
Case No.: UNDT/GVA/2009/7

Judgment No.: UNDT/2009/013

BETWEEN:

Case No: UNDT/GVA/2009/7

PARKER

APPLICANT

AND

THE UNITED NATIONS HIGH
COMMISSIONER FOR REFUGEES,

RESPONDENT

JUDGMENT

1- Considering that the Applicant, assisted by Ms. Nicole Lewis as his counsel, has submitted on 28 July 2008 an appeal before the Geneva Joint Appeals Board (JAB) seeking:

1- The rescission of the decision of 7 November 2007 b

1- CONCERNING THE APPLICANT'S REQUEST SEEKING THE RESCISSION OF THE DECISION OF 7 NOVEMBER 2007 BY WHICH UNHCR RESCINDED HIS APPOINTMENT AS SDO ON MENA AND REPARATION

Summary of Facts

3. In January 2007, the Applicant, staff member currently employed on an Indefinite Appointment at UNHCR, was placed in situation of Staff In Between Assignments (SIBA). In September 2007 he was appointed SDO at the Iraq Support Unit and took office on 1 October 2007. Then, after an incident occurred with his supervisor on 8 October 2007, he fell ill and was placed on sick leave by his personal doctor for an indefinite period. On 2 November 2007, this same doctor certified that the Applicant was able to work half-time as of 5 November and for an indefinite period. The Applicant was convoked by the Director, Medical Service, UNHCR, for a consultation on 5 November 2007. Director of the Medical Service concluded that the position held by the Applicant at the Iraq

does not allow for removing a staff member from a p

- Moreover, UNHCR has made every effort to place th

October 2007, fell ill and was placed on sick leave for an indefinite period by his personal doctor following an incident with his supe

UNHCR chose this option, it must pay to the Applicant the lump sum of two months' net base salary.

13. The Applicant requested to be compensated for moral damage suffered as a result of the above-mentioned unlawful decision. This constitutes a different harm, not compensated by paying the amount indicated in the paragraph above, which corresponds to anxiety suffered by the Applicant for having been illegally removed from his post for medical reasons without having been given the opportunity to submit observations and having thereby been left without any assignment during a long period. The compensation to be paid to him on this ground is of three months' net base salary.

2 – CONCERNING THE APPLICANT'S REQUEST TO BE COMPENSATED FOR THE DAMAGE CAUSED TO HIS CAREER DEVELOPMENT DUE TO THE COURSE OF ACTION OF SEVERAL PERSONS IN THE ADMINISTRATION, WHICH HAS RESULTED IN HIM NOT BEING PROMOTED AS HE DESERVED AND HAS CAUSED HIM MORAL SUFFERING

14. UNHCR states in his reply dated 15 December 2008 that the present part of the application is not receivable since the Applicant made a request for administrative review regarding harassment he allegedly suffered after the mandatory time limits and has failed to make such a request for review concerning the non-clearance of the Appellant for a number of positions he applied for.

15. It is clear from the documents contained in the file that the letter dated 2 January 2008 sent by the Applicant to the Secretary-General constitutes the request for review required by Staff Rule 111.2 (a). By this letter, the Applicant

contrary to what UNHCR holds, is receivable concerning the damage that he alleges to have suffered during the period from January 2005 to 7 November 2007.

16. In view of the regrettable shortcoming in the response by the Administration, which may not content itself with alleging that the application is not receivable without entering into the merits of the request, the Judge is prevented from passing judgement on this second issue of the Applicant's application. Consequently, there are grounds, before deciding upon the applicant's compensation request, to order that UNHCR submit, w

2. UNHCR is to pay the Applicant three months' net base salary as compensation for moral damage, applying the rate and interest under the same modalities specified above.

3. Before pronouncing a decision on the Applicant's request seeking compensation for damage suffered as a result of alleged harassment, UNHCR submit its observations concerning the facts recounted as well as the damage alleged within one month as from the notification of this Judgement.

4. The rest of the Applicant's claims are dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 27 day of August 2009

Entered in the Register on this 27 day of August 2009

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva