

2014-UNAT-430, Diallo

UNAT Held or UNDT Pronouncements

UNAT considered the appeal and allowed it in part. UNAT held that the Appellant's claim that the AJAB found a series of violations of her rights as a staff member, but had not awarded commensurate compensation, had merit. UNAT held that the IACO breaches identified by the AJAB were fundamental in nature, (i. e. The treating of a temporary assignment as permanent, discrimination of the staff member, failure to make good faith efforts to find alternative positions, and refusing to provide access to personnel and confidential files) and the breach itself gave rise to an award of moral damages by virtue of the harm to the employee. (Limb 1 of Asariotis). UNAT set aside the amount of two months' net base salary and substituted it with the sum of six months' net base salary. However, UNAT did not disturb the award of the payment of her full salary and all entitlements up to the end of her contract on 11 December 2011. UNAT affirmed the decision of ICAO's Secretary-General, subject to variation of the damages from two months' net base salary to six months' net base salary.

Decision Contested or Judgment/Order Appealed

ICAO decision: The Applicant contested the decision to terminate her appointment. The AJAB recommended to the Secretary-General that the International Civil Aviation Organization (ICAO) pay the Applicant her full salary and entitlements from the date her contract was terminated on 31 July 2011 through the end of her contract on 11 December 2011 as well as compensation in the amount of two months' net base salary. The Secretary-General of ICAO, while not fully concurring with the Board's conclusions, accepted the recommendations to pay the above amounts, conditioned upon the Applicant agreeing to waive her appeal rights and make no further claims against ICAO in this matter.

Legal Principle(s)

Damages for a moral injury may arise from a breach of the employee's substantive entitlements arising from his or her contract of employment and/or from a breach of the procedural due process entitlements therein guaranteed (be they specifically designated in the Staff Regulations and Rules or arising from the principles of natural justice). Where the breach is of a fundamental nature, the breach may of itself give rise to an award of moral damages, not in any punitive sense for the fact of the breach having occurred, but rather by virtue of the harm to the employee, (Asariotis, Judgment 2013-UNAT-309, para. 36). An entitlement to moral damages may also arise where there is evidence produced to UNDT by way of a medical, psychological report or otherwise 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 and where the UNDT is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

Outcome

Appeal granted in part

Outcome Extra Text

Only financial compensation; Only financial compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Diallo

Entity

ICAO

Case Number(s)

2013-489

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Jun 2014

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Termination

Compensation

Non-pecuniary (moral) damages

Remedies

Compensation (see also, Compensation)

Applicable Law

ICAO Staff Regulations

- Regulation 9.4

Related Judgments and Orders

2013-UNAT-309

2011-UNAT-123

2011-UNAT-134