

2020-UNAT-1051, Garbo

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr Garbo and a cross-appeal by the Secretary-General. UNAT held that UNDT was correct to hold that Mr Garbo's appointment was not terminated. UNAT held that UNDT should not have rescinded the decision placing him on SLWFP. UNAT held that UNDT had correctly held that the SLWFP decision had been rendered moot because the employment relationship had ceased and the special leave had been consumed. UNAT held that UNDT correctly rejected the Appellant's claim for compensation as there was no direct link between the SLWFP decision and the termination indemnity. UNAT held that Mr Garbo did not receive termination indemnity because he was not terminated and the SLWFP decision itself did not cause any material harm to him. UNAT held that, as UNDT dismissed the application, the Secretary-General was not adversely affected by the judgment and therefore the cross-appeal was not receivable. UNAT dismissed the appeal, dismissed the cross-appeal, and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to place him on Special Leave with Full Pay (SLWFP) for two months and, in addition, requested termination indemnity. The context of this decision was the drawdown and phased closure of UNAMID. UNDT found that the applicable framework for the abolishment of the post did not confer upon a staff member a right to have a termination as the modality of separation and that accordingly, there was no basis for payment of a termination indemnity. As for placing the Applicant on SLWFP until the expiry of his fixed-term appointment, UNDT found no support in the jurisprudence to use SLWFP as a generic cost-saving alternative to termination or a default modality for downsizing and therefore found the decision to be unlawful. UNDT found no basis for rescinding the contested decision despite it being unlawful, given that the SLWFP had been consumed and the employment relationship had ceased, rendering the question moot. UNDT dismissed the application.

Legal Principle(s)

Termination is a separation from service which marks the end of all employment relations between a staff member and the UN. A staff member cannot request termination indemnity while at the same time keeping the advantages and benefits of remaining a staff member. UNDT may only award compensation if the harm in question was caused by the administrative decision challenged by the staff member.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Garbo

Entity

UNAMID

Case Number(s)

2020-1383

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Termination (of appointment)

Abolition of position

Applicable Law

Staff Regulations

- Regulation 9.3(a)
- Regulation 9.3(c)

Staff Rules

- Rule 9.6(a)

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2020/020

2020-UNAT-978

2018-UNAT-868

2018-UNAT-861

2017-UNAT-718

2015-UNAT-530

