

UNDT/2023/045, Heurtematte

UNAT Held or UNDT Pronouncements

Rescission and in lieu compensation under art. 10.5(a) of the Dispute Tribunal's Statute

Considering that the evidence provided by the Respondent showed that the duration of most of the former renewals of the Applicant's fixed-term appointment including the last regular renewal was for a duration of one year and that there is no expectation of renewal for a fixed-term appointment, the Tribunal determined that the amount of in lieu compensation must be equal to one year's net base salary.

Compensation for harm under art. 10.5(b) of the Dispute Tribunal's Statute

The Tribunal reviewed the Applicant's arguments and the evidence submitted and found that none of the medical reports on record show any evidence of a nexus between the Applicant's health problems and the unlawful decisions.

Under such circumstances, the Tribunal concurred with the Respondent that the Applicant had not shown the required causal link between the alleged harm experienced and the decision to abolish his post and the subsequent non-renewal of his appointment. As such, the Tribunal did not grant the Applicant compensation for harm under art. 10.5 (b) of its Statute.

All the other claims were rejected.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to abolish his post which caused the non-renewal of his fixed-term appointment beyond 30 September 2021.

In its Judgment No. UNDT/2022/131, this Tribunal found that the decisions to abolish the Applicant's post and not to renew his appointment were unlawful. The Tribunal

thus only determined remedies on the present judgment.

Legal Principle(s)

The UNAT held that “the very purpose of in lieu compensation 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”. It also further held that the Tribunal “shall ordinarily give some justification and set an amount that the Tribunal considers to be an appropriate substitution for rescission or specific performance in a given and concrete situation” (see Laasri 2021-UNAT-1122, para. 63).

The UNAT held that “the determination of the quantum of in lieu compensation will depend on the circumstances of each case, but some relevant factors that can be considered, among others, are the nature of the post formerly occupied, the remaining time to be served by a staff member on his or her appointment, and their expectancy of renewal” (see Afm Badrul Alam 2022-UNAT-1214, para. 28).

The UNAT has consistently held since the amendment of art. 10.5 (b) that a breach of staff member’s rights, despite its fundamental nature, is thus not sufficient to justify compensation for harm. There must indeed be proven harm stemming directly from the Administration’s illegal act or omission for compensation to be awarded (see Kebede 2018-UNAT-874, para. 21).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal decided to grant the Applicant one year’s net base salary as compensation in lieu of rescission under art. 10.5(a) of its Statute. No compensation for harm was granted and all other claims were rejected.

Full judgment

[Full judgment](#)

Applicants/Appellants

Heurtematte

Entity

UN Women

Case Number(s)

UNDT/NY/2022/004

Tribunal

UNDT

Registry

New York

Date of Judgement

31 May 2023

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

In-lieu compensation

Compensation

Applicable Law

UNDT Statute

- Article 10.5

Related Judgments and Orders

2019-UNAT-951

2021-UNAT-1122

2022-UNAT-1214

2018-UNAT-874