

UNDT/2014/120, Alobwede

UNAT Held or UNDT Pronouncements

The Tribunal considered both applications receivable, and held that both the fact-finding panel and the ICTR Registrar misinterpreted the definition of harassment contained in ST/SGB/2008/5 by finding that an action which happens only at one instance, without any previous or subsequent similar behavior, does not amount to harassment, since harassment normally implies a series of incidents. The Tribunal recalled the definition of harassment and its constitutive elements, which may also include a one-off incident as affirmed by the Appeals Tribunal, and decided to rescind the decision to close the complaint. With respect to the fact that it took 11 months from the date of the complaint for a decision to be made, the Tribunal found that such a delay was excessive and in breach of the duty imposed by sec. 5.3 of ST/SGB/2008/5 to take prompt and concrete action on a complaint. Since the Applicant did not request a fresh investigation, the Tribunal did not make such an order, but awarded him compensation for moral damages of USD5,000 resulting from the undue delay, and USD10,000 for the substantive breach of ST/SGB/2008/5.

Decision Contested or Judgment/Order Appealed

In two separate applications, the Applicant challenged (1) the closure of his complaint of harassment and abuse of authority filed against one colleague who had sent him a vexatious email copied to 29 other staff members, as well as (2) the delay in reaching that decision.

Legal Principle(s)

Review of decisions based on ST/SGB/2008/5: It is not for the Tribunal to substitute its judgment for that of the Secretary General, but to review and establish if the correct procedures were followed. In addition, when reviewing the outcome of a process it is the responsibility of the Tribunal to ascertain if the facts on which the

decision was based were well established and met the relevant definition. An erroneous finding made by the responsible official in application of ST/SGB/2008/5, which results in the decision that an applicant was not subjected to harassment, is a substantive breach of ST/SGB/2008/5 and so fundamental that it gives rise to an award of moral damages for harm to the employee. Harassment: The intention of the alleged harasser is not part of the definition and should not be taken into account when assessing whether conduct amounted to harassment. A single incident may also amount to harassment if it meets its definition; to that effect, the quality and nature of the act, and its effect on the recipient, should be evaluated. Abuse of authority: This definition requires a superior/subordinate relationship between the harasser and the person harassed, as well as the misuse of the superior status.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only financial compensation

Full judgment

[Full judgment](#)

Applicants/Appellants

Alobwede

Entity

ICTR

Case Number(s)

UNDT/GVA/2014/42

UNDT/GVA/2014/43

Tribunal

UNDT

Registry

Geneva

Date of Judgement

30 Sep 2014

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Abuse of authority

Harassment (non-sexual)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Related Judgments and Orders

UNDT/2014/092

UNDT/2012/095

UNDT/2011/050

UNDT/2010/213

2010-UNAT-018

2014-UNAT-442

2013-UNAT-280

2010-UNAT-012

2013-UNAT-357

2010-UNAT-009

2013-UNAT-309

2013-UNAT-292