

2019-UNAT-926, Ross 2021-03-18

UNAT Held or UNDT Pronouncements

UNAT considered both an appeal from the Secretary-General and an appeal from Mr Ross. UNAT considered Mr Ross's request for consideration by a full bench and held that he had no standing to make such a request and that the case did not raise any significant question of law in relation to the evidentiary standard of proof of moral damages. UNAT held that any irregularity (procedural or substantive) in promotion cases will only give rise to an entitlement to rescission or compensation if the staff member has a significant or foreseeable chance for promotion. UNAT held that the UNDT did not err in declining to rescind the contested decision and exercised its discretion judicially. Noting that UNDT awarded Mr Ross USD 5,000 for his lost opportunity, UNAT held that Mr Ross's claim for additional compensation was unsustainable because he did not meet the essential minimum requirements. UNAT held that as the Secretary-General had not appealed against the award of compensation for loss of opportunity there was no legal basis to set it aside. On the question of moral damages, UNAT held that absent any corroborating evidence in addition to that set out in his affidavit, Mr Ross was not entitled to any moral damages. UNAT dismissed Mr Ross's appeal, upheld the Secretary-General's appeal, and set aside the award of moral damages in the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to appoint an external candidate to a position. UNDT found that the Applicant did not receive the fullest consideration due to him as an internal candidate and awarded him compensation for loss of opportunity, related material damages, and compensation for moral damages.

Legal Principle(s)

Where the President or any two judges sitting on a particular case consider that the case raises a significant question of law, at any time before judgment is rendered, the case may be referred for consideration by the whole of UNAT. A decision to refer a matter for consideration by a full bench is a matter for the panel or the President of UNAT. Legal validity is never absolute and can only be described in relative terms, from which it follows that an administrative act may be invalid for one purpose (non-selection) and valid for another (selection). Rescission may not be granted in promotion cases where there may be disproportionate consequences for the selected candidate. The testimony of an applicant alone without corroboration by independent evidence (expert or otherwise) affirming that non-pecuniary harm has occurred is generally insufficient to support an award of damages.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Ross 2021-03-18

Entity

UNHCR

Case Number(s)

2018-1220

2019-1221

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2019

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Loss of chance

Non-pecuniary (moral) damages

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

UNAT Statute

- Article 10.2

UNDT Statute

- Article 10.5
- Article 10.5(b)

Related Judgments and Orders

UNDT/2018/108