

2016-UNAT-674, Dube

UNAT Held or UNDT Pronouncements

UNAT considered all arguments made on appeal. UNAT noted that the Secretary-General failed to demonstrate errors of fact or law in UNDT's findings. UNAT agreed with UNDT's findings that the Approving Authority's request for clarification from the Selection Panel was not in accordance with the staff selection procedures set forth in Section 5.5 of CF/EXD/2009-009 and that this request obviously resulted in the Selection Panel changing its recommendation. UNAT noted that, with regard to Section 9 of CF/AI/2010-001, the 22 September 2011 memorandum did not provide a basis for the Approving Authority to request clarification from the Selection Panel concerning its recommendation of Mrs Dube for the position. UNAT held that UNDT correctly found that the Approving Authority breached UNICEF's staff selection procedures, which constituted a substantial procedural breach or irregularity resulting in the loss of opportunity of continued employment with UNICEF for Ms Dube, who was encumbering an abolished post. With respect to UNDT awarding compensation for loss of opportunity, UNAT found that there were exceptional circumstances, in accordance with Article 2(5) of the UNAT Statute, to allow it to receive additional documentary evidence. UNAT concluded that UNDT erred in awarding the amount of compensation and deducted USD 9,643. With respect to the moral damages, UNAT upheld the Secretary-General's contention that Ms Dube did not adduce any evidence of harm. UNAT dismissed the Secretary-General's appeal on the merits and affirmed UNDT's judgment on the merits. UNAT allowed the Secretary-General's appeal against compensation, to the extent that the award of two years' net base salary at the GS-7 level for loss of opportunity is varied, by reducing the award by the amount of USD 9,643. The award of three months' net base salary at the GS-6 level for moral damages was also set aside.

Decision Contested or Judgment/Order Appealed

Mrs Dube contested a non-selection decision. UNDT concluded that the non-selection decision was unlawful and found that there was a substantial procedural irregularity

in the selection process. UNDT also found that the Approving Authority exerted undue influence on the Selection Panel. UNDT awarded Mrs Dube compensation of two years' net base salary at the GS-7 level for loss of opportunity, and moral damages of three months' net base salary at the GS-6 level. UNDT also awarded interest on the total sum of compensation.

Legal Principle(s)

The approving authority may: (a) approve the Central Review Body's (CRB) recommendations; (b) return the case to the CRB for further review, giving his/her reasons; or (c) choose not to agree with the CRB's recommendation, make his/her decision and inform the CRB of his/her decision, and the reasons thereof. If a staff member on an abolished post is one of the recommended candidates, he/she would be given preference even if he/she is not the first recommended candidate, unless strong reasons relating to relative competence and integrity dictate otherwise. Non-selection of a staff member on an abolished post should be justified in writing, explaining why the staff member who meets the minimum requirements for the post is not preferred and how his or her core and functional competencies as assessed in the staff selection process did not match those required for the post. In exceptional circumstances, and where UNAT determines that the facts are likely to be established with documentary evidence, including written testimony, UNAT may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Dube

Entity

UNICEF

Case Number(s)

2016-886

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

Non-pecuniary (moral) damages

Staff selection (non-selection/non-promotion)

Central Review Body

Selection decision

Applicable Law

UNAT Statute

- Article 2.5

UNICEF Administrative Instructions

- CF/AI/2010-001

Related Judgments and Orders

UNDT/2015/109

2010-UNAT-097

2010-UNAT-078

2010-UNAT-083

2010-UNAT-056