
**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1346



Angioli Rolli
(Respondent/Appellant on Cross-Appeal)

v.

Secretary-General
of the World Meteorological Organization
(Appellant/Respondent on Cross-Appeal)

Counsel for Secretary-General: Daniel Trup

Counsel for Mr. Rolli: Robbie Leighton

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5. After preliminary litigation, the UNDT delivered its Judgment on 16 December 2021 finding that Mr.

performance in the guise of restoration of both Mr. Rolli's pension and education grant cannot be an addition to this in-lieu compensation.

11. The Secretary-General of the WMO further contends that the UNDT erred in law and exceeded its jurisdiction in awarding legal expenses to Mr. Rolli on the unique basis that these costs were incurred as a result of the Organization's action of unlawfully separating him. However, under UNAT jurisprudence, such legal expenses may only be payable in instances such as those in *Mr. Rolli v. WMO* (2019-UNAT-1346) and *Mr. Rolli v. WMO* (2021-UNAT-1346).

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UNDT erred in law by discounting the amount ordered in alternative compensation by the figure of earnings received during the period of projected post decision employment.

29. Further, or in the alternative, Mr. Rolli submits the UNDT erred in fact and law, reaching a manifestly unreasonable decision, by factoring in inappropriate elements of Mr. Rolli's pay during the projected period of post decision employment. Mr. Rolli received 10,000 Euros as "Relocation Allowance" and Euros 17,990 as "Installation Allowance" which the UNDT included as relevant earnings towards the figure to be deducted from salary over the projected period.

32. Mr. Rolli claims that the UNDT erred in fact and law by not granting in-lieu compensation for a tax-free car on the basis that “no implication is stated for 2018 and 2019 as a replacement is only granted every fourth year”. However, Mr. Rolli had bought his previous vehicle in 2014 thus was due to purchase a new vehicle in the 2018 period identified as relevant to compensation. He could not have been on notice that it was necessary to demonstrate purchase of a new vehicle during an arbitrary period of projected future employment decided upon only in the Judgment. The UNDT did not seek any clarification regarding this head of damages and yet advanced on an assumption that Mr. Rolli’s claim was not well founded.

33. Mr. Rolli asks that the

38. The Secretary-General submits that the UNDT did not err in fact and in law when calculating projected post-employment. In 2019/2020 the Organization underwent major institutional reform both in its services it provides to its member states and crucially with respect to the structure of the Secretariat. As part of this reorganization, Mr. Rolli's post of D-2 Director of Resource Management was abolished in December 2019. As WMO is a small scientific organization consisting during the relevant period of approximately 316 staff, the only post that Mr. Rolli might have applied for in the new organisation was Director of Governance Services. The UNDT correctly determined that this new post was substantially broader and deeper than Mr. Rolli's previous position. Based on the evidential material presented by Mr. Rolli of his previous work experience, including submissions of his resume, the UNDT correctly concluded that it was unlikely that he would have assumed this new position, considering the need to retain knowledge in relation to publishing and managing language services. Clearly, issues regarding Mr. Rolli's previous performance, which had been raised by the Secretary-General, would(d)5.1 018 Tc(ia)3.esal

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Considerations

44. There is no doubt that the UNDT was entitled in law to award remedies in the sense that it was within its jurisdictional competence having determined that Mr. Rolli's dismissal was unlawful. The essential question on appeal is whether it erred in doing so in all the circumstances, not only in the amounts it did but in some cases whether it should have granted particular remedies at all.

45. We start with the statutory provision allowing the UNDT to award remedies in such circumstances. Article 10(5)-(7) of the

election has ever been made, in respect of Mr. Rolli. Given the expiry of his contract the elimination of Mr. Rolli's role before his case came in front of the UNDT, we assume that the Secretary-General elected to pay compensation.

47. The remedies granted were, in the UNDT's words:

a. The contested decision is rescinded;

b. As compensation under art. 10.5(a) of the Dispute Tribunal's Statute, the Applicant shall be awarded the following:

i. Full salary, including net-base mn7 (e)-0/4g nrt(d)p1.2 oe(t)-3.3 (a(d)-1.9 ja)3.6 ud(t)-3.3 meontwigl

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31 December 2019, the role that Mr. Rolli had previously occupied at the WMO, was abolished altogether. It is probable that by or before 31 August this role abolition would have been in

53. We have already concluded that Mr. Rolli could have been expected to have continued to work until 31 December 2019 had he not been dismissed, so that the period for calculating his pension entitlements will need to be adjusted to that extent of four additional months.

54. Because of the paucity of detail in the UNDT's Judgment about Mr. Rolli's pension situation and what it would have been had he continued to work for the WMO until 31 December 2019 as we have decided would have been probable, we have drawn such conclusions as we are able to from the evidence to attempt to clarify this. Upon passing his five years' service mark before 31 December 2019, Mr. Rolli would also have attained the age of 55 years entitling him to take early retirement. In these circumstances he would have been able to choose between three options then open to him. The first was a deferred retirement benefit. The second was an Early Retirement Benefit under Article 29(e) commuting up to one third of his benefit to a cash lump sum with the balance being paid as a reduced monthly pension for life. The lump sum would have equated to his own contributions to the Fund plus compound interest earned on these. Third, he would have been entitled to have elected a Withdrawal Settlement under Article 31(b)(ii).

55. Beyond setting out these options, we do not know which Mr. Rolli may have elected.

56. Those choices are to be compared to his position having been dismissed on 9 May 2018 as he was only entitled to a Withdrawal Settlement under Article 31(b)(ii).

