

**Judgment No. 2022-UNAT-1228**



**Counsel for Appellant: Edward Patrick Flaherty**

**Counsel for Respondent: Francisca Lagos Pola**



6. On 16 January 2018, the MOFA in Islamabad informed the UNICEF PCO that it would not renew Ms. Coleman's accreditation card and expressly requested that she be advised to leave Pakistan on expiry of her visa. An exit visa was approved, and she left Pakistan on 9 February 2018.

7. On 5 March 2018, Ms. Coleman filed a complaint with OIAI alleging that her supervisor, the former Deputy Representative, PCO, UNICEF, had engaged in harassment, abuse of authority and unethical behaviour against her.

8. By memorandum dated 17 July 2019, the Chief of Investigations, OIAI, informed the Director, Division of Human Resources (DHR), UNICEF, that the complaint had been reviewed and that there was no evidence supporting Ms. Coleman's allegations. As a result, the Chief of Investigations, OIAI considered the case closed.

9. By e-mail dated 19 July 2019, the Chief, Policy and Administrative Law, DHR, UNICEF, informed Ms. Coleman that OIAI found no evidence to substantiate harassment or abuse of authority, that the difficulties with the Pakistani authorities had been triggered by her failure to renew her MOFA accreditation card in accordance with protocol, which was her responsibility and that PCO, UNICEF had made every effort to remedy the situation.

10. The Director, DHR, UNICEF, determined, based on the above, that OIAI's findings did not warrant administrative or disciplinary action against Ms. Coleman's supervisor and that no further action would be undertaken.

11. On 26 July 2019, Ms. Coleman requested management evaluation of the conclusion of the Director, DHR, UNICEF. On 9 September 2019, the Deputy Executive Director, Management, UNICEF, upheld the contested decision.

12. On 6 December 2019, Ms. Coleman filed an application before the UNDT.

13. By Order No. 128 (GVA/2020) of 9 December 2020, the UNDT ordered the Secretary-General *inter alia* to submit additional documents relevant to the consideration of the case. It also ordered Ms. Coleman *inter alia* to elaborate (ta)7 ,



of the OIAI investigator to timely reply to

that the UNDT may order compensation to a staff member for the violation of the staff members' legal rights under Article 10(5)(b) of the Statute; and compensation may be awarded for actual pecuniary or economic loss, non-pecuniary damage, procedural violations, stress, and moral injury.<sup>1</sup>

22. In this case, the UNDT determined that there were two procedural violations: Ms. Coleman was not interviewed in violation of the Organization's own regulatory framework and there was undue delay with regard to OIAI's completion of its fact-finding investigation (and, if the UNAT agrees with Ms. Coleman's arguments herein, the investigator's failure to respond to the Appellant's queries also constituted a procedural irregularity). Therefore, according to UNAT's

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impugned administrative decision, and that the failure of the OIAI investigators to timely reply to the Appellant's multiple requests for information on the assessment of her complaint was not, of itself, a procedural irregularity. There is no authority for the proposition that the Administration was under a legal obligation to satisfy the Appellant's requests at this early stage of the investigation into her complaints of improper motives.

Merits of the case

Whether the UNDT erred in denying the Appellant's request for moral damages

36. Article 10 of the UNDT Statute provides in relevant part:



41. In response, the Secretary-General rejects the Appellants' above arguments as unsound. Further, the Secretary-General argues that the Appellant has not provided evidence of any harm.

42. We agree with the Secretary-General and find that the Appellants' arguments are misplaced. Our consistent jurisprudence clearly shows that it is incumbent on the claimant to prove the elements of his/her alleged harm irrespective of its specific cause and nature, i.e., whether it comes to pecuniary or non-pecuniary harm, on account of substantive or procedural violations etc. Notably, in terms of moral damages, as it is in the present case, we have consistently held that an entitlement to moral damages may arise where there is evidence produced to the Tribunal, predominantly by way of a medical or psychological report of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to mer



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