

# 2020-UNAT-1008, Fosse

## UNAT Held or UNDT Pronouncements

UNAT agreed with UNDT that the Appellant's claim of constructive dismissal was not receivable. UNAT held that it was well within UNDT's jurisdiction and that UNDT had committed no error when it deemed the claim not receivable on the basis that it had not been subject to management evaluation. Regarding the Appellant's argument that she only presented a new legal qualification descriptor of the challenged identified administrative decision, UNAT held that it did not merely constitute a new legal qualification, but a new request meant to expand the scope of the relief sought through her application to the first instance Tribunal so as to cover a claim for compensation based on legal and factual settings varying from those contained in her request for management evaluation. UNAT noted that the Appellant did not make any specific request for compensation for material damages or non-pecuniary damage (moral harm) as a consequence of the harm she suffered on account of her alleged constructive dismissal and that UNDT, therefore, lacked jurisdiction to award this kind of compensation *sua sponte*. UNAT dismissed the appeal and affirmed the UNDT decision by majority (Judge Colgan dissenting).

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions not to return her to her original functions following temporary assignments and not to issue personnel actions to recognize her temporary assignments. UNDT considered that the Administration had the discretion to reassign all staff members, whether as reassignment or as temporary assignment. UNDT considered the Applicant's claim of constructive dismissal not receivable *ratione materiae* because it had been raised for the first time in her UNDT application, but not in her request for management evaluation. UNDT dismissed the application.

## Legal Principle(s)

The appeals procedure is of a corrective nature, not an opportunity for a dissatisfied party to reargue his or her case. An appellant has the burden of satisfying UNAT that the judgment he or she seeks to challenge is defective, and it follows that an appellant must identify the alleged defects and state the grounds relied upon in asserting that the judgment is defective. UNDT is not competent to award compensation of the specific kind, namely for actual pecuniary or economic loss, including loss of earnings, as well as non-pecuniary damage, procedural violations, stress, and moral injury, without a previous claim for such damage and compensation. If no request for such compensation is made, UNDT lacks jurisdiction to award this kind of compensation sua sponte.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Fosse

## Entity

ICAO

## Case Number(s)

2019-1323

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

27 Mar 2020

## President Judge

Judge Raikos

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

## Applicable Law

Staff Rules

- Rule 11.2(a)
- Rule 11.2(c)

UNDT Statute

- Article 2.1
- Article 8.1(c)

## Related Judgments and Orders

UNDT/2019/135

2016-UNAT-699

2016-UNAT-654

2013-UNAT-293

2018-UNAT-860

2013-UNAT-288

2015-UNAT-599

2019-UNAT-974

2018-UNAT-849