

2018-UNAT-882, Rehman

UNAT Held or UNDT Pronouncements

The Appellant sought an order for reinstatement, an increase in the compensation awarded, and an increase in the amount awarded by UNDT for moral damages. The Appellant also contested the failure UNDT's failure to make a referral for accountability to the Secretary-General under Article 10(8) of the UNDT Statute. UNAT decided that Article 10(5)(a) of the UNDT Statute, which corresponds to Article 9 (1)(a) of the UNAT Statute, does not confer on the Tribunal the power to enforce the reinstatement of a staff member's contract in a non-renewal case. UNAT, therefore, held that the Appellant's claim for an order of reinstatement must be rejected. UNAT held that a staff member's testimony alone is not sufficient to present evidence supporting harm under Article 10(5)(b) of the UNDT Statute. Therefore, the testimony of an applicant in such circumstances needs the corroboration of independent evidence to support the contention that harm has occurred. UNAT accordingly dismissed those claims but allowed UNDT's award of moral damages to stand since it was not appealed by the Secretary-General. UNAT further held that referral for accountability is not appropriate in this case, as Cohen held that the exercise of the power of referral for accountability must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws. UNAT found that the Appellant did not establish any error of law, fact, or procedure that would entitle UNAT to interfere with UNDT's judgment. UNAT held that the appeal must fail.

Decision Contested or Judgment/Order Appealed

The Applicant contested the non-renewal of her contract and the amount of damages awarded by UNDT. UNDT found that the new reason for the non-renewal of the Applicant's contract, which was provided ex post facto, was not supported by any evidence. UNDT, therefore, concluded that the Applicant's non-renewal was unlawful. UNDT ordered rescission of the decision not to renew the Applicant's fixed-term appointment beyond 31 December 2015 and, in the alternative, compensation

in the amount of one-year net base salary. UNDT also awarded moral damages to the Applicant.

Legal Principle(s)

The power of referral for accountability must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws. The UNDT and UNAT Statutes do not confer the power to enforce the reinstatement of a staff member in a non-renewal case. A staff member's testimony alone is not sufficient to present evidence supporting harm under Article 10(5)(b) of the UNDT Statute.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Rehman

Entity

UNICEF

Case Number(s)

2018-1175

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

Non-renewal

Reason(s)

Applicable Law

UNAT Statute

- Article 9.1(a)

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)

Related Judgments and Orders

UNDT/2018/031