

# **UNDT/2011/216, Cooke**

## **UNAT Held or UNDT Pronouncements**

Summary Judgment The Tribunal noted that Summary Judgment can only be entered in a case where the material facts are not in dispute and a party to case is entitled to judgment as a matter of law. Further that for a party to seek Summary Judgment, it has to be on the merits of the case and such a party should have pleaded facts in relation to the case. The Respondent had not pleaded any material facts and had also not joined issues with the Applicant on the merits of the case. Receivability In determining the receivability of the Application, the Tribunal addressed the Applicant's access to justice and his efforts at mediation. The Tribunal noted that the Applicant was neither advised as to his rights for challenging the administrative decision nor as to the finality of the decision. The Tribunal found that an Applicant's actual knowledge of his rights, responsibilities and procedures for challenging a disciplinary measure is absolutely essential and that the Respondent had a bounden responsibility to inform a staff member in writing of his/her rights and applicable mechanisms to challenge a disciplinary action. Additionally, the Tribunal recognised the Applicant's efforts at mediation with the Respondent and held that when a party initiates mediation, it behoves the other party to respond promptly. In finding that the Application was receivable, the Tribunal concluded that the circumstances surrounding the Application were exception and that the fact of UNICEF maintaining silence in the face of the Applicant's overtures served to freeze time in which the Applicant could file his Application before the Tribunal. In these circumstances, the Tribunal is entitled to waive time-limits in favour of the Applicant.

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

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line-height:107%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri",sans-serif; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} The Applicant contested the decision to summarily dismiss him on charges of physical assault, sexual harassment and abuse of authority.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Cooke

## Entity

UNICEF

## Case Number(s)

UNDT/NBI/2010/073

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

28 Dec 2011

## Duty Judge

Judge Izuako

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

## Applicable Law

Former Staff Rules

- Rule 10.3(a)
- Rule 3

GA Resolutions

- A/RES/62/228

UNDT RoP

- Article 10.1
- Article 19.1
- Article 35
- Article 7.1(c)

UNDT Statute

- Article 8.1(d)(ii)

- Article 9

## Related Judgments and Orders

UNDT/2009/036

UNDT/2011/143