

2017-UNAT-742, Kallon

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal by a full bench of UNAT. The majority of the judges upheld UNDT's findings that the contested decisions were substantively and procedurally flawed and dismissed the appeal. As for UNDT's moral damages award, the majority noted that the purpose of the amendment to Article 10. 5(b) of the UNDT Statute, made following General Assembly Resolution 69/203, was to introduce an express requirement that compensation for harm can be awarded only when there is a sufficient evidentiary basis. The majority held that evidence of moral injury consisting exclusively of the testimony of the complainant, if credible, reliable, and satisfactory in material respects, may be sufficient to discharge the evidentiary burden. The three dissenting opinions took the view that evidence consisting exclusively of the complainant's testimony was not sufficient without corroboration by independent evidence (expert or otherwise). The majority included one concurring opinion which agreed with the three dissenting judges on the requirements of compensation but joined the majority in the outcome of the case.

Decision Contested or Judgment/Order Appealed

A staff member at the United Nations Stabilization Mission in Haiti (MINUSTAH) contested the decisions to remove his designation as Chief Procurement Officer (CPO) at MINUSTAH and to deny him the required designation to take up the post of CPO at another duty station. UNDT rescinded the decisions finding they were taken in reaction to allegations that the staff member had failed to properly exercise his delegated authority and without due process or substantiation. UNDT declined to reinstate the staff member's designation but ordered USD 50,000 in non-pecuniary damages with interest for the stigmatization, reputational damage, stress, anxiety, and moral injury caused to the staff member.

Legal Principle(s)

Harm for which compensation is requested must be supported by evidence. A staff member's testimony alone is not sufficient to present evidence supporting harm under Articles 9. 1(b) of the UNAT Statute and 10. 5(b) of the UNDT Statute.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kallon

Entity

MINUSTAH

Case Number(s)

2016-935

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Burden of proof

Non-pecuniary (moral) damages

Evidence

Evidence of harm

Sole testimony of complainant

Applicable Law

UNAT Statute

- Article 9.1

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2015/126

UNDT/2016/027