

Introduction

1. By Judgment No. UNDT/2020/123 dated 20 July 2020, the Tribunal decided that the application is receivable and granted it on the merits. In light thereof, the Tribunal ordered the parties to file updated submissions on remedies in the following order of sequence: the Applicant (10 August 2020); the Respondent (17 August 2020); and, if [redacted] 0). The Tribunal further indicated that unless otherwise ordered, it would thereafter proceed to determine the issue of remedies. The parties duly filed these submissions.

2. By Order No. 128 (NY/2020) dated 26 August 2020, the Tribunal stated that it agreed with the Respondent that the Applicant had failed to provide adequate information and/or documentation regarding her income loss in 2017. The Tribunal observed that before making any final determination on the issue of remedies, it would allow the Applicant to produce this information and/or documentation thereon, and in failure thereof, an adverse inference [redacted], as also argued by the Respondent, would need to be drawn.

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c. Any other information and/or documentation that indicate: (i) what her net income actually was in 2017 and (ii) what her income would have been had she not resigned from her previous full

e. When UNAMID withdrew the offer of appointment on 27 July 2017, the conditions of the offer remained unfulfilled due to a mistake committed by a staff member who ordered to hide [her] approved valid visa that was issued on 19 December 2016. If the unlawful decision had not been made, as [the Applicant is a] female Arabic speaker and the only one in this category in the mission working for [the United Nations Department for Safety and Security,], [her] FS4 step 6 contract would still be in place, running at least until end of second phase in the worst [case] scenario by 30 June 2018.

f. case is totally different [from] that other colleagues whom posts were abolished under the same criteria[, and the] final decision was not [an] independent and separate administrative decision. This follows from to abolish all vacant positions as well as positions on loan (1 FS) and positions at entry level (FS4) in the international category as well as positions located at closing team sites (6 international[s] and 9 national[s]) by 31 December 2017 entitled to at least 18

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- i. With reference to *Ashour* 2019-UNAT-899, *in lieu* compensation depends on the circumstances of the case and due deference shall be given to the

compensable time period, shall additionally be offset in the compensation for lost income (see, for instance, *Belkhabbaz* 2018-UNAT-895, para. 38).

11. In the present case, the Tribunal observes that it was directly stated in the offer of employment dated 30 November 2016 that the appointment was to be a one-year fixed-term appointment. With reference to *Maiga*, the Applicant could therefore not have been expected to be offered an appointment beyond 31 December 2017, and the compensable time period is therefore, at maximum, from 1 January to 31 December 2017.

12. Regarding mitigation of damages, in the above-mentioned offer of employment, it was further

Tribunal therefore explicitly instructed the Applicant to provide this information with relevant documentation by Order No. 128 (NY/2020), warning her that if she did not do so, the Tribunal would need to draw an adverse inference therefrom.

16. The Applicant, however, never responded to Order No. 128 (NY/2020). In lack of any reliable information and/or documentation had she not resigned from her previous full-time employment, or what she actually earned in 2017, the adverse inference that Tribunal must draw is that the Applicant actually earned, or would have earned in her previous employment, as much or more in 2017 than she would have if she had been employed as a Security Officer at the FS-4 level with UNAMID during 2017.

17. _____ for pecuniary damages for any income loss is rejected.

Non-pecuniary (moral) damages

18. The

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 .

21. In the present case, the Applicant intends to prove her non-pecuniary damages with

Conclusion

24. In light of the foregoing, the Tribunal DECIDES that t s for relief are rejected.

(Signed)

Judge Joelle Adda

Dated this 10th day of September 2020

Entered in the Register on this 10th day of September