

# **2019-UNAT-896, Harris**

## **UNAT Held or UNDT Pronouncements**

The UNDT judgment was appealed by both parties. On the lawfulness of the decision to withhold salary, UNAT held that Mr Harris had not identified any grounds for his appeal and failed to demonstrate that UNDT had committed any error of fact or law in arriving at its decision. UNAT held that Mr Harris' case was fully and fairly considered and could find no error of law or fact in its decisions. On the cancellation of health insurance, UNAT found no reason to differ from the UNDT finding that Mr Harris did not make the appropriate payments to reinstate his health insurance coverage, thus allowing the coverage to lapse because of his own default and not because of any unlawful action by the Administration. UNAT held that for these two decisions, Mr Harris did not meet the burden of proof of demonstrating an error in the impugned judgment such as to warrant its reversal. On the award of moral damages, UNAT held that UNDT erred in law and exceeded its competence by awarding compensation for moral damage without Mr Harris having made a previous claim for such damage and compensation. UNAT granted the Secretary-General's appeal, dismissed Mr Harris' appeal, set aside the order in the UNDT judgment for moral damages, and affirmed the remainder of the UNDT judgment.

## **Decision Contested or Judgment/Order Appealed**

Mr Harris contested the withholding of his salary and the cancellation of his health insurance after he was separated from service for abandonment of post. UNDT found that the Organisation had lawfully recovered advance payments made for his education grant and related travel. UNDT found that it was unlawful to withhold his salary for the period from 8 October 2016 to 15 November 2016, because his unauthorised absence was effective as of 16 November 2016. UNDT found that Mr Harris had failed to take appropriate steps to reinstate his health coverage and not because of any unlawful action by the Organisation. UNDT ordered reimbursement of Mr Harris' salary for the period of 8 October 2016 to 15 November 2016 and awarded moral damages.

## Legal Principle(s)

An appellant has the burden of satisfying UNAT that the judgment he or she seeks to challenge is defective, identifying the alleged defects in the impugned judgment and stating the grounds relied upon in asserting that the judgment is defective. The doctrine *volenti no fit injuria* holds that a person who knowingly and willingly puts himself in a dangerous situation cannot sue for any resulting injuries. 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 no request for specific compensation is made, UNDT lacks jurisdiction to award this kind of compensation *sua sponte*.

## Outcome

Appeal dismissed on merits; Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Harris

## Entity

UNFIL

## Case Number(s)

2018-1142

2018-1153

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Mar 2019

## President Judge

Judge Raikos

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

## Applicable Law

Administrative Instructions

- ST/AI/2011/4
- ST/AI/400

Information Circulars

- ST/IC/2016/13

Staff Rules

- Rule 5.1(e)(ii)

- Rule 5.3
- Rule 6.2(f)
- Rule 6.2(g)

#### UNAT RoP

- Article 18.1

#### UNAT Statute

- Article 2.1
- Article 8.3

#### UNDT Statute

- Article 10.5

## Related Judgments and Orders

2018-UNAT-870

2018-UNAT-849

2015-UNAT-594

2015-UNAT-579

2014-UNAT-487

2012-UNAT-236

2011-UNAT-110

2010-UNAT-035

2017-UNAT-712

2016-UNAT-691