

2018-UNAT-860, Sirhan

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Commissioner-General. UNAT held that the Commissioner-General's appeal was not time-barred and was, therefore, receivable. UNAT found that no request for compensation for loss of earnings (salary) had been made. Accordingly, UNAT held that UNRWA DT did not have jurisdiction to award compensation for loss of earnings. UNAT held that any financial loss appears to be generated as the main cause and directly by the Director of UNRWA Affairs, Lebanon's (DUA/L) decision to cancel the secondment and that this decision was found to be lawful by the UNRWA DT and that the DUO/G's delay in providing his approval was held not to be a fundamental breach of rights. UNAT upheld the appeal and vacated the UNRWA DT judgment.

Decision Contested or Judgment/Order Appealed

UNRWA DT judgment: The Applicant sought i) rescission of the contested decision to cancel his secondment to the post of Hydrogeologist at the Lebanon Field Office (LFO); ii) compensation for the expenses incurred in preparing for his secondment to the LFO; and iii) compensation for moral damages caused by the Agency's abuse of power. UNRWA DT found that the decision to cancel the Applicant's secondment to the LFO was lawful. UNRWA DT found that the delay for more than one month caused by the Director of UNRWA Operations, Gaza (DUO/G) in providing his approval for the Applicant's release, knowing the urgency of the matter, was inordinate and deprived the Applicant of the opportunity of being appointed to the post. UNRWA DT ordered the Agency to pay compensation, representing the difference between his current net salary and the amount advertised for the post for one year. UNRWA DT rejected the request for moral damages.

Legal Principle(s)

The Dispute Tribunal may award compensation for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury. It is not enough to demonstrate illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. The Dispute Tribunal is not competent to award compensation of the specific kind, namely for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury, without a previous claim for such damage and compensation. If no request for such compensation is made by the Applicant, the Dispute Tribunal lacks jurisdiction to award this kind of compensation sua sponte. Not every violation of due process rights will necessarily lead to an award of compensation.

Outcome

Appeal granted

Outcome Extra Text

No relief ordered; No relief ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

Sirhan

Entity

UNRWA

Case Number(s)

2018-1154

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Burden of proof

Pecuniary (material) damages

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Remedies

Compensation (see also, Compensation)

Applicable Law

UNAT RoP

- Article 29(a)

- Article 29(b)

UNAT Statute

- Article 7.1(c)

UNRWA DT Statute

- Article 10.5