

UNDT/2013/162, Benfield-Laporte

UNAT Held or UNDT Pronouncements

The UNDT considered that the Applicant's initial complaint was meeting all the requirements contained in sec. 5.13 of ST/SGB/2008/5. It noted that the decision not to initiate a formal fact-finding investigation was made only six months after the complaint had been lodged hence it did not meet the requirement of 'promptness' contained in sec. 5.3 and sec. 5.14 of ST/SGB/2008/5. Further, the UNDT found that the course of action chosen by the ASG/OHRM, which consisted in asking first the alleged offender for his views, had no legal basis in ST/SGB/2008/5. Having considered the definition of the concept of 'abuse of authority' and the objective of ST/SGB/2008/5, the UNDT concluded that the behavior demonstrated by the Director-General while communicating the decision to transfer the Applicant to a new post, constituted an improper way to handle an uncomfortable situation rather than a possible abuse of authority. It ordered that the Respondent pay the Applicant compensation of USD3,000 for the inordinate delay in the handling of her complaint, and rejected all other pleas.

1) Promptness (sec. 5.14 and 5.3 of ST/SGB/2008/5): A period of six months to communicate a decision to the Applicant with respect to her complaint does not meet the requirement of 'promptness' contained in sec. 5.14 and sec. 5.3 of ST/SGB/2008/5 and deserves compensation for the emotional distress and anxiety it caused her.

2) Mandate of the responsible official (sec. 5.14 of ST/SGB/2008/5): Section 5.14 of ST/SGB/2008/5 requests and entitles the responsible official only to "promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation". Under that provision, the responsible official has to assess whether there is a "reasonable chance" that the alleged facts described in the complaint—if indeed they occurred—would amount to prohibited conduct. It does not, however, fall into the mandate of the responsible official to assess whether the facts actually occurred. Indeed, the content of this provision is clear and unambiguous and any further steps, including contacting the alleged offender, fall under the exclusive responsibility of the fact-finding panel, which is confirmed by sec. 5.15 of ST/SGB/2008/5. Only in cases in which the initial

complaint is incomplete, hence does not meet the requirements of sec. 5.13 of ST/SGB/2008/5, would it be acceptable for the responsible official to take further actions before conducting his or her ‘prompt’ review and assessment as required by sec. 5.14 of ST/SGB/2008/5. 3) Extent of judicial control in relation with the requirement of “sufficient grounds” (sec. 5.14 of ST/SGB/2008/5)The Tribunal has both the competence and the duty to assess whether there were “sufficient grounds” to warrant a formal fact-finding investigation within the meaning of sec. 5.14 of ST/SGB/2008/5, since unlike in other cases—e.g. the selection of staff—in this particular area no discretion in favour of the Administration can be accepted. 4) Abuse of authority (sec. 1.4 of ST/SGB/2008/5): The list of examples of ‘abuse of authority’ contained in sec. 1.4 of ST/SGB/2008/5 is not exhaustive, however the impact of sec. 2.1 of ST/SGB/2008/5, according to which “every staff member has the right to be treated with dignity and respect”, on the actual definition of ‘abuse of authority’ cannot be described in general terms, because the concrete meaning of such a right is open to a variety of possible interpretations, and might be influenced, *inter alia*, by the cultural background of each staff member. Similarly, the concept of ‘abuse of authority’ cannot be understood to cover each and every case of impolite and awkward behavior, and different standards based on various cultural backgrounds do exist also in this area. Hence, the Tribunal considers that no general criteria can be determined, but the legal situation needs to be assessed on a case-by-case basis.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the ASG/OHRM to refuse to conduct a formal fact-finding investigation into her complaint of abuse of authority made against the Director-General, UNOG, within the framework of ST/SGB/2008/5.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only financial compensation

Full judgment

[Full judgment](#)

Applicants/Appellants

Benfield-Laporte

Entity

UNOG

Case Number(s)

UNDT/GVA/2013/29

Tribunal

UNDT

Registry

Geneva

Date of Judgement

6 Dec 2013

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation
Disciplinary matters / misconduct
Abuse of authority
Due process
Delay
Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Related Judgments and Orders

UNDT/2011/050
UNDT/2012/095
2012-UNAT-265
2011-UNAT-143
2011-UNAT-148