

2022-UNAT-1266, Korkut Yavuz

UNAT Held or UNDT Pronouncements

The only issue on appeal is whether the UNDT judgment's orders on in-lieu compensation and compensation for moral harm are free of error. In the present case, the UNDT took into account the specific circumstances of the case, in particular the seniority of Mr. Yavuz, the type of appointment held, and the chance of renewal of the appointment in a position still required by the Administration and set an in-lieu compensation of three months. Mr. Yavuz complains that the UNDT should also have considered the nature of the irregularity and the seriousness of the breaches of his rights and the humiliating treatment to which he was subjected. We do not agree. Given the seniority and type of Mr. Yavuz's appointment, and his chance of renewal, the amount of in-lieu compensation of three months set by the UNDT is free of error. Mr. Yavuz had begun his service on 4 May 2017 on a one-year fixed-term appointment. As of June 2018, the appointment was extended on a monthly basis for the purpose of the completion of the rebuttal process concerning his performance evaluation 2017/2018. There is no basis to assume that Mr. Yavuz's appointment would have been renewed (for a whole year). On 17 December 2018, the Director, DECT, UNECE, who had left UNECE since 30 November 2018, provided her appraisal of Mr. Yavuz's performance stating that he "was eager to carry out the assignment and had a pleasant disposition towards work" but "needs more guidance and direction than would normally be required from a P-3 staff member" and that he, when given an "opportunity to work with another section (...) finally produced a satisfactory output". Given that Mr. Yavuz, in consequence of the UNDT's judgment, had no valid performance evaluation for 2017/2018, the Director's 17 December 2018 statement alone is not sufficient to conclude that his appointment would have been renewed (for a whole year). She clearly states that Mr. Yavuz needs more guidance and direction than other P-3 staff members. Therefore, the Administration could have reasonably decided not to renew Mr. Yavuz's appointment or at least only for a short time. Regarding the alleged moral damage, the UNDT noted that Mr. Yavuz provided medical reports dated 5 April, 2 July and 8 July 2019 describing the conditions suffered by referring to alleged harassment only, but not to the contested

non-renewal decision. The UNDT concluded that Mr. Yavuz failed to establish the causal link between the contested decision and the alleged moral damage. We have reviewed the medical reports provided by Mr. Yavuz and agree with the UNDT that they only refer to the alleged harassment by his FRO and SRO but not to the contested administrative decision, the non-renewal. Hence, in this regard, Mr. Yavuz's appeal must fail. With respect to the alleged moral harm caused by his maintenance on short-term contracts, the UNDT noted that Mr. Yavuz has not provided any evidence to substantiate it, and rejected his claim for compensation in this respect. On appeal, Mr. Yavuz points to his 8 July 2019 medical report which states that he and his wife had to live on one month fixed-term contracts for nine months, and this caused additional anxiety and stress. Although the most part of the nine months falls into the time as of June 2018 when Mr. Yavuz's appointment was extended on a monthly basis for the purpose of the completion of the rebuttal process, a short part also falls into the time after the contested non-renewal decision had been issued (on 23 January 2019). At least for this short period of time Mr. Yavuz has demonstrated the necessary direct nexus between the non-renewal decision and his moral harm. We find it appropriate to award USD 2,000 as compensation under Article 9(1)(b) of the UNAT Statute (Article 10(5)(b) of the UNDT Statute).

Decision Contested or Judgment/Order Appealed

UNDT/2021/062

Legal Principle(s)

Compensation must be set by the UNDT following a principled approach and on a case by case basis and the Appeals Tribunal will not interfere lightly as the Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case. In-lieu compensation under Article 10(5) of the UNDT Statute shall be an economic equivalent for the loss of rescission or specific performance the Tribunal has ordered in favor of the staff member. When the Secretary-General chooses not to accept this order, he must pay compensation as an alternative to replace (in-lieu) such rescission or specific performance. Hence, the most important factor to consider in this context is the pecuniary value of such rescission or specific performance for the staff member in question. In case of

rescission of a non-renewal decision, it is reasonable for the UNDT to focus on the seniority and type of appointment held by the staff member, and particularly the chance of renewal of this appointment. The nature and degree of the irregularities committed by the Administration, on the other hand, are of no legal relevance for the pecuniary value of the ordered rescission or specific performance. On the contrary, as the UNDT may not award punitive damages according to Article 10(7) of the UNDT Statute, we find the UNDT is not allowed to consider these factors when deciding on the amount of in-lieu compensation. Compensation for harm shall be supported by three elements: the harm itself; an illegality; and a nexus between both. A breach of staff member's rights, despite its fundamental nature, is thus not sufficient to justify such an entitlement. There must indeed be proven harm stemming directly from the Administration's illegal act or omission for compensation to be awarded.

Outcome

Appeal granted in part

Outcome Extra Text

Mr. Yavuz's appeal is partly granted, and the UNDT Judgment No. UNDT/2021/062 is modified. The Secretary-General is additionally ordered to pay Mr. Yavuz USD 2,000 as compensation for moral harm. All other aspects of Mr. Yavuz's appeal are dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Korkut Yavuz

Entity

UN Secretariat

Case Number(s)

2021-1591

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Aug 2022

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation (see also, Compensation)
Remedies

Applicable Law

UNDT Statute

- Article 10.5
- Article 10.7

UNAT Statute

- Article 9.1(b)

Related Judgments and Orders

2017-UNAT-724

2016-UNAT-691

2015-UNAT-528

2010-UNAT-044

2018-UNAT-874