

2018-UNAT-861, Dahan

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the staff member arguing that UNDT erred in not awarding compensation in lieu of remand to ABCC as an alternative remedy. UNAT found no error in the UNDT judgment not awarding in-lieu compensation. UNAT held that since the Secretary-General concurred with the remand in question, the claim became moot. UNAT held that a claim of gross negligence against the Administration is a separate action that could not be included in this claim. UNAT held that the Appellant had not demonstrated that the delay had any impact on her physical or mental well-being, rejecting her claim for moral damages based on the ABCC's delay in issuing its report. UNAT held that UNDT erred in failing to address her claim for moral damages and that the Appellant's right to due process entitled her to a fair hearing and a fully reasoned judgment of her application. UNAT held that this procedural error was not prejudicial to the Appellant. However, UNAT ordered that the case, as remanded by UNDT to ABCC, had to be promptly considered by ABCC. UNAT dismissed the appeal.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision that denied her compensation under Appendix D of the Staff Rules. UNDT found that claim for compensation was untimely. UNDT found, however, that ABCC failed to properly exercise its discretion when considering whether exceptional circumstances warranted the acceptance of this untimely claim. UNDT found that ABCC also erred in refusing to waive the time limit on the ground of insufficient explanation. UNDT rescinded the decision of ABCC to deny the Applicant's request for consideration of her claim for compensation under Appendix D to the Staff Rules and, subject to the concurrence by the Secretary-General, remanded the claim to ABCC for proper consideration.

Legal Principle(s)

Under the UNDT Statute, it is only in cases of appointment, promotion, or termination that UNDT must set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered. The UNDT Statute does not require UNDT to set an amount of compensation in lieu of rescission or specific performance where, as in the present case, the matter is simply remanded, subject to the concurrence of the Secretary-General. A claim of gross negligence against the Administration is a separate action that cannot be included in a claim made by a staff member under Appendix D.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Dahan

Entity

ICTR

Case Number(s)

2018-1157

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Due process

Evidence

Evidence of harm

Medical evidence

Applicable Law

Staff Rules

- Rule 11.2(b)
- Rule 3.1
- Rule 3.6(a)

UNDT Statute

- Article 10.4
- Article 10.5

Related Judgments and Orders

UNDT/2018/002