

2019-UNAT-909, Haroun

UNAT Held or UNDT Pronouncements

Noting that the Appellant, the innocent party, lost her employment, her career prospects within the Organisation, and the offending managers remained entrenched in their positions, UNAT held that there was a substantial variation or a striking disparity between the award made by UNDT and the award that UNAT considered ought to have been made. UNAT held that, given that an order of reinstatement was unlikely to be implemented, a more generous award was justifiable in the circumstances. UNAT held that UNDT did not err in law or fact in denying moral damages, as there was no corroborating evidence to the Appellant's own testimony and thus, the evidence did not meet the evidentiary standard. UNAT upheld the appeal and modified the UNDT judgment to award 24 months' net base salary (with interest) as compensation for the unlawful termination of her appointment.

Decision Contested or Judgment/Order Appealed

The Applicant contested her termination and the decision to exclude her from the comparative review exercise involving warehouse assistants. UNDT held that the decision to exclude the Applicant from the comparative review, which formed the basis of the decision to terminate her employment, was tainted with bad faith and improper motive. UNDT found that the decision to terminate the Appellant's employment was unlawful. UNDT awarded six months' net base salary as compensation and referred the conduct of one of the managers to the Secretary-General for possible action to enforce accountability.

Legal Principle(s)

UNAT ordinarily will be reluctant to interfere with an award of compensation by the UNDT but is entitled to do so where (i) there has been an irregularity or misdirection;

(ii) no sound or reasonable basis exists for the award; or (iii) there is a substantial variation or a striking disparity between the award made by UNDT and the award UNAT considers ought to have been made. Where there is a substantial variation or a striking disparity between a compensation award made by UNDT, and the award UNAT considers ought to have been made, UNAT should interfere on the ground of a factual error, resulting in a manifestly unreasonable decision. Where retaliation against a staff member takes the form of termination of employment, and reinstatement is neither likely nor practical, then substantial awards of compensation will be appropriate.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Haroun

Entity

UNAMI

Case Number(s)

2018-1203

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

Pecuniary (material) damages

Disciplinary matters / misconduct

Retaliation

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Applicable Law

UNAT Statute

- Article 10.5(b)
- Article 2.1

UNDT Statute

- Article 10.7

Related Judgments and Orders

UNDT/2018/083