

2019-UNAT-922, Haq and Kane

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. On receivability, UNAT opined that it doubted whether the application was receivable, but due to some uncertainties and because the matter was of general interest, it would decide the case on the merits. On the merits, UNAT held that UNDT erred in law in finding that Ms Haq and Ms Kane had a fundamental right to be fully and accurately informed about their pension entitlements at the time of their appointments. UNAT held that UNDT erred in law in failing to consider that Staff Regulation 4. 1 does not oblige the Secretary-General to transmit the UNJSPF Regulations to a staff member with the letter of appointment upon appointment. UNAT held that it was sufficient to have alerted them by drawing their attention to the UNJSPF Regulations and Rules that their appointments at the Assistant Secretary-General level might have an impact on their pension status and entitlements, and that it was their responsibility to become familiar with the Regulations or seek further advice. UNAT held that, as there was no breach of duty and consequently no illegality on the part of the Administration, there could be no award of compensation for material or moral harm. UNAT noted that it did not have to examine whether Ms Haq and Ms Kane had established a causal link between the alleged breach of duty and their current pension situation and that they had not suffered any financial harm. UNAT granted the appeal and reversed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicants contested the Secretary-General's rejection of the request to address and rectify the failure of the Organisation to fulfil its duty of care in connection with the obligation to disclose and offer alternative remedies for the adverse effects upon their pension of the contractual arrangements for the final years of service that the Assistant Secretary-General and Under-Secretary-General levels. UNDT determined that the Secretary-General's rejection of the request was unlawful and ordered the rescission of the rejection of their request or payment in lieu of the rescission. UNDT

awarded each Applicant USD 10,000 as moral damages and the payment of material damages in an amount to be established by the Secretary-General.

Legal Principle(s)

The Secretary-General is under no obligation to transmit the UNJSPF Regulations to a staff member with the letter of appointment upon appointment.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Haq and Kane

Entity

UNDP

Case Number(s)

2018-1215

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2019

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Pension (see also, UNJSPF)

United Nations Joint Staff Pension Fund (UNJSPF)

Applicable Law

Staff Regulations

- Annex II
- Regulation 4.1

UNDT Statute

UNAT Statute

- Article 2.1(a)

UNJSPF Regulations

- Article 28(d)

Related Judgments and Orders

UNDT/2018/099