2022-UNAT-1214, Afm Badrul Alam

UNAT Held or UNDT Pronouncements

UNAT granted the appeal in part. UNAT held that UNDT erred by failing to implement its mandatory obligation to award an amount of compensation in lieu of rescission. UNAT held that there was no error in the UNDT's finding that the Appellant had not discharged his burden of proof that the contested decision caused a loss of income due to loss of career opportunity. UNAT held that the Appellant did not discharge his onus to show that UNDT erred as the first instance trier of fact with regard to the issue of moral damages, and therefore accepted the UNDT's findings on compensation for moral damages. UNAT awarded USD 10,350 as in lieu compensation.

Decision Contested or Judgment/Order Appealed

Before UNDT, the Applicant contested his non-selection for a position. UNDT found that the Appellant's application did not receive full and fair consideration. UNDT rescinded the contested decision, but did not order in lieu or moral compensation due to lack of supporting evidence. The Appellant appeals the lack of a compensation award.

Legal Principle(s)

The purpose of in lieu compensation is to place the staff member in the same position he or she would have been in had the unlawful decision not been made. Compensation must be set by the UNDT following a principled approach and on a case-by-case basis. The determination of the quantum of in lieu compensation will depend on the circumstances of each case, but some relevant factors that can be considered are, among others, the nature of the post formerly occupied, the remaining time to be served by a staff member on his or her appointment, and his or her expectancy of renewal. A loss of opportunity can be compensated for but the

harm should be directly caused by the contested decision, supported by evidence, and may not be duplicative. UNAT should give deference to UNDT in the exercise of its discretion and UNDT is best placed to conclude from the evidence whether a claim for moral damages is established and if so, its quantum.

Outcome

Appeal granted in part

Full judgment

Full judgment

Applicants/Appellants

Afm Badrul Alam

Entity

UN Secretariat

Case Number(s)

2021-1518

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

In-lieu compensation
Full and fair consideration
Compensation
Staff selection (non-selection/non-promotion)

Applicable Law

UNAT Statute

- Article 10.5(a)

Related Judgments and Orders

2017-UNAT-742
2019-UNAT-899
2017-UNAT-712
2018-UNAT-860
2018-UNAT-874