



**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Morten Albert Michelsen, Officer-in-Charge

HEURTEMATTE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON  
CASE MANAGEMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Michel Boulianne, UN Women  
Prue Smith, UN Women  
Ivanova Galan, UN Women

## **Introduction**

1. By Judgment No. UNDT/2022/131, the Tribunal granted the application on its merits. It further ordered that before determining the issue of remedies, by separate written order, it would instruct the parties to file their final submission thereon, taking into consideration the findings made in the Judgment No. UNDT/2022/131.

## **Consideration**

### *Remedies*

#### The submissions of the parties

2. The Applicant principally seeks the rescission of the contested decision. In the alternative to reinstatement, he seeks *in lieu* compensation although he has not indicated a requested compensation amount. In addition, the Applicant requests compensation for harm in the amount of two years net-base salary for “the stress and anxiety as well as permanent physical drawbacks due to COVID-19”, but he has filed no evidence to this end.

3. The Respondent objects to all the Applicant’s claims on remedies.

4. As indicated in Judgment No. UNDT/2022/131, the Tribunal is aware that the Applicant is self-represented and that therefore “some latitude may be allowed in the interests of justice” (see the Appeals Tribunal in *Al-Refaea* 2019-UNAT-971, para. 25, and similarly in, for instance, *Abdellaoui* 2019-UNAT-928 and *El Shaer* 2019-UNAT-942). In the following, the Tribunal will therefore present the basic framework for remedies and thereafter allow the parties to file their final submissions on the topic.

#### The legal framework for relief before the Dispute Tribunal

5. The Statute of the Dispute Tribunal provides in art. 10.5 an exhaustive list of remedies, which the Tribunal may award:

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

Rescission and *in lieu* compensation under art. 10.5(a) of the Dispute Tribunal's Statute

6. Under art. 10.5(a) of the Statute of the Dispute Tribunal, in certain types of cases, the Administration may elect to pay as an alternative to the rescission *in lieu* compensation. The Appeals Tribunal held in *Allen* 2019-UNAT-951 that a case concerning non-renewal of appointment is encompassed by this provision.

7. In *Laasri* 2021-UNAT-1122 (para. 63), the Appeals Tribunal held 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”.

8. Based on the casefile, the Tribunal therefore requests the Applicant (a) to state how much the Applicant claims *in lieu* compensation and (b) to provide information and evidence for the time periods of his previous fixed-term appointments (was the contract period, for instance, one or two years?).

Compensation for harm under art. 10.5(b) of the Dispute Tribunal's Statute

9. Under art. 10.5(b) of the Statute of the Dispute Tribunal, compensation for harm must be “supported by evidence”. The Applicant has provided no such evidence, and the Tribunal will therefore allow him to do so. In this regard, the Tribunal refers to the Appeals Tribunal’s judgment in *Kebede* 2018-UNAT-874 in which it stated as follows (see, paras. 20-22):

... It is universally accepted that compensation for harm shall be supported by three elements: the harm itself; an illegality; and a nexus between both. It is not enough to demonstrate an illegality to obtain compensation; the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. [reference to footnote omitted] If one of these three elements is not established, compensation cannot be awarded. Our case law requires that the harm be shown to be directly caused by the administrative decision in question. [reference to footnote omitted]

... As regards the award of compensation for harm, our jurisprudence has evolved following the 2014 General Assembly resolution 69/203, which amended our Statute and that of the UNDT, introducing the expression “supported by evidence” after “compensation for harm” in Article 10(5)(b) of the UNDT Statute and Article 9(1)(b) of the Appeals Tribunal Statute. A breach of staff member’s rights, despite its fundamental nature, is thus not sufficient to justify such an entitlement. There must indeed be proven harm stemming directly from the Administration’s illegal act or omission for compensation to be awarded.

... Our jurisprudence holds that, generally speaking, a staff member’s testimony alone is not sufficient as evidence of harm warranting compensation under Article 10(5)(b) of the UNDT Statute. [reference to footnote omitted] The testimony of an applicant in such circumstances needs the corroboration of independent evidence (expert or otherwise) to support the contention that non-pecuniary harm has occurred. [reference to footnote omitted] Much will depend on the circumstances of the situation at hand, as the existence of moral damages shall be assessed on a case-by-case basis.

10. In light of the above,

IT IS ORDERED THAT:

11. By **4:00 p.m. on Wednesday, 4 January 2023**, the Applicant is to file (a) his final pleadings on remedies, which is to be five pages maximum, using Times New Roman, font 12 and 1.5 line spacing, and (b) all relevant evidence;

12. By **4:00 p.m. on Wednesday, 11 January 2023**, the Respondent is to file: (a) his final pleadings responding to the Applicant's 4 January 2023 submissions at a maximum length of five pages, using Times New Roman, font 12 and 1.5 line spacing, and (b) all relevant evidence;

13. By **4:00 p.m. on Wednesday, 18 January 2023**, the Applicant may file a statement of final observations responding to the Respondent's 11 January 2023 filing. This statement of final observations must be a maximum of two pages, using Times New Roman, font 12 and 1.5 line spacing. It must be solely based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

14. Unless otherwise ordered on receipt of the latest of the aforementioned statements, the Tribunal will adjudicate on the matter and deliver Judgment based on the papers filed on record.

*(Signed)*

Judge Joelle Adda

Dated this 13<sup>th</sup> day of December 2022