

2013-UNAT-387, Gakumba

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General limited to the matter of compensation. UNAT held that the appeal had to be allowed in part because UNDT erred in setting the compensation in lieu of reinstatement at two years' net base salary without considering that Mr Gakumba's previous fixed-term appointments were one year each. UNAT held that the expectancy of renewal could not be fixed beyond such a period and therefore reduced the compensation to one year's net base salary. UNAT affirmed the UNDT judgment on compensation for non-pecuniary damages and held that no error of law was committed, since the circumstances of the case allowed the inference that the claimant suffered relevant harm, noting that, as the President of the Staff Association, the Appellant was essentially subjected to a termination that was illegally couched as Special Leave With Full Pay, arbitrarily graded and denied a renewal of his fixed-term appointment. UNAT held that those circumstances supported the finding of humiliation, embarrassment, and negative impact of the Administration's wrongdoing on the staff member, which led UNDT to award the reasonable amount of seven months' net base salary as compensation. UNAT allowed the appeal in part and reduced the award of compensation in lieu of reinstatement ordered by UNDT to one year's net base salary.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision not to renew his contract. UNDT found that the Applicant's application in respect of his termination was not receivable as he had failed to challenge the decision to terminate his service and to deny him access to his workplace. UNDT also found due process and procedural violations in respect of the Applicant's performance evaluations, and abuse of authority on the part of the UNDP Resident Representative in respect of the non-renewal of the Applicant's fixed term appointment. UNDT ordered rescission of the decision not to renew, and the Applicant's reinstatement or, in the alternative, two years' net base salary in lieu of reinstatement. UNDT awarded the Applicant an additional 7 months' net base salary in compensation for procedural and due process violations, humiliation and embarrassment.

Legal Principle(s)

In setting compensation in lieu of reinstatement, the length of the previous appointment is relevant as the expectancy of renewal should not be fixed beyond such a period or else it would not be reasonable.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Gakumba

Entity

UNDP

Case Number(s)

2013-441

Tribunal

UNAT

Registry

New York

Date of Judgement

17 Oct 2013

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Non-renewal

Separation from service

Expiration of appointment (see also, Non-renewal)

Termination of appointment (see also, Termination of appointment)

Applicable Law

UNAT Statute

- Article 9.1(a)
- Article 9.1(b)

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2012/192