

2016-UNAT-675, Uwais

UNAT Held or UNDT Pronouncements

UNAT considered both of the Appellant's cases in their judgment. UNAT held that it was not persuaded that UNRWA DT erred in deciding that the decision to close the cases arising from the Appellant's complaints was lawful. UNAT noted that UNRWA DT's decision was justified based on careful consideration of the Appellant's arguments and evidence gathered during the investigation. However, UNAT held that the characterization of the decision to terminate the Appellant's fixed-term appointment as a disciplinary measure tainted the process to such a significant degree that it rendered the decision unlawful. UNAT noted that a decision to terminate any staff member's appointment is a very serious decision and it is expected that a letter informing a staff member of their termination will be transparent and written in such a way as to properly and adequately communicate, characterize and explain the reason for the decision. UNAT held that this was not done here. UNAT accordingly allowed the appeal in part. UNAT vacated UNRWA DT's judgment as it pertained to the Appellant contesting the termination decision and awarded compensation of six months' net base salary as pecuniary damages.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to close the cases arising from her complaints of harassment and abuse of power. She also contested the decision to terminate her fixed-term appointment in the interest of the Agency. UNRWA DT found that the decisions to close the cases arising from the three separate complaints by the Applicant of harassment and abuse of power were lawful. Turning to the decision to terminate the Applicant's fixed-term appointment, UNRWA DT found a number of irregularities with regard to the Applicant's appointment. UNRWA DT concluded that the Applicant's unsatisfactory performance justified the decision to terminate her appointment.

Legal Principle(s)

Case management issues, including the question of whether to call a certain person to give evidence, remain within the discretion of the tribunal of the first instance, and UNAT will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence. A tribunal of the first instance does not have the competence to conduct a de novo investigation of complaints of harassment or other forms of prohibited conduct. A decision to terminate any staff member's appointment "in the interest of the Agency" under Area Staff Regulation 9. 1 is a very serious decision since it is the ultimate manifestation of the Administration's prerogative to do so where appropriate and is permanent in nature. Such a decision has far-reaching consequences for the staff member and requires careful consideration and deliberation before implementation. It is therefore expected that a letter or notice which informs a staff member of the termination of his or her service will be transparent and written in such a way as to properly and adequately communicate, characterize and explain the reason for the decision.

Outcome

Appeal granted in part

Outcome Extra Text

Only financial compensation; Only financial compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Uwais

Entity

UNRWA

Case Number(s)

2016-888

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Procedure (first instance and UNAT)

Case management

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Applicable Law

Staff Regulations

- Regulation 9.1

Related Judgments and Orders

2015-UNAT-597

2011-UNAT-123