

UNDT/2012/034, Perelli

UNAT Held or UNDT Pronouncements

Outcome: The application was rejected. The UNDT made the following findings: The preliminary fact-finding investigation was initiated properly, but was flawed, because the Applicant was not re-interviewed or given the opportunity to answer the allegations of sexual harassment in writing after the full scope of allegations became known to the investigation panel. However, these flaws did not vitiate the contested decision as they were cured in the process that followed. The findings of the fact-finding investigation report and the accompanying documents justified the decision to initiate formal disciplinary process. The Applicant's due process rights were respected during the formal disciplinary process. The decision to discipline the Applicant was reasonable and lawful. The formal disciplinary process, including the JDC proceedings, and the decision of the Secretary-General to maintain the summary dismissal of the Applicant were not vitiated by any improper considerations. The Applicant's actions as established by the JDC and accepted by her amounted to sexual harassment of which she had constructive notice. The disciplinary measure imposed on the Applicant was within the range of what was reasonably available to the Secretary-General and was not arbitrary or unnecessarily harsh.

Decision Contested or Judgment/Order Appealed

The Applicant appealed against the decision of the Secretary-General to uphold her summary dismissal on the grounds that she had engaged in sexual harassment of her staff. T

Legal Principle(s)

Judicial review of disciplinary cases: Generally, in reviewing disciplinary cases the role of the Tribunal is to examine (i) whether the facts on which the disciplinary measure is based have been established; (ii) whether the established facts legally amount to misconduct under the Staff Regulations and Rules; (iii) whether the disciplinary measure applied is proportionate to the offence; (iv) whether there were any procedural irregularities. Sexual harassment: Sexual harassment is a very serious offence and the Organization has a responsibility to investigate claims of sexual harassment promptly and effectively. Culpability justifying summary dismissal for sexual harassment requires evidence of actual or constructive knowledge by the perpetrator that the offending behaviours were unwelcome by the recipients or other staff members in the workplace. A finding of actual knowledge requires evidence of continuing sexual behaviour in spite of the recipients making it clear to the harasser that it is unwelcome. Constructive knowledge by a harasser is an alternative to the requirement for actual knowledge and as such is a necessary component of liability for sexual harassment in the workplace. It takes account of the dynamics of power, authority and hierarchy that can inhibit staff members from confronting a harasser. It ensures accountability for sexual harassment that is conducted out of thoughtlessness or irresponsibility but nevertheless creates problems for affected staff members.

Proportionality of disciplinary measure: The Tribunal will give due deference to the Secretary-General unless the decision is manifestly unreasonable, unnecessarily harsh, obviously absurd or flagrantly arbitrary. Should the Dispute Tribunal establish that the disciplinary measure was disproportionate, it may order imposition of a lesser measure.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Perelli

Entity
UN Secretariat
Case Number(s)
UNDT/NY/2010/002/UNAT/1566
Tribunal
UNDT
Registry
New York
Date of Judgement
9 Mar 2012
Duty Judge
Judge Shaw
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Disciplinary matters / misconduct
Sexual harassment
Investigation
Termination (of appointment)
Summary dismissal
Applicable Law
Administrative Instructions

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

Former Staff Rules

- Rule 101.2(d)

Secretary-General's bulletins

- ST/SGB/253

Staff Regulations

- Regulation 1.2(a)