

# **UNDT/2010/115, Applicant**

## **UNAT Held or UNDT Pronouncements**

When attempting to establish a pattern of retaliation with regard to past decisions, the question is one of the relevance of those decisions, not receivability. Whether or not the SGB on retaliation was in force at the time an act or decision took place, the act or decision can still be considered retaliatory and constitute serious misconduct. The burden on the respondent of proving “by clear and convincing evidence” in respect of decisions made before the provision came into effect that “it would have taken the same action absent the protected activity” (ST/SGB/2005/21) applies to decisions in retaliation cases that are appealed before the Tribunal for the determination of whether a particular decision is illegal, and this burden applies to the decision not to renew the applicant’s contract but not to other prior decisions which may form part of the pattern of retaliation. If a decision can be shown to be justified, it cannot rationally be characterised as retaliatory. A significant number of decisions which are improper for reasons other than retaliation may give rise to the legitimate inference that there is a likelihood of retaliation. The notion of institutional retaliation can only be applied where there is a significant number of wrong decisions adversely affecting the staff member or a significant number of adverse decisions which are not wrongful as such but could reasonably have been made in a way that was not adverse to the staff member and there is no reason why the latter course was not taken. A number of adverse decisions which are justifiable do not constitute institutional retaliation. It was held that the preponderance of evidence did not establish that the impugned decisions were, or any one decision was affected by any intention to retaliate against the applicant, either wholly or partly, for his reporting of what he believed to be misconduct. Outcome: The non-renewal of the applicant’s appointment was not a breach of the contractual obligations of the applicant. The application was dismissed.

## **Decision Contested or Judgment/Order Appealed**

The applicant claimed he was the victim of a pattern of harassment and abuse of authority which constituted retaliation for his reporting of alleged wrongdoing and that this resulted in his eventual separation from service. The applicant requested review of the decision not to extend his contract on this basis.

## Legal Principle(s)

N/A

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Applicant

## Entity

UNOPS

## Case Number(s)

UNDT/NY/2009/067/JAB/2009/015

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

25 Jun 2010

## Duty Judge

Judge Adams

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Harassment (non-sexual)

Non-renewal

Arbitrary or improper motive

Reason(s)

## Applicable Law

Secretary-General's bulletins

- ST/SGB/1991/1
- ST/SGB/2005/21

Staff Regulations

- Regulation 1.2(c)

Staff Rules

UNRWA International Staff Rules

- Rule 111.2

## Related Judgments and Orders

UNDT/2009/075

UNDT/2010/087