

UNDT/2023/039, MATHEW

UNAT Held or UNDT Pronouncements

On the issue of illegality, the Tribunal found that the Applicant had been removed from his official functions, without cause or proper justification, and had been forced to re-apply for his own previous functions. These decisions were taken without reference to any failings of the Applicant, misconduct, indication that he has not successfully performed his functions in the past, or indication that he would not be able to perform his functions in the future.

On the issue of damages, the Tribunal found that although the Applicant kept on holding a continuing appointment at the D-1 level, he was stripped of his relevant functions without proper reasons and with many flaws in the process. The Tribunal also found that in the situation, the contested decision objectively affected the Applicant's professional reputation (as he was sidelined notwithstanding his past satisfactory performance) and the Applicant's dignity (as he was forced to apply for TJO related to his own functions).

In view of the above and considering that the unlawful situation lasted more than 10 months, during which the Applicant continued receiving his salary, and considering that a moral satisfaction for the damage suffered came from the Administration itself, who restored the Applicant's original position, and having in mind the Appeals Tribunal's case law, the Tribunal found it fair to award the Applicant compensation for damages of three months' net base salary in total.

Decision Contested or Judgment/Order Appealed

The Applicant contested the UNAMI's decision to reassign him from Chief of Office post to the Special Political Advisor post, with changes in his functions. He also challenged the decision to not select him for the Temporary Job Opening ("TJO") of Chief of Office, Political Affairs.

Legal Principle(s)

According to staff regulation 1.2(c), staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities of the United Nations.

As per the settled jurisprudence, the reassignment of a staff member's functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate. However, this discretion is not unfettered and can be declared unlawful.

Under art. 10.5(b) of the Dispute Tribunal's Statute, as amended by the General Assembly resolution 69/203, compensation for harm should be supported by evidence; the Applicant bears the burden of proof to establish that the harm is directly caused by the Administration's illegal act. The evidence should consist of three elements: illegality, the harm, and a nexus between them.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Respondent was ordered to pay the Applicant damages equivalent to three months' net base salary at the D-1 level.

Full judgment

[Full judgment](#)

Applicants/Appellants

MATHEW

Entity

UNAMA

Case Number(s)

UNDT/NBI/2022/061

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 May 2023

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reasons

Administrative decision

Applicable Law

Staff Regulations

- Regulation 1.2(c)

Related Judgments and Orders

2022-UNAT-1223

2019-UNAT-930

2012-UNAT-266

2017-UNAT-742