

2024-UNAT-1498-Corr.1, Houria

Kembouche

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT did not err in finding that the former staff member's change of title following a reclassification did not amount to an abolition or discontinuance of her post, rendering her termination of appointment unlawful.

The UNAT also determined that the UNDT did not err in awarding the former staff member compensation in lieu of two years' net base salary. In this regard, the UNAT emphasized that the UNDT correctly considered the fact that the former staff member's permanent appointment included a specific undertaking stating that she could only be terminated due to an abolishment of her post or a reduction of staff, as well her 33 years of unblemished career at the United Nations, which supported the reasonable assertion that she would have been employed with UNHCR until her normal retirement age. However, the UNAT found that the UNDT erred by not deducting the amount of termination indemnity and compensation in lieu of notice from the award of compensation in lieu. It held that since the UNDT rescinded the termination of the former staff member's employment, there was consequently no termination requiring the payment of termination indemnity and compensation in lieu of notice.

The UNAT also found that the UNDT did not err in its award of compensation for harm, particularly since it had before it medical reports that established a link between the contested decision and the staff member's medical condition.

The UNAT opined on ambiguities in the language of Article 10(5) of the UNDT Statute.

The UNAT granted the appeal in part and modified Judgment No. UNDT/2023/088. The UNAT reduced the amount of compensation in lieu of two years' net base salary by the payments made in termination indemnity and compensation in lieu of notice.

Decision Contested or Judgment/Order Appealed

A former staff member in the Office of the United Nations High Commissioner for Refugees (UNHCR) contested the decision of the Administration to terminate her indefinite appointment due to a change of position title.

In its Judgment No. UNDT/2023/088, the UNDT granted the former staff member's application on the grounds that the change of position title did not constitute an abolition of post that would authorize the termination of her employment. It rescinded the contested decision, fixed the alternative compensation in lieu of rescission at two years' net base salary and awarded compensation for moral damages in the amount of USD 8,000.

The Secretary-General appealed.

Legal Principle(s)

An international organization has the authority to restructure its departments or units but must act fairly, justly and transparently in dealing with its staff members. The UNDT reviews whether the exercise of such discretion is legal, rational, reasonable, and procedurally correct. It is not its role to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him or to substitute its own decision for that of the Secretary-General.

The words of a legislative provision must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, the object of the legislation, and the intention of the legislature. In the event of conflict, primary legislation must prevail over delegated authority.

A change of position title and abolition of post are not synonymous. The Secretary-General can only terminate a permanent appointment if the necessities of service require the post to be ended or "completely done away", which does not apply to a change of position title.

In lieu compensation aims at restoring staff members in the same position that they would have been, had the Organization complied with its contractual obligations.

Factors which can be considered in determining in lieu compensation include the nature and the level of the post formerly occupied by the staff member, the remaining time on the contract, and chances of renewal.

The UNDT is best placed to determine the level of compensation, considering the nature of the irregularity in relation to the contested decision, the staff member's length of service and any consequential prejudice.

If there is no termination, termination indemnity cannot be granted.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Houria Kembouche

Entity

UNHCR

Case Number(s)

2023-1864

Tribunal

UNAT

Registry

New York

Date of Judgement

9 Dec 2024

President Judge

Judge Sandhu

Judge Colgan

Judge Ziadé

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Permanent appointment

Evidence of harm

Abolition of position

In-lieu compensation

Appointment (type)

Compensation

Termination (of appointment)

Applicable Law

Administrative Instructions

Former Staff Regulations

- Regulation 9.1

GA Resolutions

- A/RES/69/203

Secretary-General's bulletins

Staff Regulations

- Regulation 9.3(a)(i)
- Regulation 9.3(c)

- Regulation 9.3
- Annex III

Staff Rules
UNDT Statute

- Article 10.5

UNHCR Administrative Instruction

Related Judgments and Orders

UNDT/2023/088

2018-UNAT-847

2010-UNAT-084

2023-UNAT-1392

2019-UNAT-975

2016-UNAT-705

2021-UNAT-1122

2019-UNAT-909

2017-UNAT-783

2024-UNAT-1417

2022-UNAT-1304

2014-UNAT-433

2013-UNAT-305

2011-UNAT-131

2010-UNAT-092