

UNDT/2024/032, Aguilar Valle

UNAT Held or UNDT Pronouncements

Considering the circumstances, the most appropriate remedy would be to rescind the contested decision (in comparison, see the Appeals Tribunal in *Lucchini* 2021-UNAT-1121 and *Rolli* 2023-UNAT-1346).

It is standard practice and courtesy in the Organization that, albeit fixed-term appointments, per definition, do not carry any expectancy of renewal under staff rule 4.13(c), a staff member whose fixed-term appointment is not to be renewed is to receive a pre-notification concerning the non-extension, at least 30 days before its expiry. The Respondent has not argued or submitted any documentation demonstrating that the Applicant should have been advised that his fixed-term appointment was not to be extended. Considering that the Applicant was separated only 18 days before the expiry of this fixed-term appointment, the Tribunal therefore finds it likely that a non-renewal of the Applicant's fixed-term appointment had not been contemplated; rather, his appointment was planned to be extended. In this regard, it is further noted that nothing in the case file suggests that any possible reason existed for not renewing the Applicant's appointment, such as, for instance, the abolishment of his post or him having serious and documented performance issues. Had it not been for the Applicant's separation on 4 April 2022, his fixed-term appointment would have been renewed for another two years on 23 April 2022. In this hypothetical scenario, he would then have been granted another two-year fixed-term appointment expiring on 22 April 2024. Thereafter, the Tribunal finds that it would too be speculative to assume that it would be extended any further.

In the present case, the Applicant should be placed in a position as if his fixed-term appointment had been extended until 22 April 2024, which the Tribunal will therefore order the Administration to do. Accordingly, in cooperation with the Applicant, the Administration is to undertake the necessary calculations and adjustments in terms of the Applicant's benefits and entitlements, including net-base salary, post adjustment, pension, grants, subsidies, allowances, and all other

payments relevant to the Applicant in the situation.

The Tribunal accepted the medical report and the invoice submitted by the Applicant as genuine and proper evidence of the stress and anxiety he felt after the second harshest disciplinary sanction under staff rule 10.2 imposed on him, namely separation from service with compensation *in lieu* of notice and without termination indemnity, for alleged sexual harassment.

The Applicant's non-pecuniary and moral damages fell in the most hurtful middle spectrum of harm, also noting that the Appeals Tribunal has held that a "finding of sexual harassment against a staff member of the Organisation is a serious matter", which "will have grave implications for the staff member's reputation, standing and future employment prospects" (see, *Appellant* 2022-UNAT-1210, para. 37, as also quoted in Judgment No. UNDT/2024/007, para. 15). At the same time, at least to some extent, the Applicant also contributed to the situation.

As the Appeals Tribunal has held that compensation for harm under art. 10.5(b) should be set as a lumpsum in order not to differentiate between professional grades and salary scales, the Applicant is awarded USD5,000 for his non-pecuniary and moral damages (in line herewith, see *Dawoud* 2023-UNAT-1402, paras. 53-54 (on the issue of lumpsum), and *Belkhabbaz* UNAT-2018-873, para. 90 (on the compensation amount)).

Insofar as the entire compensation amount exceeds the two-year net salary limitation stated in art. 10.5 of the Dispute Tribunal's Statute, the Tribunal finds that the Appeals Tribunal's unequivocal case-law in, for instance, *Laasri an Ashour*, combined with the seriousness of the sexual harassment accusations, the severity of the disciplinary sanction, and the Applicant's proven moral harm, provides sufficient justification for paying him more than the stated two-year limit. The circumstances of the Applicant's case are, thus, indeed exceptional.

Deletion of the Applicant's name from Clear Check is a corrective measure that logically follows from the Tribunal rescinding the impugned disciplinary sanction. Subsequent to the Judgment, no reason any longer exists for maintaining his name therein. For the Applicant's name to be deleted from Clear Check, the Tribunal therefore does not need to order the Administration to do so—this should be done automatically.

Considering the outcome of Judgment No. UNDT/2024/007, and since the Tribunal also addressed the questions of the Respondent's page limit in the closing statement and the issue of possible witness intimidation therein, the Tribunal found that all procedural matters of the proceedings on the merits have been appropriately addressed and resolved. The Applicant's 26 December 2023 request for costs is therefore to be rejected.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to impose against him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.

Legal Principle(s)

In *Laasri* 2021-UNAT-1122 (para. 63), the Appeals Tribunal set out 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 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". In this regard, the Appeals Tribunal held that "the elements which can be considered are, among others", (a) "[T]he nature and the level of the post formerly occupied by the staff member (i.e., continuous, provisional, fixed-term)"; (b) "[T]he remaining time on the contract"; and (c) "[C]hances of renewal".

Any actual income, which an applicant has received during the compensation period for loss of income in accordance art. 10.5 of the Dispute Tribunal's Statute, shall be offset in the compensation amount as, in the hypothetical scenario that the applicant had not lost her/his appointment at stake, s/he would not have obtained this other income (see also the Appeals Tribunal in *Belkhabbaz* 2018-UNAT-895, para. 38). In line herewith, the Appeals Tribunal has also held that an applicant has a duty to mitigate her/his losses in terms of the compensation for loss of income under art. 10.5 of the Dispute Tribunal's Statute (see, for instance, *Dube* 2016-UNAT-674.). Typically, the applicant therefore must show that s/he has been actively job

searching during the relevant compensation period.

Under the Appeals Tribunal's settled jurisprudence, the Applicant is to be placed in a situation as if the infringement of his rights had never occurred (see, for instance, the above quoted judgments in *Laasri* and *Ashour*).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Aguilar Valle

Entity

UNDP

Case Number(s)

UNDT/NY/2022/033

Tribunal

UNDT

Registry

New York

Date of Judgement

10 May 2024

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Remedies

Applicable Law

Staff Rules

UNAT Statute

Related Judgments and Orders

2021-UNAT-1121

2023-UNAT-1346

2021-UNAT-1122

2016-UNAT-674

2022-UNAT-1210

2023-UNAT-1402