

2022-UNAT-1227, Ade Mamonyane

Beatrice Lekotje

UNAT Held or UNDT Pronouncements

The Secretary-General appealed the UNDT Judgment.

The UNAT found that the UNDT failed to address OAI's investigation report, the acceptance of which led to Ms. Lekoetje's severance from service. The investigation report was an important evidential element which should have been, but was not, examined and analyzed by the Dispute Tribunal. The UNDT was wrong to have dismissed the allegations of misconduct against Ms. Lekoetje without considering the investigation report's evidence of them.

Because of the intertwined natures of the two relationships between UNDP and Ms. Lekoetje (landlord/tenant and employer/employee), it was not appropriate to address the allegations against Ms. Lekoetje as solely a tenancy issue or an employment disciplinary issue. While the rights and duties of the tenant and landlord fell to be considered under the lease contracts, where there was relevant associated employment misconduct alleged, that needed to be considered in that context. The UNAT thus rejected the UNDT's exclusive focus on the commercial or contractual relationship between the parties. The UNAT held that it was error of the UNDT to conclude that UNDP had abused the disciplinary process and acted in bad faith.

The UNAT held that Ms. Lekoetje abused her authority when she failed to transparently inform her superiors and seek their approval of her negotiations of a reduction of the monthly rate of her rental property. The UNAT also concluded that the UNDT erred in finding that Ms. Lekoetje did not commit misconduct when she instructed her staff to make utility and service payments for the property out of the Organization's resources, when she was responsible for those payments herself.

The UNAT also considered that the UNDT erred in dismissing all of the allegations against Ms. Lekoetje as being unsubstantiated or inconsequential. The UNAT found that her breaches of the lease agreements in relation to utilities and consumables' payments were clearly and convincingly established. In addition, where these breaches involved the payments being made by UNDP rather than personally by Ms. Lekoetje, this was a breach of the relevant Staff Regulations and Rules.

Given that the compensatory awards made by the UNDT were on the basis of complete exoneration of Ms. Lekoetje's conduct, the UNAT concluded that these remedies could not survive unmodified. The UNAT upheld the UNDT's rescission of her separation from service. However, the UNAT stated that the three years and six and a half months salary was at the uppermost end of compensatory awards and reserved for cases in which a staff member who has suffered grievously was also blameless. The UNAT held Ms. Lekoetje was not in this position and substituted the in lieu award made by the UNDT with one year's net base salary. The UNAT also set aside the UNDT's award of moral damages, given Ms. Lekoetje's culpability for the losses she incurred. Lastly, UNAT determined that USD 20,987.91 was payable from Ms. Lekoetje to the Organization.

Related JudgmentsNoneReviewed (VAG)Approved for publicationYesSubmitted On13 Jun 2022Drafted Bywlin3Drafted Date13 Jun 2022Reviewed ByJJOHNSON59Reviewed On11 Mar 2023

Decision Contested or Judgment/Order Appealed

Before the Dispute Tribunal, Ms. Lekoetje contested her separation from service for alleged misuse of funds, abuse of authority, and conflict of interest. The UNDT ordered rescission of the separation decision or payment of an in lieu compensation amounting to three years and six and a half months of Ms. Lekoetje's D1 salary. In addition, the UNDT awarded two years' net base salary as damages for moral harm.

Legal Principle(s)

The Staff Regulations and Rules affecting abuse of authority and conflicts of interest could not have been applicable to a commercial negotiation between the Organization as landlord and a staff member as tenant, over the lease of temporary

accommodation at a foreign posting.

A compensation award of three years and six and a half months of net base salary is at the uppermost end of compensatory awards and is reserved for cases in which a staff member who has suffered grievously was also blameless.

Outcome

Appeal granted

Outcome Extra Text

UNDT Judgment rescinding Ms. Lekoetje's severance from service upheld, but its monetary remedies modified, and its award of moral damages set aside. In substitution, UNAT ordered Ms. Lekoetje be paid a sum equivalent to one year's net base salary minus USD 20,987.91 that Ms. Lekoetje owed to the Organization.

Full judgment

[Full judgment](#)

Applicants/Appellants

Ade Mamonyane Beatrice Lekotje

Entity

UNDP

Case Number(s)

2021-1533

Tribunal

UNAT

Registry

New York

Date of Judgement

18 May 2022

President Judge

Judge Murphy

Judge Colgan

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Disciplinary matters / misconduct

Abuse of authority

Fraud, misrepresentation and false certification

Misuse of office

Remedies

Compensation (see also, Compensation)

Applicable Law

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 1.2

UNDP Staff Regulations and Rules