

UNDT/2011/106, Applicant

UNAT Held or UNDT Pronouncements

There was no evidence that established that the work place had become intimidating, hostile or offensive for the Complainant. The charge of sexual harassment cannot be sustained in the circumstances to the extent that the Complainant was a willing participant in sex talks in emails, via telephone, via text messages and in person. While it is recognised that a rebuttable presumption of law or fact may exist where a certain set of facts are present, there is definitely no room for making a legal finding based on presumptions about what would likely be the case in a given situation. It is a trite and basic legal principle that no one can be charged with, tried or indeed punished for an offence unknown to law. It is both unprofessional and reckless for ONUB and OHRM to recommend and level a charge of attempted abuse of authority against the Applicant as this does not exist anywhere within the Organization's legal and internal justice systems. Under no system of law does the prohibition of abuse of authority in the workplace anticipate or intend that a person who is not in authority over another in the workplace can abuse an authority which he or she does not possess. The due process rights of the Applicant were breached in the failure to provide him with a copy of the complaint against him by the time he faced investigators. While the Organization is entitled to look into the complaint brought to it, it cannot constitute itself into a guardian of people's personal morals. The Applicant's gross managerial incompetence was deserving of a reprimand at the very worst but certainly not summary dismissal.

Decision Contested or Judgment/Order Appealed

The Applicant filed an Application with the former United Nations Administrative Tribunal on 31 March 2008 contesting the decision of the Secretary-General summarily dismissing him on charges of sexual harassment, workplace harassment, attempted abuse of authority, retaliatory conduct and vindictive animus, interference with an official investigation and the failure to follow the proper instructions of his supervisors.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

All aspects regarding remedies 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

ONUB

Case Number(s)

UNDT/2010/012/UNAT/1589

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

23 Jun 2011

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Harassment (non-sexual)

Retaliation

Sexual harassment

Due process

Applicable Law

Administrative Instructions

- ST/AI/371
- ST/AI/379

Secretary-General's bulletins

- ST/SGB/2002/13
- ST/SGB/2008/5
- ST/SGB2003/13

Related Judgments and Orders

2010-UNAT-013

UNDT/2011/008

UNDT/2011/054

UNDT/2010/044