

UNDT/2010/204, Zoughy

UNAT Held or UNDT Pronouncements

The Tribunal finds that the decision to summarily dismiss the applicant is not tainted by any irregularity, that the facts are established, that they amount to misconduct and that the sanction of summary dismissal is proportionate to the seriousness of the misconduct. UNDT jurisdiction: The Tribunal has no power to compel a person external to the Organization to appear before it as a witness. Standard of review of disciplinary matters: In reviewing disciplinary matters, the Tribunal must examine whether the procedure followed was regular, whether the facts in question are established, whether those facts constitute misconduct and whether the sanction imposed is proportionate to the misconduct. The Tribunal may not intervene in the exercise of the Secretary-General's discretionary authority, unless an illegality, irrationality or procedural impropriety has been established. Staff members' rights during preliminary investigation: According to administrative instruction ST/AI/371, the disciplinary procedure starts only when the Administration informs the staff member in writing of the allegations leveled against him/her, of his /her right to respond and of his/her right to seek assistance of counsel. No such rights exist during the preliminary investigation. Joint Disciplinary Committee procedure: Unlike proceedings before the JAB, proceedings before the JDC may be reviewed by the Tribunal. Both former staff rule 110.7(b) and administrative instruction ST/AI/371 leave it to the JDC to decide whether witness' testimonies are required in view of the circumstances. Joint Disciplinary Committee recordings: It is not sufficient for an applicant to allege procedural flaws, he/she must also demonstrate that such flaws have affected his/her due process rights. In the instant case, the applicant has requested a copy of the recordings of the JDC oral proceedings. The Administration has indicated that those were no longer available and the applicant has failed to explain the legal consequences of such unavailability. Definition of misconduct: In deciding whether the facts amount to misconduct, the Tribunal is not bound by the characterizations of the Administration but only by the facts alleged against the staff member. Therefore, it is irrelevant that the facts in the instant case were characterized successively as sexual assault and sexual harassment. The Tribunal is

only required to determine whether the fact that the applicant touched the plaintiff in a sexual manner constituted misconduct.

Decision Contested or Judgment/Order Appealed

The applicant contested the decision to summarily dismiss him for serious misconduct on the grounds that he had sexually harassed a person external to the Organization.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Outcome Extra Text

Application rejected on the merits, the applicant's claim concerning his suspension with full pay is rejected on receivability grounds.

Full judgment

[Full judgment](#)

Applicants/Appellants

Zoughy

Entity

UNOG

Case Number(s)

UNDT/GVA/2010/028

Tribunal

UNDT

Registry

Geneva

Date of Judgement

25 Nov 2010

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual harassment

Due process

Investigation

Standard of review (judicial)

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Regulations

- Regulation 1.2
- Regulation 10.2

Former Staff Rules

- Rule 101.2(d)
- Rule 110.1
- Rule 110.2(a)
- Rule 110.3
- Rule 110.7(b)
- Rule 111.2(a)

UNDT Statute

- Article 10.5(a)

Related Judgments and Orders

2010-UNAT-028

2010-UNAT-022

2010-UNAT-025

UNDT/2010/169