

2020-UNAT-1077, Domitila Icha

UNAT Held or UNDT Pronouncements

UNAT held that UNDT had not failed to properly exercise its jurisdiction by refusing to convene a second case management discussion. UNAT held that, regarding the question of whether UNDT failed to address the Appellant's factual arguments challenging the legality of the abolition of her post, the appeal was without merit; the Appellant only reargued her case and did not establish that UNDT erred in fact or in law about this issue. UNAT held, however, that UNDT erred in deciding that the Appellant had failed to rebut the presumption that the selection of Mr. D R-B, given that the selected candidate was a similarly situated colleague, with less seniority and experience, was regular and dismissed her claim that the termination was unlawful. UNAT held that the reassignment of Mr. D R-B was not compliant with the gender policy and that the Administration did not demonstrate that all reasonable efforts had been made to consider the Appellant for available suitable posts. UNAT held that the previous medical reports established the stress, harm, and anxiety that the Appellant had suffered, which could reasonably be attributed to the conditions of termination, the gender policy violation, and the due process rights breaches. UNAT granted the appeal in part. The decision to terminate the Appellant's fixed-term appointment was rescinded, and the Secretary-General was ordered to reinstate the Appellant on similar terms and conditions of employment or, alternatively, to pay compensation in lieu. UNAT granted the Appellant compensation for moral damages.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate her fixed-term appointment with the UN Organisation Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). UNDT found that the Secretary-General met the minimal standard of proof that the abolition of the Applicant's post and her non-placement on another suitable post had been done in accordance with the Regulations and Rules. UNDT concluded that the Applicant had failed to discharge her legal duty to prove with clear and convincing evidence that the abolition of her post and non-placement on a

suitable position were marred by irregularities entitling her to a remedy. UNDT dismissed the application in its entirety.

Legal Principle(s)

UNDT has broad discretion with respect to case management. As the court of the first instance, UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties. UNAT will not interfere lightly with the broad discretion of UNDT in the management of cases. UNAT emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case.

Outcome

Appeal granted

Applicants/Appellants

Domitila Icha

Entity

MONUSCO

Case Number(s)

2020-1372

Tribunal

UNAT

Registry

New York

Date of Judgement

12 Feb 2021

President Judge

Judge Neven

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Compensation

Non-pecuniary (moral) damages

Procedure (first instance and UNAT)

Case management

Standard of review (judicial)

Termination (of appointment)

Abolition of position

Applicable Law

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 9.3
- Rule 9.6(e)

UNAT Statute

- Article 9

UNDT RoP

- Article 19