

2019-UNAT-899, Ashour

UNAT Held or UNDT Pronouncements

On appeal, UNAT limited its consideration to the issue of the amount of compensation awarded in lieu of rescission and the amount of compensation awarded for harm. On the issue of in lieu compensation, UNAT held that the Appellant failed to advance any error of law or of fact leading to a manifestly unreasonable decision. UNAT noted that in lieu compensation is not intended to compensate for the possible harm suffered by the injured person, as that is the specific aim of compensation for harm. UNAT held that UNRWA DT had the discretion to fix this amount as a generic sum and was not bound by any detailed or intricate calculations involving contribution to the Provident Fund or other possible allowances. On the issue of compensation for harm, UNAT recalled that it was insufficient to demonstrate illegality to obtain compensation; the claimant bore the burden of proof. In addition, UNAT recalled that the harm had to have been directly caused by the administrative decision in question. UNAT held that the Appellant's interpretation of his laboratory reports showing a fluctuation in blood sugar level had to have been corroborated by additional evidence in order to support his claim for compensation for harm. UNAT noted that the Appellant had neither requested leave to present such evidence nor presented the evidence itself. UNAT held that the Appellant failed to provide sufficient evidence of any harm resulting from the impugned decision. UNAT found no error in the UNRWA DT judgment pertaining to compensation for harm. On the Appellant's claim that UNRWA DT erred in not having referred the case to the Commissioner-General of UNRWA for action to enforce accountability, UNAT noted that the Appellant did not seek such a referral in his UNRWA DT application. UNAT held that previous decisions regarding submissions of alleged prejudice against him inside the Gaza Field Health Program did not fall within the scope the present case. UNAT found no grounds for awarding costs against the Appellant as there was no intentional or manifest abuse of the appeal process. UNAT dismissed the appeal and affirmed the UNRWA DT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested his non-selection for a position. UNRWA DT found that the selection process had been tainted by irregularities and bias. UNRWA DT ordered that the non-selection decision be rescinded, or in the alternative, the Respondent pay the Applicant USD 2,363. 76 (in lieu compensation). UNRWA DT further held that the Applicant's request for moral damages for psychological harm was not supported by evidence and therefore did not award moral damages.

Legal Principle(s)

The purpose of in-lieu compensation is to place the staff member in the same position he or she would have been in, had the Organisation complied with its contractual obligations. In-lieu compensation is an alternative to rescission or specific performance and should be as equivalent as possible to what the person concerned would have received, had the illegality not occurred. In-lieu compensation is not intended to compensate for all the possible harm suffered by the injured person, as this is the specific aim of compensation for harm.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ashour

Entity

UNRWA

Case Number(s)

2018-1190

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Mar 2019

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence of harm

In-lieu compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Applicable Law

UNRWA DT Statute

- Article 10.5(b)