2018-UNAT-874, Kebede

UNAT Held or UNDT Pronouncements

The only issue in contention in this appeal is whether the UNDT erred on a question of law or fact when it found that the harm to the Appellant was sufficiently evidenced to justify an award of compensation for moral damages. UNAT found that UNDT based the award of compensation for harm both on the evidence produced by the individual and what it described as “pre-existing distress that the individual was already suffering from” which “was exacerbated by the unlawful decision to refuse his request” to investigate the allegations of discrimination. UNDT was to determine whether Mr. Kebede suffered moral harm as a consequence of the 2016 decision refusing his 2013/2014 complaint of discrimination. UNAT found that UNDT effectively relied on evidence of harm that the individual suffered before the 2012 settlement agreement to support its award of moral damages for harm suffered after the 2016 decision. UNAT held that UNDT erred in law in awarding damages without evidence corroborating the individual’s testimony. UNAT granted the Secretary-General’s appeal and vacated UNDT’s award of compensation for moral damages.

Decision Contested or Judgment/Order Appealed

The Applicant contested the 23 April 2016 decision made by the then Executive Secretary of ECA (ES/ECA) not to set up a fact-finding investigation panel to investigate his complaints about workplace discrimination and harassment. UNDT found that the ES/ECA misapplied the definition of what constitutes workplace harassment pursuant to ST/SGB/2008/5. UNDT also found that the ES/ECA conflated ST/SGB/2008/5 on prohibited conduct with the receivability of claims under the formal internal justice system, thereby excluding material he should have considered and failed to address the simple question of whether it appeared that the Applicant may have been subjected to prohibited conduct which merited an investigation. Further, UNDT held that the ES/ECA erred in law and procedure by disregarding allegations of prohibited conduct, thereby failing to appreciate that the

Applicant was complaining of a continuing state of prohibited conduct. UNDT concluded that the ES/EA had misdirected himself as to the applicable law and procedures in deciding not to initiate a formal fact-finding investigation into the Applicant’s complaint. UNDT rescinded the ES/EA’s decision and referred the complaint back to the ES/ECA for proper consideration. UNDT also awarded compensation for moral damages to the Applicant.

Legal Principle(s)

Compensation for harm must be supported by three elements: the harm itself; an illegality; and a nexus between both. If one of these three elements is not established, compensation cannot be awarded. 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. If one of these three elements is not established, compensation cannot be awarded. The case law requires that the harm be shown to be directly caused by the administrative decision in question.

Outcome

Appeal granted

Full judgment

Full judgment

Applicants/Appellants

Kebede

Entity

ECA

Case Number(s)

2018-1166

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation
Non-pecuniary (moral) damages
Evidence
Compensation
Evidence of harm

Applicable Law

UNAT Statute

- Article 9.1(b)

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2018/018