

UNDT/2016/009, Kostomarova

UNAT Held or UNDT Pronouncements

Formal requirements: It is justified to request a complainant to conform to the requirements of format and content of secs. 5.11 and 5.13 of ST/SGB/2008/5. However, as a matter of fairness, the same degree of exigency must be required from the different complainants. Purpose and material scope of ST/SGB/2008/5: ST/SGB/2008/5 was promulgated to address very specific kinds of conduct, defined in its sec. 1. Re-characterizing allegations of a different nature and having them investigated under the bulletin is a misuse of the procedure. Investigating a complaint and its counter-complaint together under said framework turns the procedure from one tending to shed light into some given allegations into one opposing two contradictory allegations that is, from an inquisitorial to an adversarial one; this amounts to an abuse of procedure. Moreover, ST/SGB/2008/5 contains a specific provision to address the possibility where allegations of prohibited conduct were unfounded and based on malicious intent. Notifications of allegations against a staff member: Sec 5.15 requires that the alleged offender be informed at the beginning of the fact-finding investigation of the nature of the allegation(s) against him or her. Being informed of the details of the allegations against him or her constitutes a fundamental attribute of due process for any staff member subject to investigation; without such knowledge the concerned staff member is unable to identify and provide the evidence that may serve his or her case. Furthermore, in the context of an investigation into a complaint of prohibited conduct, as well as its counter-complaint, informing one of the concerned staff members of the specific allegations against him or her and not the other, is a serious failure by the Administration to ensure equality of arms.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the decision to close, after investigation, her complaint for prohibited conduct under ST/SGB/2008/5 against her supervisor with no disciplinary action. The Tribunal found that the handling of the complaint had been improper in

several respects and untimely and that there were serious grounds to question the correctness of the conduct of the investigation. It rescinded the contested decision, awarded USD4,000 as compensation for undue delays and procedural vices in addressing the Applicant's complaint and ordered that a memorandum taking administrative action vis-à-vis the Applicant be removed from her official records.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial comp. and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Kostomarova

Entity

UNOG

Case Number(s)

UNDT/GVA/2014/33

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Jan 2016

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Investigation

Due process

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2012/095

UNDT/2012/201

UNDT/2014/092

2010-UNAT-084

2011-UNAT-123

2012-UNAT-272

2014-UNAT-420

2015-UNAT-505