

# **UNDT/2014/025, Flores**

## **UNAT Held or UNDT Pronouncements**

The Applicant contended, *inter alia*, that WFP breached her due process rights during the disciplinary proceedings and she did not breach any of the applicable rules. The evidence before the Tribunal sustained the Applicant's contention that WFP's investigators did not respect her due process rights. The ground of appeal related to the irregularity of the disciplinary proceeding is accepted and the Tribunal does not need to analyse the rest of the Applicant's contentions. The rescission of the contested decision is, *per se*, a fair and sufficient remedy for the moral prejudice caused to the Applicant and there is no evidence that would show that the moral prejudice she suffered as result of the contested decision cannot be covered by this remedy. The amount of compensation to be awarded as an alternative to the rescission of the contested decision is USD5,000 for the emotional distress suffered by the Applicant (the emotional distress will be otherwise covered by the rescission of the decision).

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

The Applicant contests her separation from service without termination indemnity following an investigation into a written complaint that she had breached the World Food Programme's ("WFP") rules regarding harassment, sexual harassment and abuse of the authority as well as financial and transport rules.

## **Legal Principle(s)**

An investigation should be a neutral fact-finding process into allegations put forward against a staff member. While an investigation is considered to be part of the process that occurs prior to Human Resources being seized of the matter, its findings, including any incriminating statements made by the staff member, become part of the record. Consequently, any such process must be conducted in

accordance with the rules and regulations of the Organization and it must respect a staff member's rights to due process. The Tribunal concludes that the Applicant's due process rights were not respected during the interview and the breach was not cured later during the procedure in front of the HRD. The Tribunal cannot uphold disciplinary findings and conclusions that are based on a disciplinary process where a subject's due rights were breached and the decision to impose disciplinary sanctions is to be rescinded.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Flores

## Entity

WFP

## Case Number(s)

UNDT/NY/2010/092

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

28 Feb 2014

## Duty Judge

Judge Greceanu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Harassment (non-sexual)

Due process

Separation from service

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2009/7

UNDT Statute

- Article 10

## Related Judgments and Orders

UNDT/2010/169

UNDT/2010/176

UNDT/2010/204

UNDT/2011/046

UNDT/2011/115

2010-UNAT-018

2010-UNAT-098