

UNDT/2022/025, Rolli

UNAT Held or UNDT Pronouncements

The Tribunal found it most unlikely that—in the hypothesis that the Applicant’s fixed-term appointment had not already been terminated on 9 May 2018—it would have been renewed from 31 August (the expiry date of his fixed-term appointment) to 31 December 2019 (the last date before the abolition of his post). The Tribunal found that despite the Applicant’s skills and credentials, it would be most unlikely that he would have been transferred to the post of the Director of Governance Services.

The Applicant was awarded the full salary (net base salary plus post adjustment) he would have obtained from working with WMO from 9 May 2018 to 31 August 2019, including all relevant benefits and entitlements. Regarding an award of costs under art. 10.6 of the Statute of the Dispute Tribunal, the Tribunal noted that legal expenses can only be reimbursed if the other party has been found to have “manifestly abused the proceedings” before the Tribunal. Accordingly, no basis exists for awarding costs against the Respondent in this regard (see also the Appeals Tribunal in *Barbato* 2021-UNAT-1150).

Also, the Tribunal cannot award any non-pecuniary (or so-called moral) damages for the Applicant’s legal expenses under 10.5(b) of the Statute of the Dispute Tribunal. These legal expenses solely concern a possible monetary—and not a non-pecuniary—loss. The question was therefore whether the Applicant’s legal expenses are compensable as in lieu compensation under 10.5(a) or pecuniary damages in accordance with 10.5(b) of the Statute of the Dispute Tribunal.

In the present case, it was evident that had it not been for the unlawful contested decision, the Applicant would not have filed a case before the JAB. As a direct consequence thereof, the Applicant therefore hired a private counsel because, as a WMO staff member at the given time, he did not have access to free legal services. In a case as important and sensitive as a summary dismissal, the Tribunal also accepts that he did not believe that representing himself was a viable option.

Accordingly, the requirements of *Kebede* were all satisfied. The Tribunal found that USD3,000 is an appropriate amount to compensate for his legal expenses. Following the Appeals Tribunal's jurisprudence in *Kebede*, *Kallon* and *Malhotra*, the Tribunal found that the Applicant has demonstrated that he suffered reputational harm from his unlawful summary dismissal from WMO. The Applicant's reputational harm fell in the midrange of compensable damages, and with reference to *Malhotra* 2021-UNAT-1147 (affirming *Malhotra* UNDT/2020/193), awarded him two months of net-base salary in compensation.

Decision Contested or Judgment/Order Appealed

The summary dismissal of the Applicant

Legal Principle(s)

In *Laasri* 2021-UNAT-1122 (para. 63), the Appeals Tribunal stated that "the very purpose of in lieu compensation is to place the staff member in the same position in which he or she would have been, had the Organization complied with its contractual obligations". It further held that the Tribunal "shall ordinarily give some justification and set an amount that the Tribunal considers to be an appropriate substitution for rescission or specific performance in a given and concrete situation". In this regard, the elements which can be considered include: (a) "[T]he nature and the level of the post formerly occupied by the staff member (i.e., continuous, provisional, fixed-term)"; (b) "[T]he remaining time on the contract"; and (c) "[C]hances of renewal". As much as in lieu compensation is "not compensatory damages based on economic loss", the point of departure for the Tribunal's considerations is the actual financial impact that the unlawful contested decision had on the Applicant's situation.

In *Kebede* 2018-UNAT-874, the Appeals Tribunal outlined the three basic prerequisites for compensation, namely, harm, illegality and nexus between the three. In *Dieng* 2021-UNAT-1118, the Appeals Tribunal held that harm to reputation is an individual type of compensable non-pecuniary damages under art. 10.5(b) of the Dispute Tribunal's Statute. As for proving reputational harm, the Appeals Tribunal stated in *Kallon* 2017-UNAT-742 that, "The harm to dignitas or to reputation

and career potential may thus be established on the totality of the evidence; or it may consist of the applicant's own testimony or that of others, experts or otherwise, recounting the applicant's experience and the observed effects of the insult to dignity.

The Appeals Tribunal further added that, "While obviously corroboration will assist the applicant in meeting his or her burden of proof, and thus ordinarily will be required, such evidence is not required in all cases. There is no basis in law, principle or policy which precludes a tribunal from relying exclusively on the testimony of a single witness, be it the applicant or another witness, to make a finding of moral harm. In accordance with universally accepted rules of evidence, the testimony of a single witness must be approached with caution but if it is credible, reliable and satisfactory in all material respects, it may well be sufficient to discharge the evidentiary burden" (see para. 69).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Rolli

Entity

WMO

Case Number(s)

UNDT/NY/2021/19

Tribunal

UNDT

Registry

New York

Date of Judgement

17 Mar 2022

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Maximum amount / exceptional circumstances

Remedies

Rescission

Applicable Law

UNDT Statute

- Article 10.5
- Article 10.5(a)

- Article 10.5(b)
- Article 10.6
- Article 10.7
- Article 2.7

Related Judgments and Orders

UNDT/2021/154
2021-UNAT-1122
2014-UNAT-469
2017-UNAT-764
2020-UNAT-1040
2019-UNAT-952
2021-UNAT-1150
2018-UNAT-874
2021-UNAT-1118
2017-UNAT-742
2021-UNAT-1147