

2023-UNAT-1393, Berhanemeskel Nega

UNAT Held or UNDT Pronouncements

The UNAT concluded that the Dispute Tribunal had been guided by the appropriate factors in making its award of compensation in lieu. Specifically, the UNDT had considered the seniority of the staff member, the type of contract he held and the chance of being offered equivalent positions, the reasons for termination, and months of service until retirement age. In light of the UNAT's deference to the UNDT in such matters, the UNAT found it to be an adventure in futility to re-examine these factors.

The UNAT rejected the Secretary-General's contention that the length of the Temporary Job Opening that Mr. Nega applied to was the determining factor in computing the compensation award. The UNAT stated that Mr. Nega's application for that TJO was only a subsidiary issue in the case and aimed only at establishing that Mr. Nega had cooperated in terms of being absorbed into a new post after the organizational restructuring. The UNAT also rejected the Secretary-General's averment that the compensatory award should have been reduced by the pension benefits he received upon retirement. Lastly, the UNAT found no error that Mr. Nega's daughter's educational expenses were considered one of the factors, cumulatively, to arrive at the in-lieu compensation award.

The UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/105, the UNDT concluded that the Administration failed to make good faith efforts to absorb Mr. Nega into a new post in the Organization after his position with the United Nations-African Union Hybrid Operation in Darfur

(UNAMID) was abolished. The UNDT granted his application contesting his termination and ordered that Mr. Nega be placed in the same position as he was when his post was abolished, or alternatively, to pay Mr. Nega two years' net-base salary as compensation in lieu.

The Secretary-General did not contest the substantive findings, but appealed the quantum of compensation.

Legal Principle(s)

In-lieu compensation is only an alternative to rescission or specific performance which should be as equivalent as possible to what the person concerned would have received had the illegality not occurred.

To ascertain the need for such an upward or downward change in a compensation award, the elements which can be considered are among others, the nature and the level of post occupied by the staff member (i.e., continuous, provisional, fixed term), the remaining time, chances of renewal, etc.

Compensation in lieu is not compensatory damage based on economic loss.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Berhanemeskel Nega

Entity

UNAMID

Case Number(s)

2022-1763

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Dec 2023

President Judge

Judge Sandhu

Judge Gao

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Applicable Law

Staff Rules

- Rule 13.1
- Rule 9.6(e)
- Rule 9.6(f)

UNDT Statute

- Article 10.5

Related Judgments and Orders

2023-UNAT-1346

2020-UNAT-1040

2014-UNAT-469

2012-UNAT-246

2017-UNAT-765

2021-UNAT-1165

2018-UNAT-847

2019-UNAT-899