



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1393

Berhanemeskel Nega
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before:	Judge Leslie F. Forbang, Presiding Judge Kanwaldeep Sandhu Judge Gao Xiaoli
Case No.:	2022-1763
Date of Decision:	27 October 2023
Date of Publication:	1 December 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant: Francisca Lagos Pola

Counsel for Respondent: Brandon Gardner, OSLA

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18. On 6 December 2022, the Secretary-General lodged an appeal of the impugned Judgment with the Appeals Tribunal

submitted any evidence of support for such compensation, and that all he had provided was a transcript of expenses for the prior year (2021-2022) at St. John's University, and this transcript did not even contain the name of his daughter. Mr. Nega has also not shown that he met all of the eligibility requirements for the education grant. In sum, it was an error to consider the Administration's non-payment of the education grant when the UNDT made its compensatory award.

24. For the foregoing reasons, the Secretary-General requests that the UNAT reduce the award of compensation in lieu for Mr. Nega.

Mr. Nega's Answer

25. Mr. Nega submits that the Secretary-General has failed to demonstrate that the UNDT made an error of fact and/or law, or exceeded its competence in awarding him two years' net-base salary at level D-1 based on its finding that the Administration failed to make good faith efforts to place him in rtst23th9eedrd rd

same thing as receiving a salary for services rendered. Mr. Nega avers that compensation in lieu serves a different purpose than payment for services rendered, and there is no rule barring a staff member from receiving compensation in lieu and a pension.

35. Mr. Nega also submits that the two years' net-base salary award does not come close to placing him in the same financial position that he would have been in had he been able to continue his service through to mandatory retirement age. He notes that he lost the ability to earn a full 2.5 years of salary, payments into his pension based on that salary, and education grants; as well as the possibility of a promotion to D-2 at even higher salary levels and higher pension contributions. Thus, even deducting for the pension payments received, he submits that he would still be entitled to the two years' net-base salary award from the UNDT. Mr. Nega also submits that he suffered moral damages by the Organization's failure to find him a suitable post notwithstanding his significant contributions to the Organization.

36.

Considerations

40. We have before us an appeal against Judgment No. UNDT/2022/105 of the Dispute Tribunal rendered on 7 October 2022.

41. The orders of the Dispute Tribunal which constitute the main issue for determination before us are reproduced in relevant part as follows:¹²

... [Mr. Nega] must be placed in a position - among those he applied to - of the same level to that one he had at the time of the abolition of his post.

... The [Administration] is to pay to [Mr. Nega] the compensation in lieu of two years' net-base salary at the D – 1 level as per the salary scale in effect at the time of [his] separation from service.

42. We note that the discretion of the Administration to restructure its organs is wide, but not unfettered. In its restructuring efforts, the Administration must comply with its

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two years' net-base salary at the D-1 level awarded to

57. In light of our deference to the Dispute Tribunal in such matters, we find it an adventure in futility to re-examine the factors considered by the UNDT as this would amount to reviewing the matter *de novo*.

58. Be that as it may, for purposes of clarity we find it necessary to examine the points raised by the Secretary-General to substantiate his contention that the award was unreasonable and excessive.

59. In the first place, the Secretary-General argued that the Dispute Tribunal erred in law and in fact by failing to consider that TJO 152064 was only temporarily available for six months, and consequently that the latter duration should be taken into account.

compensation in lieu “is not compensatory damage based on economic loss. Thus, there is no reason to reduce this award by the amount of termination indemnity”.³²

63. In that vein, we held further in Fasanella that “the UNDT erred in reducing Mr. Fasanella’s in-lieu compensation by the amount of his termination indemnity, to which he has a right under Staff Regulations and Staff Rules”.³³ And therefore, we concluded in that appeal that “the

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Judgment

71. The Secretary-General's appeal is dismissed, and Judgment No. UNDT/2022/105 is affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Forbang, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 1st day of December 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar