

# 2014-UNAT-433/Corr.1, Hersh

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT had correctly stated that even if it could be argued that the profile of the Broadcast Technology Officer (BTO P-4) post had changed due to the drafting of new Terms of Reference (TOR) by Ms Hermann, the only viable course of action in the circumstances for the purposes of filling it would have been a regular, competitive selection process and not a comparative review as happened in this case. UNAT held that UNDT was correct in finding that the so-called comparative review between Ms Hersh and Mr Tobgyal for the only post of BTO in the new mission was manifestly fraudulent and amounted to a reckless abuse of power and position on the part of Ms. Hermann. UNAT held that UNDT had not erred in exercising jurisdiction over Ms. Hersh's challenge of the classification of the BTO post in UN Mission in South Sudan (UNMISS), even if Ms. Hersh did not request management evaluation, since UNDT's review of the factual situation by necessity involved a consideration beyond the mere fact of termination of the contract. UNAT held that UNDT did not err regarding the increased award of compensation under Article 10.5(b) of the UNDT Statute. UNAT held that the alternative award of two years' net base salary was well within UNDT's jurisdiction, having regard to the seriousness of the breaches, which occasioned a referral of the Chief Radio to the Secretary-General for accountability. Regarding the moral damages, UNAT held that the award of the sum of one year and four months' net base salary was excessive and reduced it to six months' net base salary. UNAT held that the referral for accountability was well within the discretion of UNDT under Article 10.8 of the UNDT Statute. UNAT upheld in part the appeal and affirmed the UNDT Judgment, subject to variation of the award to two years and six months' net base salary, with interest at the US Prime Rate accruing from the date on which the staff member left South Sudan.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate her contract. UNDT ordered rescission of the decision to separate the Applicant from service because it was the result of a series of violations of the pertinent administrative issuances. UNDT ordered that the Applicant be reinstated, or in the alternative, be paid two years' net base salary. Regarding moral damages, UNDT further awarded the Applicant one year's net base salary for substantive irregularity and four months' net base salary for procedural irregularity.

## Legal Principle(s)

The Administration has the duty to follow its own Regulations and Rules in matters of staff selection. In reviewing such decisions, it is the role of UNDT or UNAT to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration. The Secretary-General has broad discretion in matters of staff selection. The Tribunal can intervene where the Administration failed in its duty to act fairly, justly, and transparently in dealing with its staff members and to follow its own Regulations and Rules.

## Outcome

Appeal granted in part

## Applicants/Appellants

Hersh

## Entity

UNMIS

## Case Number(s)

2014-649

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

27 Jun 2014

## President Judge

Judge Adinyira

Judge Weinberg de Roca

Judge Simón

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Disciplinary matters / misconduct

Abuse of authority

Separation from service

Termination of appointment (see also, Termination of appointment)

Staff selection (non-selection/non-promotion)

Termination (of appointment)

## Applicable Law

Administrative Instructions

- ST/AI/1998/9

#### Information Circulars

- UNMIS IC 327/2011

#### Other UN issuances (guidelines, policies etc.)

#### Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

#### UN Charter

- Article 101

#### UNDT Statute

- Article 10.5(b)

#### UNRWA DT Statute

- Article 10.8

## Related Judgments and Orders

UNDT/2013/062

2013-UNAT-309

2014-UNAT-410

2010-UNAT-092

2013-UNAT-305

2014-UNAT-450

2012-UNAT-201

2013-UNAT-371

2012-UNAT-265

2010-UNAT-084

2013-UNAT-281