

2016-UNAT-645, Fiala

UNAT Held or UNDT Pronouncements

UNAT found that the execution of the UNDT judgment No. UNDT/2014/007 had been suspended following the filing of the Secretary-General's appeal to UNAT. UNAT held that the UNDT judgment had become duly executable upon the issuing to the parties of judgment No. 2015-UNAT-516 wherein UNAT dismissed the Secretary-General's appeal against UNDT judgment. UNAT held that the staff member's motion seeking execution was properly filed before UNAT. UNAT held that the request for execution had been rendered moot by the event that the payment was issued on 22 July 2015. UNAT considered that the only remaining issue was if it was open to the UNAT, in a motion for execution of judgment, to make provision for an interest payment since no provision had been made in the judgment being executed. UNAT held that a staff member was seeking a retroactive award of interest on the payment made to her. UNAT held that the request to award retroactive interest did not fall within the scope of the motion for execution presented. UNAT rejected the motion for execution.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to revise her recruitment level from FS-4 to FS-5 with effect from 1 June 2006, the date she had been appointed to the United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo (MONUC). UNDT concluded that a legitimate expectation that she would be offered a FS-5 position was created and that the decision to appoint her at the FS-4 level was thus "erroneous". UNDT ordered the rescission of the decision to appoint the Applicant at the FS-4 level and her re-appointment at the FS-5 level, as well as payment of the difference between the salary and entitlements of FS-4 and FS-5 from 1 June 2006 to the date of the UNDT judgment. Alternatively, in the event that rescission was not possible, UNDT ordered compensation in-lieu and, additionally, compensation for moral damages. The Secretary-General appealed. UNAT dismissed the appeal and affirmed the UNDT judgment. The staff member filed a motion for execution of the UNAT judgment.

Legal Principle(s)

Article 11. 4 of the UNAT Statute provides: "Where the judgment requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution of the judgment". In Warren (judgment No. 2010-UNAT-059), UNAT held that its "judgments shall be executed within 60 days of the date the judgment is issued to the parties". A request for a retrospective award of interest on the payments to be made to a staff member does not fall within the scope of a motion for execution if no interest was granted in the judgment being executed.

Outcome

Revision, correction, interpretation or execution

Full judgment

[Full judgment](#)

Applicants/Appellants

Fiala

Entity

MONUC

Case Number(s)

2015-853

Tribunal

UNAT

Registry

New York

Date of Judgement

24 Mar 2016

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Judgment-related matters

Execution of Judgment

Applicable Law

UNAT Statute

- Article 11.4
- Article 7.5

Related Judgments and Orders

2015-UNAT-516

2010-UNAT-059