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Judgment No. 2021-UNAT-1096

opportunity either to re-run the same case or to reinforce it with more or better evidence. It is only in truly exceptional circumstances that new pleadings will be permitted. Put colloquially, litigants should ensure that their first shot is their best shot. Mr. Dabbour's motion to introduce additional pleadings must be, and is, dismissed in these circumstances.

Submissions

The Appellant's Appeal

5. The relief sought by the Appellant includes an order or direction that he be appointed to the post of ARO;

b)

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4 of 10 !

- 10. Specifically, the Respondent contends first that the plea for increased compensation instead of recission is not receivable. That is because the Appellant has not challenged the methodology used by the UNRWA DT in assessing its award and that we should therefore not interfere in the exercise of the broad discretion that the UNRWA DT possesses within the correct methodology.
- 11. Next, the Respondent says that the Appellant's claims to lost benefits and earnings were not claims before the UNRWA DT even though the Appellant must have known of these alleged losses at the time of his hearing in that forum. To allow consideration of these, we would have to allow a new plea and new evidence which we should not do.
- 12. Furthermore

compensatory sum, deprives an affected staff member of the social and economic benefits that would otherwise attach to the new employment and in some cases potentially from a position of unemployment. In Mr. Dabbour's case, however, he continues to work for UNRWA as an Administrative Assistant at Grade 10, one grade below the position he would have been in had he been appointed to the Grade 11 role he sought.!

- 20. However, the UNRWA DT had no alternative but to make this order because its! Statute dictates such an outcome in cases such as this when UNRWA's appointment decision is rescinded. The final remedy is not left to the UNRWA DT to determine, but to the Commissioner-General. We note that we are not aware of any case like Mr. Dabbour's in which the Commissioner-General (or in other cases, the United Nations Secretary-General where, in law, he is the employer) has rescinded the appointment erroneously made and appointed the staff member who should have been appointed. So, the alternative remedy is invariably the default remedy. The wrong suffered by the staff member being the same, however, it is incumbent on the UNRWA DT to ensure that the remedies provided and from which the Commissioner-General selects one (invariably monetary compensation) have an equivalent beneficial compensatory effect for the staff member.
- 21. The UNRWA DT addressed the issue of compensation in lieu of recission of the decision not to appoint him to another position with UNRWA, at paragraphs 42 47 of its Judgment.

a percentage of certainty of appointment having regard, among other things, to the number of short-listed candidates and the staff member's ranking among them. The UNAT Judgment is also authority for the proposition that consideration needs to be given to the nature of the appointment that did not eventuate for the staff member. In Chhikara, as in this case, that was a three-year contract. The Tribunal must take into account the possibilities of a shorter period having been completed if the appointment had been made. Non-exhaustively, the reasons for those contingencies may include abolition of the post, illness, resignation and the like. Next, the difference in income (if any) between the post previously or currently encumbered and that which was lost will form the basis of compensation for!

- 23. Finally, as Chhikara notes, these calculations are not "an exact science". Nevertheless, the Tribunal must make the best it can of the available evidence and, if necessary, seek that information from the parties in order to best and most fairly quantify such an alternative monetary remedy as it is obliged to provide.
- 24. Although the UNRWA DT in Mr. Dabbour's case recorded its conclusions on some of these considerations, it did not do so at all in respect of others making it difficult, if not impossible, to ascertain objectively how it reached the apparently modest figure of compensation in lieu of recission of USD 1,000.
- 25. The UNRWA DT did conclude that, absent the appointment process errors, there would have been an "extremely high" likelihood of Mr. Dabbour being appointed.³ The Tribunal also recorded that the appointment for which Mr. Dabbour was unsuccessful was graded for salary at 11 as compared to his

7 of 10

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26. At paragraph 47 of its Judgment, the UNRWA DT only stated: "Taking into account the A

motion for leave to augment the evidence in support of this claim. In the circumstances, it cannot be said that the UNRWA DT erred by failing to take into account information that was not before it. In this respect, we dismiss Mr. Dabbour's claim for an award of moral damages equivalent to two years' remuneration.

- 31. As did the UNRWA DT, we must dismiss Mr. Dabbour's plea that UNRWA be directed to conduct an inquiry into alleged abuse of power in the selection process. That is not a remedy that either the UNRWA DT or we are permitted by our Statutes to make. We note, however, that the UNRWA DT did find the UNRWA selection process flawed in Mr. Dabbour's case and we expect that UNRWA will be concerned not to repeat that in other cases.
- 32. Finally and for the sake of completeness, we note the UNRWA DT's direction that UNRWA was required to have paid the compensation in lieu of rescission to Mr. Dabbour within 60 days of the date of its judgment during which the US prime interest rate would apply and following w (tTJing) 413h() -163 (1((ng) 4() 27 (t) 1((ng) 4() 27 (ra 1((tTJ ()) 163 (1((e) -1(w) 1(p)

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Judgment No. 2021-UNAT-1096