

2017-UNAT-716, Cohen

UNAT Held or UNDT Pronouncements

UNAT considered an application to UNAT contesting the Conciliation Committee's decision to recommend compensation of USD 35,000. UNAT dismissed the motion of Ms Cohen seeking reconsideration of a UNAT Order granting the ICJ Registrar additional time to file his answer. On Ms Cohen's application for permission to reply to the ICJ Registrar's answer on the grounds that neither the ICJ Registrar nor the Conciliation Committee addressed the testimony on record in their decisions, UNAT considered that exceptional circumstances existed and granted the motion. UNAT held that, absent a successful conciliation and settlement agreement as contemplated in the ICJ Staff Regulations, Ms. Cohen was permitted to make an application to the UNAT to determine if the administrative decision was in breach of contract entitling her to compensation as an effective remedy for the proven harassment. UNAT held that the implied administrative decision to deny Ms. Cohen compensation for the harm she suffered denied her the effective remedy to which she was contractually entitled under ST/SGB/2008/5 and that, accordingly, there was a legal basis for her claim for compensation before UNAT. UNAT held that the ICJ was in breach of its duty to protect its employees from discrimination and harassment. UNAT held that Ms. Cohen presented no evidence to support her claim for loss of earning capacity or her loss of future job prospects. UNAT held that relocation expenses would have been incurred under other circumstances as she was locally recruited and, as such, could not be considered to be a loss caused by her injury, noting that her decision to relocate was made voluntarily and there was an insufficient causal link between that decision and any harassment she suffered. UNAT held that her allegations of procedural fairness relating to delay in processing her complaint were not materially prejudicial as she was either on paid leave or receiving disability benefit and did not suffer any financial prejudice resulting from the delays. UNAT considered there was no justifiable basis to refer for accountability as the wrongdoing in the case was primarily that of Ms Cohen's supervisor. UNAT awarded Ms Cohen compensation in the amount of one year's net base salary.

Decision Contested or Judgment/Order Appealed

ICJ decision: Ms Cohen had filed a complaint with the Conciliation Committee for compensation for the damages she suffered as a result of being a victim of preventable harassment while employed at the ICJ. The Conciliation Committee concluded that Ms Cohen had been the victim of discrimination, harassment, and abuse of authority and that she was entitled to an effective remedy in the form of monetary compensation for the violation of her legal rights to a workplace free from any form of harassment. The Conciliation Committee recommended paying Ms Cohen reparations in the amount of USD 35,000.

Legal Principle(s)

The quantum of compensation for harm caused by harassment is a matter within the discretion of UNAT properly assessing the evidence of the nature, extent, and effects of the harm, with due regard and consideration being given to awards in similar cases.

Outcome

Appeal granted in part

Outcome Extra Text

Only financial compensation; Only financial compensation

Full judgment

[Full judgment](#)

Applicants/Appellants

Cohen

Entity

ICJ

Case Number(s)

2016-951

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Harassment (non-sexual)

Applicable Law

ICJ Staff Regulations

- Regulation 11.5
- Regulation 11.7
- Regulation 5.5

Other UN issuances (guidelines, policies etc.)

- UNAT Practice Direction No.1/Section II.A.3

Secretary-General's bulletins

- ST/SGB/2008/5

UNAT Statute

- Article 2.10
- Article 9.1(a)
- Article 9.5

Related Judgments and Orders

2014-UNAT-409

2012-UNAT-272

2011-UNAT-143

2014-UNAT-410

2014-UNAT-397

2011-UNAT-177

2016-UNAT-644

2016-UNAT-702