

2014-UNAT-424, McCloskey

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that as a consequence of the UN Income Tax Unit's (ITU) unlawful decision, the staff member had been harmed in the amount of the foreign tax credits he was required to use since he no longer had use of these credits to reduce his or his wife's income tax liability in future years. UNAT held that the staff member's claim for a refund was not moot, as UNDT had correctly determined. UNAT held that there was no basis to the Secretary-General's claim that the ITU did not need to provide a refund of the foreign tax credits to the staff member and that he should be responsible for obtaining his own refund by filing an amended 2010 income tax return with the IRS that does not use the foreign tax credits and that he should subsequently have sought to recover reimbursement from the ITU of any costs, expenses and penalties attendant to the filing of the amended tax return. UNAT held that UNDT had not erred in fact or law when it applied the Johnson jurisprudence and ordered the ITU to refund the staff member. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT Judgment: The Applicant filed an application seeking the rescission of the impugned decision requiring him to remit the amount of USD 52,596 as advanced to the IRS as an estimate of his 2007 Tax Settlement and reimbursement in the amount his tax liabilities were reduced in 2008, 2009 and 2010 through the forced use of his wife's foreign income tax credits. UNDT issued a Judgment on receivability finding that the Applicant's claims relating to a reimbursement of the staff assessment deducted from his salary for 2007, 2008 and 2009 was not receivable. UNDT found, however, that the application was receivable in so far as it sought to contest the refusal to reimburse the 2010 staff assessment. Later UNDT issued a second Judgment in which it applied the Johnson jurisprudence and ordered the Secretary-General to reimburse the Applicant for the staff assessment (USD 34,920.00)

deducted from his salary and other emoluments for 2010, plus interest thereon.

Legal Principle(s)

UNAT concluded in Johnson (Judgment No. 2012-UNAT-240) that to require a staff member to use available foreign tax credits would not only contravene the principle of equality of treatment among staff members if staff members from the US were deprived of the benefit of reimbursement for using such tax credits not associated with income earned at the UN to relieve the effects of double taxation, but also the principle of equity among the Member States irrespective of whether they choose to grant, or not to grant, an income tax exemption to their nationals, as these two principles form the basis for the staff assessment system in respect of taxation

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

McCloskey

Entity

ICTY

Case Number(s)

2013-478

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Taxation

Staff income tax liability

Applicable Law

Agreements, conventions, treaties (etc.)

- Convention on the Privileges and Immunities of the UN

Related Judgments and Orders

UNDT/2013/057

2014-UNAT-395

2012-UNAT-240