

2021-UNAT-1122, Yasmina Laasri

UNAT Held or UNDT Pronouncements

UNAT first noted that neither party disagreed with the UNDT Judgment that the contested decision was unlawful. Regarding the Secretary-General's appeal that an award in moral damages was not warranted, UNAT disagreed with the Administration and found that the UNDT was correct when it considered the medical certificate dated in March 2020, which gave a history of the staff member's health in 2015 (a year before the contested decision). UNAT found it credible that the staff member suffered from a pattern of harassment, which began before the time of the contested decision (June 2016). As such, a medical certificate dated in March 2020 covering a period of 2012 to 2020, and giving specific details in 2015 – a year before the contested decision – constitute enough evidence of the harm suffered. UNAT also found the appeal from the staff member receivable. The Secretary-General had challenged her appeal on receivability grounds, arguing that she had prevailed at the first instance tribunal and that she's appealing only because she disagreed with the reasoning below. UNAT found the appeal receivable because if the reasoning of the tribunal was indeed incorrect, then that could possibly affect the damages awarded in the case. The staff member took issue with the fact that the UNDT did not allow for a hearing in the case. The UNDT accepted the admission of the Administration that the contested decision was based, in part, on flawed considerations. The staff member argues that she would have been able to show that there was more – that in fact, there was retaliation in her case. However, UNAT found no reason to disagree with the UNDT analysis when it came to the issue of in lieu compensation. The Tribunal explained, regardless whether UNDT were to find a case of retaliation or not, the purpose of in lieu compensation is to restore the rights of the staff member, had the illegality not occurred. In the present case, noting there is no expectancy of renewal, UNDT found that the staff member's appointment could have been renewed for another year. As such, it granted 12 months' net base salary, and UNAT found no reason to deviate from that conclusion. Regarding moral harm, UNAT agrees a finding of retaliation could customarily have had an impact on the compensation for moral damages, but in the instant case, given the clear prohibition

by Statute to award exemplary or punitive damages, a finding of retaliation would not have impacted the award in moral damages. Furthermore, UNAT also noted that the trial judge is best placed to assess the nature and evidential value of the information provided to justify an award of damages. As such, UNAT found no reason to disturb the findings of the UNDT. The Tribunal accordingly dismissed both appeals.

Decision Contested or Judgment/Order Appealed

A staff member who previously served as a National Professional Officer with UNICEF challenged the decision of the Administration to abolish her post and to not renew her appointment. The Administration first decided to abolish her post in November 2014. This decision was later rescinded because the proper procedures were not followed. However, the staff member filed a complaint with the Ethics Office, which found a prima facie case of retaliation. Although the case was referred to OIAI, no disciplinary measures were taken because of insufficient evidence. The Administration decided for a second time to abolish her post in June 2016. The staff member requested management evaluation of the decision and also filed a complaint with the Ethics Office. This time, the Ethics Office did not find a prima facie case of retaliation. In response to her management evaluation request, the Administration explained there were legitimate reasons to abolish the incumbent's post and to internationalize the national post into a P-3 post. However, the Deputy Executive Director, Management, noted that the job description had not changed from the national post to the internationalized post, and as such, the panel had failed to consider whether the staff member could have stayed in the post. The staff member was separated on 31 May 2016. Because she was not considered for the internationalized post, the Administration proactively granted her compensation in the amount of 12 months' net base salary for loss of chance of contract renewal. The staff member challenged the second decision to abolish her post with the UNDT. The UNDT found the decision unlawful. In arriving at this conclusion, the tribunal relied on the admission of the Administration that the contested decision was based, in part, on flawed considerations. The tribunal ordered rescission and set in lieu compensation at one year's net base salary. However, the tribunal noted that the Administration had already proactively offered this same compensation to the staff member and therefore found no additional compensation was needed. Regarding her request for moral damages, the UNDT granted two months' net base salary,

based on the medical certificate she provided. Although the certificate was dated in March 2020, the physician gave a history of the staff member's health (2015) from before the exact time of the contested decision (June 2016). Both parties appealed the UNDT Judgment. The Secretary-General's appeal focused on the award of moral damages. The Administration argued there was no evidence of moral harm suffered, at the time of the contested decision (June 2016). The staff member, on the other hand, appealed arguing that the UNDT erred by not granting her a hearing, which could have impacted the quantum of damages awarded in her case.

Legal Principle(s)

A medical certificate dated in 2020 giving the health history of a staff member from 2012 to 2020 and providing specific details in 2015 about the ailment suffered by the staff member (a year before a contested decision of 2016) can be used as evidence in computing moral damages. In this case, the argument was there was a pattern of harassment and the damage caused to the staff member was on an ongoing basis. Even if a party prevailed in the first instance tribunal, her appeal can be receivable, if she's challenging the reasoning of the tribunal and if said reasoning can have an impact on damages. The purpose of in lieu compensation is to restore the rights of the staff member, had an illegality not occurred. A showing that retaliation has occurred does not entitle a staff member to a greater compensation award. A finding of retaliation can be used to award redress to the aggrieved staff member and restore her rights, not grant her additional compensation. A finding of retaliation also does not affect the award in moral damages. This is because the Statute clearly prohibits exemplary or punitive damages. Also, the trial judge is best placed to assess the evidential value of the information presented regarding damages incurred.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Both the Secretary-General's and the staff member's appeals were dismissed on the merits.

Full judgment

[Full judgment](#)

Applicants/Appellants

Yasmina Laasri

Entity

UNICEF

Case Number(s)

2020-1437

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jun 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Termination

Compensation

Evidence of harm
Exemplary/punitive damages (prohibition against award of)
In-lieu compensation
Loss of chance
Non-pecuniary (moral) damages
Pecuniary (material) damages
Ethics office
Retaliation
Jurisdiction / receivability (UNAT)
Appeal
Non-renewal
No expectancy of renewal
Remedies
Compensation (see also, Compensation)
Rescission
Separation from service
Expiration of appointment (see also, Non-renewal)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2008/5

UNAT Statute

- Article 2.1
- Article 9.1
- Article 9.3

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2020/101