

2017-UNAT-724, Mihai

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that although UNDT did not expressly rescind the impugned decision to withdraw the offer of appointment, the award of compensation in lieu of rescission could be read as an implied order of rescission. UNAT held that UNDT gave no reasoning for the calculation of compensation, nor did it specify what amount corresponded to in-lieu compensation and what amount as compensation for loss of opportunity. UNAT awarded three months' net base salary as compensation in lieu of rescission of the impugned decision to withdraw the offer of appointment, noting that more than this would be excessive given that Ms. Mihai had received and accepted a temporary appointment. UNAT held that the chance the appointment would be renewed could not be considered for in-lieu compensation as that would be a violation of the Staff Regulations which provide that a temporary appointment does not carry any expectancy of renewal. UNAT awarded compensation for pecuniary harm during her period of unemployment but not for loss of opportunity in connection with other job offers, as she had rejected the job offers before she received and accepted the offer of appointment by the UN Stabilisation Mission in the Democratic Republic of the Congo (MONUSO) and therefore there was no detrimental reliance. UNAT held that Ms. Mihai could not claim compensation for the loss of opportunity of a job interview as she did not present any evidence of the conditions of the employment in question, nor of her chances of being selected. UNAT granted the Secretary-General's appeal in part, modifying the UNDT judgment and awarding compensation in the total amount of six months' net base salary.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision to withdraw her offer of appointment. UNDT awarded compensation in lieu of rescission and for loss of opportunity.

Legal Principle(s)

Compensation awarded by UNDT must follow a principled approach and on a case-by-case basis. UNDT is in the best position to decide on the level of compensation; however, UNDT must give thorough and convincing reasoning as to the amount of compensation awarded, or UNAT may remand the case or modify the award.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Mihai

Entity

MONUSCO

Case Number(s)

2016-962

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Compensation

In-lieu compensation

Loss of chance

Pecuniary (material) damages

Applicable Law

Staff Rules

- Rule 4.12(c)

UNAT Statute

- Article 2.3
- Article 2.5
- Article 9.1
- Article 9.1(a)
- Article 9.1(b)

UNDT Statute

- Article 10.5(a)

Related Judgments and Orders

UNDT/2016/087