

2022-UNAT-1306, Gautam Mukhopadhyay

UNAT Held or UNDT Pronouncements

UNAT found that because the termination had been rescinded and Mr. Mukhopadhyay had been reinstated further to the First Judgment, the appeal of the Second Judgment had become moot as there could be no entitlement to termination notice pursuant to the applicable Regulations and Rules. UNAT thus granted the Secretary-General's appeal and reversed the Second Judgment.

UNAT found not receivable Mr. Mukhopadhyay's cross-appeal requesting an award for consequential damages, compensation for moral damages and costs. UNAT found that he had made these claims for the first time on appeal and was attempting to re-litigate the outcome of the remedy awarded by the UNDT in the First Judgment. Since any compensation warranted for the improper termination decision had been fully addressed and adjudicated in the First Judgment, the matter was res judicata.

Decision Contested or Judgment/Order Appealed

Mr. Mukhopadhyay, a former MONUSCO staff member, filed two applications before the UNDT, the first one challenging the termination of his continuing appointment, due to the abolition of his post, and the second one challenging MONUSCO's denial of his request for payment of three months' salary in lieu of notice of termination.

By Judgment No. UNDT/2021/085 (First Judgment), the UNDT ordered the rescission of the termination decision, or, in-lieu compensation in the amount of two years' net base salary.

By Judgment No. UNDT/2021/119 (Second Judgment), the UNDT rescinded the decision to withhold three months' compensation in lieu of notice and ordered the

Secretary-General to pay Mr. Mukhopadhyay three months' net base salary in lieu of notice.

The Secretary-General appealed Judgment No. UNDT/2021/119, and Mr. Mukhopadhyay cross-appealed.

Legal Principle(s)

A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect.

Under Article 9(2) of the UNAT Statute, costs may be awarded by this Tribunal if it considers that a party has “manifestly abused the appeals process”. The Appeals Tribunal has previously held that such an order will be rarely made, and usually after the party has been fairly warned of that consequence if the party’s abuse of process continues.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Gautam Mukhopadhyay

Entity

MONUSCO

Case Number(s)

2021-1642

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Dec 2022

President Judge

Judge Raikos

Judge Murphy

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Costs

Administrative decision

Benefits and entitlements

Termination indemnities

Compensation

Jurisdiction / receivability (UNAT)

Remedies

Rescission

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Abolition of position

Applicable Law

Staff Rules

- Rule 9.3
- Rule 9.7

UNAT Statute

- Article 9.2

Related Judgments and Orders

2017-UNAT-742

2022-UNAT-1219