

UNDT/2013/085, Hunt-Matthes

UNAT Held or UNDT Pronouncements

Legal Obligations/Applicable rules: Rules affecting jurisdiction and remedies are not procedural but substantive in nature. A person cannot be entitled to remedies or be subject to penalties that come into force after the event in question. Protected activity: The criteria for determining whether a person has properly reported misconduct or engaged in a protected activity are not mere matters of procedure. A report of misconduct is the protected activity which is the very foundation of a claim for protection without which a claim cannot be considered. Retroactive application: As a matter of general principle the criteria for assessing a claim of protected activity can only apply from the date on which the criteria came into force and may not be applied retroactively. In addition, retroactive application should not occur if it would be prejudicial or limit the protection to a claimant. Burden and standard of proof: This burden and standard of proof on the Administration to show by clear and convincing evidence that it would have taken the same action against the claimant absent the protected activity is not excluded from the preliminary enquiry conducted by the Ethics Office into whether the complainant engaged in a protected activity and if there is a *prima facie* case that the protected activity was a contributing factor in causing retaliation. Basic principles of law: Even where a newly established office has no standard operating procedures or transitional measures, it is bound to observe the well-known fundamental principles of law: the facts relied on by a decision- maker must be correct and reliable. A decision-maker may only take into account relevant matters and must not consider irrelevant matters.

Decision Contested or Judgment/Order Appealed

The Applicant is a former Investigation Officer with the Inspector General's Office ("IGO") of the United Nations High Commissioner for Refugees ("UNHCR"). She filed an appeal with the former United Nations Administrative Tribunal contesting the decision of the Ethics Office which found that although she had engaged in a protected activity by reporting misconduct; there was no *prima facie* case of

retaliation against her.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal awarded the Applicant USD8,000 for the stress and anxiety caused by the breaches by the Ethics Office.

Full judgment

[Full judgment](#)

Applicants/Appellants

Hunt-Matthes

Entity

UNHCR

Case Number(s)

UNDT/NBI/2010/054

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

21 May 2013

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Ethics office

Retaliation

Whistleblower

Applicable Law

Administrative Instructions

- ST/AI/371

Information Circulars

- ST/IC/2005/19

Other UN issuances (guidelines, policies etc.)

- UNHCR IOM/65/2003-FOM/65/2003

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2005/22
- ST/SGB/2009/11

Related Judgments and Orders

UNDT/2010/001

UNDT/2011/063

UNDT/2012/092

UNDT/2013/084