

2023-UNAT-1397, Ibrahim Ahmad Fanous

UNAT Held or UNDT Pronouncements

The UNAT found that the UNRWA DT did not err in its award of in-lieu compensation. It appropriately considered Mr. Fanous' chance of selection for the post when it stated that it considered there was no guarantee of a future selection. The UNRWA DT applied a context-specific lump sum amount. It considered the likelihood of selection and Mr. Fanous' salary at the time. It made a determination that was fair and just in the present case but also took a principled approach that considered all relevant considerations.

As to Mr. Fanous' request for moral damages, with regard to the First and Second Contested Decision, the UNAT found that the UNRWA DT did not err in denying Mr. Fanous' request for moral damages in the absence of sufficient evidence.

Turning to the Third Contested Decision, the UNAT found that there was no evidence that the shortlisting was not based on objective criteria. Although Mr. Fanous had the required experience, he failed to properly provide that information in his application and his PHF did not reflect his supervisory experience. The UNAT found that the UNRWA Dispute Tribunal did not err when it held that Mr. Fanous failed to discharge his burden to rebut the presumption that the Agency improperly exercised its discretion in the Third Contested Decision

Legal Principle(s)

The purpose of in-lieu compensation is to place the staff member in the same position they would have been in, had the unlawful decision not been made.

The Dispute Tribunal must set compensation following a principled approach and on a case-by-case basis.

The determination of the quantum of in-lieu compensation will depend on the circumstances of each case. Many factors can be considered, including the nature of the post occupied, the remaining time of appointment, the salary difference, the number of candidates involved, and the possibility of selection.

Moral damages: The claimant bears the burden to establish, on a balance of probabilities, three elements: the harm itself, an illegality, and a nexus between both. Therefore, the harm must be shown to be directly caused by the unlawful administrative decision in question.

An entitlement to moral damages may arise where there is evidence by way of a medical, psychological report or otherwise of harm, stress or anxiety caused to the staff member, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

The Agency has broad discretion in matters of staff selection. In non-selection cases, all official acts are presumed to have been regularly performed, if the Agency can minimally show that full and fair consideration was given. The staff member can rebut this presumption, through clear and convincing evidence, that the procedures were violated, the Panel was biased or discriminated against the candidate, relevant material was ignored, or irrelevant material was considered, or other grounds depending on the facts of the case.

Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

Full judgment

[Full judgment](#)

Applicants/Appellants
Ibrahim Ahmad Fanous
Entity
UNRWA
Case Number(s)
2022-1766
Tribunal
UNAT
Registry
New York
Date of Judgement
5 Dec 2023
President Judge
Judge Sandhu
Judge Gao
Judge Sheha
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Compensation
In-lieu compensation
Non-pecuniary (moral) damages
Staff selection (non-selection/non-promotion)
Full and fair consideration
Applicable Law
UNRWA DT Statute

- Article 10.5

Related Judgments and Orders

2022-UNAT-1214
2011-UNAT-117
2021-UNAT-1118
2023-UNAT-1329
2011-UNAT-122
2020-UNAT-1066