

# UNDT/2011/054, Applicant

## UNAT Held or UNDT Pronouncements

To give full effect to the requirements of staff rule 110(4) which embodies the elements of fair process in disciplinary investigations, the preliminary investigation undertaken pursuant to the AI and any related IOM/FOMs should be treated as strictly preliminary. The disciplinary part of the process, including the interview of the alleged offender should only occur once all the preliminary evidence has been made available to the staff member and the specific allegations against him or her have been finalised. If there is to be an interview it should properly be the last step in the investigation as envisaged by paragraph 6(a-c) of the ST/AI/371. In order for the Applicant in this case to have had a fair and reasonable opportunity to respond as referred to in all of the relevant instruments including in paragraph 5.12.5 of the IOM/FOM, he should have had the opportunity to see all the relevant information before making such a response regardless of what stage he was interviewed at. There were a number of procedural deficiencies during the investigation of the allegations against the Applicant. These are: a) The decision to interview him before any formal charges had been made precluded him having the opportunity to take counsel before having to answer the serious allegations against him. b) The failure to give him any notice of the allegations before he was required to attend an interview. c) The failure to provide him before interview and before he was ultimately dismissed with all relevant information to enable him fully to assess the case against him. d) The failure properly to consider his request for witnesses specified by him to be interviewed. The Respondent failed to give the Applicant a reasonable opportunity to present his case and countervailing evidence and have these treated with due deference. The evidence considered by the Respondent was limited to that given by witnesses the Respondent regarded as relevant. As a consequence the Tribunal cannot be satisfied that the facts relied on by the Respondent clearly indicated that misconduct had occurred and that the seriousness of the misconduct warranted immediate separation. Summary dismissal was not the inevitable consequence of the disciplinary procedure. These breaches not only prejudiced the Applicant but also the complainants who were deprived of their right to a full, proper and conclusive investigation of their complaints. The parties agreed at the hearing that the questions of the amount of payment the Secretary-General may make in lieu of rescission of the summary dismissal and other compensation due to the Applicant will require further consideration. Matters such as the pecuniary losses of the Applicant and his mitigation of those losses, including related questions such as the state of his health, will require further evidence.

## Decision Contested or Judgment/Order Appealed

The Applicant was summarily dismissed from his post with the office of the United Nations High Commissioner for Refugees (UNHCR) in Budapest, Hungary on 19 January 2009, following an investigation into two formal sexual harassment complaints against him.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

i) The rescission of the summary dismissal of the Applicant on grounds that it was unlawful; ii) The names of the Applicant and complainants are not to be published. iii) All issues of compensation are adjourned for agreement between the Parties or, failing that for a hearing and final decision by the Tribunal.

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNHCR

Case Number(s)

UNDT/NBI/2009/61

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Mar 2011

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual harassment

Termination (of appointment)

Summary dismissal

Applicable Law

Administrative Instructions

- ST/AI/371

Other UN issuances (guidelines, policies etc.)

- UNHCR IOM/054/2005-FOM/054/2005 (Inter-Office Memorandum No. 054/2005 and Field Office Memorandum No. 054/2005)

Staff Rules

- Rule 110.4