

UNDT/2023/088, Kembouche

UNAT Held or UNDT Pronouncements

While, arguably, changing the title of a position may carry the same effect as abolishing it, the two actions are not synonymous under the UNHCR legal framework. Since “discontinuance/abolition of post” and “change of position title” are separately provided for under the UNHCR New Resource Allocation Framework (UNHCR/AI/2019/7/Rev.1), it follows that they are independent of each other. Indeed, the above provision has explanatory language indicating that “discontinuance of a post” is “same as abolition of a post defined in the Staff Regulations and Rules of the United Nations”. No such explanation is made for the term “change of position title”. This implies that there was no intention of treating a change of position title as an abolition of post.

The Respondent heavily relied on the fact that the Applicant’s former role no longer exists to argue that the post she encumbered was abolished. This alone does not support the Respondent’s argument. It is not disputed that the impugned decision was the “change of position title” and not the abolition of the post. All facts and evidence considered, the Respondent changed the Applicant’s position title, as relayed to her by email, and did not abolish the position pursuant to staff regulation 9.3(a)(i).

The available evidence is that the Applicant’s indefinite appointment was terminated under the terms of staff regulation 9.3(a), which contains similar language as former staff regulation 9.1(a). Having found that the change of the Applicant’s position title does not amount to abolition of post under staff regulation 9.3(a)(i), the Tribunal cannot but conclude that the termination of the Applicant’s indefinite appointment pursuant to staff regulation 9.3(a)(i) on account of change of position title goes against the clear terms of her employment.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to terminate her indefinite appointment.

Legal Principle(s)

The very purpose of compensation in lieu 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” (see Laasri 2021-UNAT-1122, para. 63). 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 favour of the staff member. 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. 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. Compensation in lieu and the termination indemnity have two different legal natures and one cannot be deducted from the other.

“[A]n entitlement to moral damages may arise where there is evidence produced to the Tribunal, predominantly by way of a medical or psychological report of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award” (see Coleman 2022-UNAT-1228, para. 42; see also Ashour 2019-UNAT-899, para. 31; Kebede 2018- UNAT-874, para. 20). The Tribunal is best placed to calculate, based on the evidence, the appropriate award of moral damages.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Kembouche

Entity

UNHCR

Case Number(s)

UNDT/GVA/2022/026

Tribunal

UNDT

Registry

Geneva

Date of Judgement

17 Aug 2023

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Termination (of appointment)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2019/3
- ST/SGB/Staff Rules/1/Rev.8

Staff Regulations

- Regulation 9.3(a)(i)

UNDT Statute

- Article 10.5

Secretary-General's Bulletins

Administrative Instructions

- UNHCR/AI/2019/7/Rev.1

Staff Rules

- 9.8(c)

Related Judgments and Orders

2018-UNAT-847

2017-UNAT-768

2017-UNAT-765

2021-UNAT-1090

2010-UNAT-084

2018-UNAT-812

2021-UNAT-1122

2022-UNAT-1265

2022-UNAT-1266

UNDT/2020/053

2012-UNAT-247

2014-UNAT-469

2017-UNAT-730

2020-UNAT-1042

UNDT/2021/085

2022-UNAT-1228

2019-UNAT-899

2018-UNAT-874

2014-UNAT-397

2015-UNAT-516

UNDT/2020/053