

2018-UNAT-895, Belkhabbaz **(formerly Oummih)**

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the Secretary-General's submissions were valid in most aspects. UNAT held that the award of 21 months' compensation was excessive as it was not reasonable to assume that Ms Belkhabbaz's fixed-term appointment would have been extended for longer than one year, finding that an award of 12 months' remuneration would be adequate compensation. UNAT held that UNDT exceeded its competence and erred in law by awarding pecuniary damages relating to Applicant's placement on sick leave with half pay. UNAT held that UNDT erred by awarding separate compensation for the alleged non-extension of the contract pending the completion of the rebuttal process. UNAT held that the award of non-pecuniary damages for non-extension pending rebuttal was duplicative of the UNDT's award of USD 40,000 for non-pecuniary damages for non-renewal as Ms Belkhabbaz did not suffer any additional compensable harm. UNAT reduced the amount for compensation for moral harm to USD 20,000. UNAT upheld the appeal in part and modified the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to extend her contract pending the rebuttal of her fourth performance appraisal. Simultaneously, the Applicant filed an application for interim measures seeking to suspend the execution of the contested decision. Further, the Applicant filed an application challenging the decision not to renew her contract upon its expiry. UNDT addressed the two separately filed applications as they were inextricably linked. With respect to the contested decision not to extend the Applicant's fixed-term appointment, UNDT found there were no good reasons to depart from the principle of renewing the contract pending completion of the rebuttal process. As for the contested decision not to renew the Applicant's fixed-term appointment upon its expiry, UNDT found that the Applicant's

performance had not been adequately and properly evaluated during her third and fourth performance appraisal cycles as the First Reporting Officer had been biased against her and the Second Reporting Officer had not taken sufficient measures to ensure an objective assessment of her performance. UNDT considered that the third reason for the contested decision, namely that the Applicant had only partially met performance expectations for two consecutive years, could not stand. UNDT accepted the application and ordered the payment of pecuniary damages to the Applicant. UNDT further ordered payment to the Applicant of non-pecuniary damages arising from the significant stress she experienced because of the non-renewal of her contract and for the non-pecuniary harm the Applicant suffered as a direct result of the decision not to extend her appointment pending completion of the rebuttal process.

Legal Principle(s)

The award of non-pecuniary damages for non-extension of the contract pending the rebuttal of performance appraisal is duplicative of an award of non-pecuniary damages for non-renewal of the contract upon its expiry when the Applicant did not suffer any additional compensable harm.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Belkhabbaz (formerly Oummih)

Entity

OAJ

Case Number(s)

2018-1193

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Evidence

Evidence of harm

Non-renewal

Performance management

Performance evaluation

Remedies

Compensation (see also, Compensation)

Specific performance

Applicable Law

Administrative Instructions

- ST/AI/2013/1

UNDT Statute

- Article 10.5(b)
- Article 8.1(c)

Related Judgments and Orders

UNDT/2018/071

UNDT/2013/057

UNDT/2013/039