

2018-UNAT-879, Nimer

UNAT Held or UNDT Pronouncements

UNAT rejected the Appellant's request for an oral hearing. UNAT held that UNRWA DT did not commit an error of procedure such as to affect the decision of the case by failing to order the Agency to allow the participation of the Appellant representative in the oral hearing or by failing to accommodate the latter's employment situation. UNAT held that UNRWA DT did not err on a question of fact, resulting in a manifestly unreasonable decision when it determined that the Head of Education Department (H/ED) had not received the Appellant's request for SLWOP and, consequently, that there had not been an administrative decision about this request. UNAT held that the Agency's decision to separate the Appellant from service for abandonment of post was not reasonable and thus unlawful. UNAT held that the Appellant had not presented any evidence that justified compensation for moral harm. UNAT upheld the appeal partially and modified the UNRWA DT judgment. The decision to separate the Applicant from service was rescinded. Alternatively, UNAT ordered the Commissioner-General to pay in-lieu compensation in the amount of six months' net base salary. In all other respects, UNAT dismissed the appeal and affirmed the UNRWA DT judgment affirmed.

Decision Contested or Judgment/Order Appealed

UNRWA DT judgment: The Applicant contested the decision to deny his SLWOP request and to terminate his employment due to abandonment of post. UNRWA DT found the request regarding the SLWOP not receivable as no administrative decision had been taken. On the issue of termination, the application was dismissed considering that the decision to terminate the employment by reason of abandonment of post was lawful and correct. UNRWA DT denied the request for moral damages. UNRWA DT dismissed the application in its entirety.

Legal Principle(s)

While a staff member has a right to be represented by another staff member pursuant to Article 8. 3 of the UNRWA DT RoP, the UNRWA DT has wide discretion in matters of case management. UNAT may only award compensation for harm in cases where the staff member has presented evidence other than his own testimony that he or she suffered a moral injury due to the contested administrative decision.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Nimer

Entity

UNRWA

Case Number(s)

2018-1172

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

President Judge

Judge Knierim

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence of harm

Separation from service

Abandonment of post

Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1
- Article 8.3
- Article 9.1(a)
- Article 9.1(b)

UNRWA Area Staff Rules

- Rule 109.4(2)
- Rule 109.4(3)

UNRWA DT RoP

- Article 8.2