

# **UNDT/2010/121, Ostensson**

## **UNAT Held or UNDT Pronouncements**

“[...]if the respondent fails to follow proper procedures, and even if the decision is subsequently withdrawn, the applicant may be entitled to compensation, for the violation of his due process rights at the time the decision in question was taken. Therefore, the question of compensation must be dealt with separately from the fact that the contested decision was withdrawn.” “The Administration’s failure to pursue one of the options under Section 9 of ST/AI/371, to put the case on hold and to keep the applicant, who had been charged with misconduct, in a limbo and to issue the Note for File, was, under the prevailing circumstances at the time, not justified and violated the applicant’s rights to a proper procedure under Chapter X of the former Staff Rules and ST/AI/371, then in effect.” The Administration has discretionary power to decide whether to conduct an investigation into a complaint and to initiate disciplinary proceedings against another staff member. This discretionary power was not abused in the present case. “The application of the universal principle of proportionality on the determination of financial award for a proven breach requires due consideration of all elements of the case at hand. Essential elements of this consideration are e.g. the number of breaches and their intensity, as well as the impact the established breaches have on their victim.” “In view of other decisions of the Tribunal in which violations of the applicants’ due process rights, stemming from procedural irregularities, were compensated only by two months of the applicants’ net base salaries (see UNDT/2009/089, Wu; UNDT/2010/009, Allen), the increase in the case at hand to three months’ net base salary is justified in view of the considerable delay in the handling of the case (see 2010/UNAT/021, Asaad).”

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

The applicant, a permanent staff member at the P-5 level, had an incident with colleague A in December 2006. After the incident, both colleague A and the applicant submitted a complaint against each other for assault. The applicant later submitted another complaint against colleague A and an alleged witness B. An

Investigation Panel was set up which issued a three page report which called itself for a more indepth investigation. On the basis of that report, a charge letter was sent to the applicant in April 2008 for assault against colleague A. After the applicant submitted his comments to the charge letter, nothing further was undertaken until the applicant resigned from the Organisation in March 2009. In view of the applicant's separation from service, a Note for File was issued, indicating that a disciplinary matter was pending with the applicant and that if he rejoined the Organisation, that matter should be further reviewed by OHRM. A day before the oral hearing, the respondent informed the Tribunal that he had decided to remove the Note for File from the applicant's personnel file and to drop the charges against him.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The applicant was awarded a lump sum of USD24,000.00. All other pleas rejected.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Ostensson

## Entity

UNCTAD

## Case Number(s)

UNDT/GVA/2009/34

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

12 Jul 2010

## Duty Judge

Judge Laker

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Investigation

## Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Chapter X

## Related Judgments and Orders

UNDT/2009/025

UNDT/2009/028

UNDT/2009/089

UNDT/2010/009

2010-UNAT-028