

2019-UNAT-948, Sonia Bezziccheri

UNAT Held or UNDT Pronouncements

As a preliminary matter, in response to the Appellant's request for interim measures, in which she requested that the Secretary-General complied with the UNDT judgment insofar as it had not been appealed against, UNAT denied the motion on the basis that execution should have been requested before UNDT. On the Appellant's motion to strike assertions and evidence, UNAT noted that the Appellant was supplementing her appeal, and denied the motion. On the merits, UNAT held that the appeal was limited to the request for further compensation, as per the Appellant's Power of Attorney document, and that all her other claims were not receivable. On the Appellant's claim that the judgment failed to set in-lieu compensation as an alternative to rescission, UNAT held that it is only required when the contested administrative decision concerns appointment, promotion or termination and that therefore there was no error and the Appellant's appeal on the matter must fail. On the Appellant's claim of specific performance in the form of payment of sick leave entitlements which had not been exhausted, UNAT held that the claim failed. On the Appellant's other claims, including the request to increase the amount of costs awarded, UNAT held that the Appellant failed to establish any errors of law or of fact leading to a manifestly unreasonable decision by the UNDT. UNAT held that it would defer to UNDT on the amount of costs awarded. UNAT took note of the recent issuance ST/AI/2019/1 on resolution of disputes relating to medical determinations that occurred after the issuance of UNDT judgment and recommended that the Administration review the applicability of it to the Appellant's situation, as the matter remained unresolved. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to recommend her for consideration for a disability benefit by the UNSPC. UNDT rescinded the decision on grounds that it was illegal since the decision relied upon the report of an Independent Medical

Examination, which it found was a result of unlawful procedures. UNDT noted that there was a deficiency in the regulatory regime as there was no mechanism to address party disagreement over the Medical Board composition and exceptionally awarded costs USD 5,000 to the Applicant for the deficiency having resulted in a long and abusive proceeding even though it did not award damages to her.

Legal Principle(s)

Except where a rescinded administrative decision concerns appointment, promotion, or termination, there is no requirement for UNDT or UNAT to establish in-lieu compensation as an alternative to the rescission.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Sonia Bezziccheri

Entity

UNODC

Case Number(s)

2019-1244

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Halfeld

Judge Knierim

Judge Neven

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Sick leave

Compensation

In-lieu compensation

United Nations Joint Staff Pension Fund (UNJSPF)

Disability

Applicable Law

Administrative Instructions

- ST/AI/2005/3
- ST/AI/2019/1/Section 4.3

Staff Rules

- Rule 6.2(j)
- Rule 6.2(k)
- Rule 6.2(k)(iii)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 10.5(a)
- Article 2.5
- Article 8.3
- Article 9.1(a)

UNDT Statute

- Article 11.3
- Article 12.4

Related Judgments and Orders

UNDT/2019/012

2010-UNAT-035

2010-UNAT-044