

2023-UNAT-1346, Angioli Rolli

UNAT Held or UNDT Pronouncements

The UNAT dismissed the Secretary-General's appeal and granted Mr. Rolli's cross-appeal in part. The UNAT found that the rescission of the termination decision ordered by the UNDT was "pointless" since by the time the case had reached the UNDT, Mr. Rolli's post had been abolished. The UNAT accordingly held that in these circumstances, compensation had to fall under Article 10(5)(b) and be for harm caused by the unlawful decision. The harms he suffered included the loss of his remuneration and benefits (education and pension entitlements), the specific losses resulting of his ceasing to be based in Switzerland, as well as the non-economic (moral) consequences of the wrong done to him. The UNAT found that the UNDT erred in setting as the end point for the calculation of compensatory remedies the date of the expiry of Mr. Rolli's appointment. The UNAT found that since only four months later, Mr. Rolli's role was abolished altogether, it was probable that had Mr. Rolli not been dismissed wrongfully, he would probably have continued to occupy that position for an additional four months. For the purpose of the calculation of remedies, it was therefore that later date which should be used. Regarding the pension entitlements, the UNAT found that had Mr. Rolli continued to work for the WMO until the abolition of the post, he would have attained the age of 55 years entitling him to take early retirement. In these circumstances he would have been able to choose between deferred retirement benefit, early retirement, and withdrawal settlement. The UNAT compared those choices to his position at the time of his dismissal where he was only entitled to a withdrawal settlement. The UNAT found that the most just compensatory award to make for pension entitlement losses in this case was the sum representing what would have been the WMO's contributions to Mr. Rolli's Pension Fund for the period from the date of his dismissal until the abolition of his post plus 10 per cent of that sum. The UNAT found no error in the education allowance compensation, except that, for reasons set out in relation to other remedies, the end date of this period should be the date of the abolition of his post. Turning to the costs for legal representation, the UNAT found that the UNDT correctly concluded that Mr. Rolli had no alternative, if he was to be professionally advised and represented before the JAB, but to engage private counsel. Such expenditure on legal services was plainly a necessary financial consequence (loss) attributable to the wrongful decision that he contested. The UNDT however erred in awarding only USD3,000 while Mr. Rolli's legal costs before he could obtain the services of OSLA at no cost to himself amounted to approximately CHF (Swiss francs) 21,000 and directed that he be paid that as an element of his Article 10(5)(b) compensation. Turning to Mr. Rolli's claim to compensation for loss of tax credit on the acquisition of a motor vehicle, the UNAT found that the UNDT did not err in rejecting this claim. The UNAT found no error in the UNDT's reduction from its compensation awards for loss of remuneration earnings received by Mr. Rolli following his dismissal until the date of the abolition of his post (but less any relocation expenses reimbursed). The UNAT held that if the compensation awards exceeded two years' net base salary of Mr. Rolli, it was satisfied that his, and his dismissal's circumstances, were exceptional, thereby justifying exceeding this cap.

Decision Contested or Judgment/Order Appealed

After preliminary litigation before the former JAB and UNAT, the UNDT delivered its Judgment finding that Mr. Rolli's summary dismissal without investigation, interview or any of the other required due process steps was unlawful. In its subsequent Judgment on Relief, the UNDT rescinded the contested decision and ordered in-lieu compensation under art. 10.5(a) of the Dispute Tribunal's Statute (full salary, including net-base salary and post adjustment, with regular deductions, and restoration of pension contributions and education allowances from the time of his dismissal until the time of the expiry of his appointment; compensation for "annual tax"; "fuel card"; and "VAT Exemption"; and costs for legal expenses). From the in lieu compensation Mr. Rolli's actual income from salaries was to be deducted for the same period. The UNDT also awarded two months of net-

base salary in compensation under art. 10.5(b) of the Dispute Tribunal's Statute. The aggregated compensation amount was not to exceed two years' net base salary. The WMO Secretary-General appealed, and Mr. Rolli cross-appealed.

Legal Principle(s)

Award of legal costs as compensation for loss attributable to the Organization's unlawful acts or omissions: this is to be distinguished from an order for costs in the litigation before the UNDT or before the UNAT. Such an order will be rare and only in circumstances where no staff legal assistance is available and where costs for legal representation are thus incurred. Where OSLA or an equivalent service is available to staff members, such losses will not need to be incurred in other cases. Privately retained counsel will still be a choice for staff members, but they cannot expect to be reimbursed for such expenses where a viable alternative representation service exists at no cost to them. The UNDT Statute (Article 10(7)) prohibits the UNDT (or the UNAT on appeal) from awarding punitive or exemplary damages to mark judicial disapproval of egregious conduct towards a staff member and we have borne this prohibition in mind in deciding this cross-appeal. Nevertheless, it is also well recognized that egregious treatment of a staff member can aggravate the effects of the injustice of dismissal on the staff member concerned. If that is so, on the evidence, then this may justify a greater than normal or usual award of compensation to reflect the exceptionally damaging effects on the staff member.

Outcome

Appeal granted in part; Cross-appeal granted in part

Outcome Extra Text

The Secretary-General's appeal is dismissed. Mr. Rolli's cross-appeal is allowed in part. The following are the remedies payable to Mr. Rolli in the form allowed by the UNDT, but as amended by this appeal: Pursuant to Article 10(5)(b) of the UNDT Statute Mr. Rolli is awarded the following compensation for harm: a. Full salary, including net-base salary and post adjustment, with regular deductions from 10 May 2018 to 31 December 2019; b. A sum representing what would have been the WMO's contributions to Mr. Rolli's Pension Fund for the period 9 May 2018 to 31 December 2019 plus 10 per cent of that sum; c. Education allowances from 10 May 2018 to 31 December 2019; d. The following amounts representing specific monetary losses as assessed by the UNDT; i. CHF1,093.47 in 2019 for "annual tax"; ii. CHF2,524.67 in 2018 and CHF2,885.33 in 2019 for "fuel card"; iii. CHF291.67 in 2018 and CHF333.33 in 2019 for "VAT Exemption"; iv. CHF 21,000 for legal expenses; e. Subject to (f) below, from the foregoing compensation amounts is to be deducted EUR92,451.50 plus EUR200 (but adjusted upwards from the foregoing figures awarded by the UNDT to reflect additional earnings if Mr. Rolli earned more in paid employment between 1 August and 31 December 2019) representing the sum of the Applicant's actual income from 10 May 2018 until 31 December 2019); f. If either Mr. Rolli did so to the UNDT or, if not, upon providing to the WMO documentary proof of payment to him by his new employer of the sum of EUR 27,990 is to be deducted from the sum of EUR 92,451.50 referred to in subpara. (e) of these Orders; g. Mr. Rolli is awarded three months of net-base salary in compensation for other (non-economic consequences) of his unlawful termination of service; h. The net compensation amount payable to Mr. Rolli shall bear interest at the United States of America prime rate with effect from the date of this Judgment until payment of the said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable.

Full judgment

[Full judgment](#)

Applicants/Appellants

Angioli Rolli

Entity

WMO

Case Number(s)

2022-1690

Tribunal

UNAT

Registry

New York

Date of Judgement

11 May 2023

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Duty of mitigation

In-lieu compensation

Maximum amount / exceptional circumstances

Pecuniary (material) damages

Legal representation

Compensation (see also, Compensation)

Rescission

Specific performance

Termination of appointment (see also, Termination of appointment)

Summary dismissal

Compensation

Legal services (OSLA or other) and self-representation

Remedies

Separation from service

Termination (of appointment)

Applicable Law

UNDT Statute

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

UNJSPF Regulations

- Article 29(e)