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His loss attributable to the Organization's unlawful action was the cost to him of representation. There was a sufficient nexus between that illegality and his loss to make that loss compensable. We emphasize that this is not an order for costs in the litigation before the UNDT or before the UNAT: rather it is compensation for loss attributable to the Organization's unlawful acts or omissions. We consider that such an order will be rare: it was only the unusual circumstances of Mr. Rolli having no staff legal assistance available to him that caused him to incur that cost. Where OSLA or an equivalent service is available to staff members, such losses will not need to be incurred in other cases. Privately retained counsel will still be a choice for staff members, but they cannot expect to be reimbursed for such expenses where a viable alternative representation service exists at no cost to them. It appears that the WMO staff now have OSLA assistance available to them.

63. We do not understand that there was any contest about the sum paid by Mr. Rolli to his lawyers: the Secretary-General's only challenge was and is to his liability to pay any of these costs. In these circumstances and accepting that they were incurred as a loss attributable to his unlawful dismissal, we have concluded that the UNDT erred in law in not indemnifying Mr. Rolli in that sum of CHF21,000 and direct that he be paid that as an element of his Article 10(5)(b) compensation.

64. We should say, also and out of deference to the Secretary-General's submissions on this point, that the WMO's failure to establish an internal appeals' system that complied with the requirements of the UNAT's Statute was not, as Mr. Rolli submits, an abuse of its power which should be reflected in costs awarded against it. Rather, we perceive this to have been an error by the WMO shared with other like organizations at the time, a failure to consider and apply correctly the statutory requirement of neutrality of its first instance appellate body. This has now been corrected. Nevertheless, our decision to allow these legal costs turns not on whether there has been an abuse of the litigation process by the WMO but rather on the fact that Mr. Rolli incurred these costs as a consequence of the WMO's unlawful dismissal of him. What we have compensated for are not costs in this litigation before the UNDT and which is now before us on appeal. An award of costs in this litigation could only be made if there had been an abuse of process in this litigation and there has been none.

65. Each of these remedies (pension, education and legal expenses) was based on an analysis of what remuneration or benefits Mr. Rolli would probably have received had he not been dismissed, or losses that he incurred attributable to that illegality that he would not otherwise have incurred. Except as noted and corrected in this Judgment, we can detect no error in the UNDT's factual findings and conclusions of law in this regard and we therefore disallow the UNDT's award of costs.

66. We turn now to Mr. Rolli's cross-appeal. As the summary of submissions indicates, this is a wide-ranging and substantial challenge to the adequacy of the UNDT Judgment.

67. While at the end of this Judgment we decline one element of compensation claimed by Mr. Rolli, we uphold his cross-appeal in some other respects but also need to alter the statutory basis for the confirmed and amended compensatory amounts ordered by us.

68. The UNDT made orders under Article 10(5)(a) for both rescission of the decision to dismiss Mr. Rolli and for specific performance, although it did not define what contractual obligations were the subject of these two orders. By the time the case got before the UNDT, however, not only had his fixed-term agreement expired but his WMO role had been abolished. As the UNDT accepted, there was no position to which Mr. Rolli would probably be able, or could, return. Rescission of the decision to dismiss him would have had the effect not only of deeming in law that it did not take place or take effect, but also of reinstating him to his former role with reinstatement of his lost and ongoing remuneration and other benefits. That would have been a valuable remedy for Mr. Rolli had there been a job to go back to, but there was not. It thus became an empty or illusory remedy. Not only was an order for rescission under Article 10(5)(a) arguably pointless in these circumstances, but unless an order for rescission or specific performance had been made, the UNDT could not order compensation under that same sub-Article (a).

69. In these circumstances, compensation had to fall under Article 10(5)(b) and be for harm caused to him by the Secretary-General's unlawful decision. The harms he suffered included the loss of his remuneration and benefits (education and pension entitlements), as well as those specific losses also provided for as a result of his ceasing to be based in Switzerland which are not challenged or otherwise in issue in this appeal. The UNDT also awarded Mr. Rolli a sum equivalent to two months' remuneration for the non-economic (moral) consequences of the Secretary-General's unlawful decision.

74. We begin, however, by declining to apply some of the considerations Mr. Rolli wishes to be taken into account to establish a higher-than-ceiling figure. He seeks to rely on what he says are the merits of his actions for which he was dismissed. However, the UNDT did not determine these, either way. There is no evidential basis as would be necessary to find, as Mr. Rolli wishes us to, that the Secretary-General's substantive decision to dismiss him summarily for serious misconduct has been examined and determined by the Tribunals to have been seriously flawed.

75. Nevertheless, as required by the Statute, we need to give our reasons for so concluding that grounds exist for exceeding the two-year cap. The UNDT concluded that Mr. Rolli's was a case of summary dismissal without any semblance of due process, or what is also called natural justice. Without determining the merits of his reasons for doing as he did and for which he s 8m5.10.6 3.2

Nevertheless, it is also well recognized that egregious treatment of a staff member can aggravate the effects of the injustice of dismissal on the staff member concerned. If that is so, on the evidence, then this may justify a greater than normal or usual award of compensation to reflect the exceptionally damaging effects on the staff member.

79. It is very uncommon for an international civil servant, especially one of such seniority and

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Original and Authoritative Version: English

Decision dated this 24th day of March 2023.

Judge Colgan, Presiding

Judge Murphy

Judge Raikos

Judgment published and entered into the Register on this 11th day of May 2023 in New York, United States.

Juliet Johnson, Registrar