

2016-UNAT-614, Roberts

UNAT Held or UNDT Pronouncements

UNAT considered the appeal by the Secretary-General challenging the compensation for moral damages. UNAT held that there was enough evidence produced that the amount of compensation for moral damages had been paid into the staff member's bank account. UNAT held that the payment of the compensation constituted an acceptance of the Secretary-General of the UNDT judgment. UNAT held that the appeal was, therefore, moot. UNAT rejected the staff member's claim for costs against the Secretary-General because of abuse of process. UNAT held that although the Secretary-General's appeal had no merit, it did not configure abuse of process. UNAT dismissed the appeal and affirmed the UNDT judgment.

Accountability referral: The Dispute Tribunal referred the case to the Secretary-General to consider any appropriate action to ensure that proper oversight and accountability measures are in place, with particular reference to the role of the CRP in ensuring procedural propriety in decision making within its remit. The referral for accountability was not appealed and the UNAT did not take a decision on it.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to grant him a permanent appointment. UNDT found that the Administration had unlawfully applied an informal and not promulgated policy denying conversion to a permanent appointment to any staff member who had a disciplinary measure in his or her official records, regardless of the timing and the gravity of the underlying misconduct. UNDT found that the Administration's assessment of the Applicant's suitability for conversion to permanent appointment was not aligned with the "Guidelines on consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered as at 30 June 2009" (2009 Conversion Guidelines), which require the Administration to take into account two criteria (timing and gravity) in determining whether a staff member is suitable for conversion. UNDT ordered the rescission of

the decision to deny the conversion and the retroactive conversion of the Applicant's appointment to a permanent appointment. UNDT also awarded the Applicant compensation for moral damages.

Legal Principle(s)

An appeal must be filed within 60 calendar days of the receipt of a UNDT judgment. The filing of the appeal has the effect of suspending the execution of the judgment. In the absence of an appeal, the UNDT judgment becomes executable following the expiry of the time provided for an appeal. Either party may then apply to UNDT for an order for execution of the judgment. However, there is no law that prevents a UNDT order for payment from being effected before it becomes executable, which is what was done in the present case.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Roberts

Entity

Not indicated

Case Number(s)

2015-710

Tribunal

UNAT

Registry

New York

Date of Judgement

24 Mar 2016

President Judge

Judge Lussick

Judge Adinyira

Judge Weinberg de Roca

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Costs

Compensation

Non-pecuniary (moral) damages

Evidence

Compensation

Referral for accountability

Applicable Law

Administrative Instructions

- ST/AI/2009/1

UNAT RoP

- Article 8.6

UNAT Statute

- Article 7.1(c)
- Article 7.5
- Article 9.2

UNDT RoP

- Article 32.2

UNDT Statute

- Article 11.3
- Article 12.4

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2015/020