

# 2023-UNAT-1399, Michel Raymond Marie Rixen

## UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the Secretary-General of WMO.

The UNAT found that the staff member was seeking to adhere to an agreed variation to his contract which, in return for foreshortening his period of employment, entitled him to a termination indemnity. The UNAT noted that the UNDT had been correct in establishing a direct and negative effect, brought about by the implementation of the contested decision, as a condition for receivability.

The UNAT was of the view that WMO's decision purporting to rescind its agreement affected the staff member's established career and personal plans made in reliance on that consensually varied termination date. The UNAT observed that there was a cause and effect relationship between the breach and the harm or loss. The UNAT found that the harmful effects on him were disproportionate to the benefits that WMO achieved by insisting on the continuation of his employment against his will for a further three months. The UNAT noted that the Secretary-General was estopped from acting contrary to and without consideration of the legitimate expectation that the staff member had of how and when his employment would end and in reliance of which he had made personal and professional arrangements.

The UNAT held that the UNDT had not committed any errors of fact or law in its Judgment.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/134.

## Decision Contested or Judgment Appealed

A former staff member contested the decision to rescind the termination of his appointment. The contested decision resulted in his separation from WMO based on the expiration, instead of the termination, of his fixed-term appointment.

In Judgment No. UNDT/2022/134, the UNDT granted the application and rescinded the contested decision. The UNDT concluded that the staff member was entitled to rely on the notice of termination of his fixed-term appointment. It re-set the lawful date of his separation from service, declared his entitlement to termination indemnities and separation entitlements, directed that he be paid in-lieu compensation in the amount of ten months' salary and awarded moral damages of USD 5,000.

## Legal Principle(s)

An employer has a duty to organize its operations so as not to imperil the health and safety of its staff.

Discretionary organizational flexibility in management must be exercised with moderation, lawfully, rationally, correctly in a procedural sense, and proportionately. Such decisions may not be exercised ignoring the relevant or taking account of the irrelevant. It is not for the Tribunals to substitute their decisions on administrative matters for those of the Organization properly taken in the exercise of its discretion.

In an employment relationship for which the United Nations has adopted a combined or fused statutory and contractual model and in which both parties also have express and implied rights and obligations, the notion of subservience is no longer appropriate. The employment relationship, with regard to a variation that results in prolonging it, is governed by contract and contractual principles apply, including that such variation is by

consent and not unilateral.

Outcome

Appeal dismissed on merits

Full judgment

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Applicants/ Appellants

Michel Raymond Marie Rixen

Entity

WMO

Case Number(s)

2023-1777

Tribunal

UNAT

**Registry Location :**

New York

Date of Judgment

7 Dec 2023

Judge(s)

Judge Colgan

Judge Forbang

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

**Document Topic/Theme :**

Administrative decision

Definition

Compensation

In-lieu compensation

Non-pecuniary (moral) damages

Discretionary authority

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

GA Resolutions

- A/RES/217 (III)

Universal Declaration of Human Rights

WMO Staff Regulations and Rules

Related Judgments

2020-UNAT-1050

UNDT/2022/134

2020-UNAT-1051

2022-UNAT-1245

2018-UNAT-840

2022-UNAT-1228