

2014-UNAT-401, Zeid

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the absence of any breach of the staff member's substantive or procedural rights during the selection exercise precluded the award of moral damages to him. UNAT held that the staff member could not show a breach of a fundamental nature or that he suffered harm, stress or anxiety directly linked or reasonably attributed to a breach of his substantive or procedural rights. UNAT held that the Administration's failure to respond to staff members' repeated requests for information was not a breach of his substantive contractual entitlements or his procedural rights. UNAT held that UNDT had erred in law in awarding moral damages. UNAT upheld the appeal, reversed the UNDT judgment and vacated the award of moral damages.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application with the former UN Administrative Tribunal complaining about the circumstances surrounding his promotion to the P-5 level. UNDT found that the cancellation of the second selection exercise and its subsequent recommencement were appropriate and lawful. UNDT found, however, that there were excessive and unjustifiable delays in concluding the selection process and that the Organisation consistently and without just cause failed to respond to the Applicant's reasonable requests for information and action. UNDT found that the delays and failures to respond to the Applicant's communications amounted to maladministration and caused the Applicant emotional distress. UNDT awarded compensation for moral damages.

Legal Principle(s)

Damages for moral injury may arise from a breach of the employee's substantive entitlements from his or her contract of employment and/or from a breach of the

procedural due process entitlements therein guaranteed or where there is evidence produced of harm, stress or anxiety caused to the employee which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights. When a promotion or selection process is challenged by one or more candidates, the Administration has a duty to determine whether the candidates' complaints require that the selection process must be re-started or can continue, and this may cause delay in the process; however, when the delay is not a breach of a candidate's substantive or procedural rights, it cannot be the basis for an award of moral damages. To require the Administration to respond to each inquiry about the status of a promotional selection exercise, would unduly interfere with the Administration's duty to fully consider candidates' complaints about alleged deficiencies in the selection process and to correct such deficiencies.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Zeid

Entity

DGACM

Case Number(s)

2013-451

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Due process

Delay

Related Judgments and Orders

UNDT/2013/005

2010-UNAT-100

2012-UNAT-204

2013-UNAT-309