UNDT/2016/112, Nielsen

UNAT Held or UNDT Pronouncements

The Dispute Tribunal rejected the application as irreceivable, on the grounds that the Applicant’s complaint to OAIS was time-barred and that the OAIS properly exercised its discretion in finding that the Applicant’s allegations against her colleague were insufficient to fall within the scope of the definition of harassment and to prima facie establish misconduct. Requirements for a formal complaint of harassment in UNFPA: Pursuant to sec. 9.3.1 of UNFPA Policy on Harassment, Sexual Harassment and Abuse of Authority (“the Policy”), a formal complaint has to be addressed to OAIS within six months from the date of the last incident of harassment, sexual harassment or abuse of authority. Complaints filed almost eleven months after a staff member is placed on SLWFP and, therefore, without interaction with the alleged offender, are not receivable.In accordance with sec. 9.4 of the Policy, it is a staff member’s responsibility to substantiate a complaint to OAIS with a solid description of the factual circumstances, to allow the investigator to have a clear picture of the alleged incident(s). The staff member shall clearly identify who were the people involved, where, when and how the events took place, and in which way they affected the staff member’s working environment or the staff member’s rights. Judicial review of a decision not to launch an investigation into allegations of harassment: A decision not to open an investigation into allegations of harassment may be subject to judicial scrutiny (Nwuke 2010-UNAT-099). In reviewing such decision, the Dispute Tribunal shall examine if the Administration’s act or omission in response to a request for investigation was taken in accordance with the applicable law (Nwuke). In this process, the Dispute Tribunal may examine whether the applicable procedure was followed, whether OAIS committed a manifest error in the exercise of its discretion, and whether the decision not to initiate the investigation was tainted by ulterior motives (Staedtler UNDT/2014/123).

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision of the Office of Audit and Investigations Services (“OAIS”), UNFPA, not to review her complaint for misconduct and harassment against one of her colleagues. In Judgment Nielsen UNDT/2015/061, the Dispute Tribunal found that the Applicant’s complaint to OAIS was time-barred and, therefore, not receivable. In Judgment Nielsen 2016-UNAT-648, the Appeals Tribunal vacated the UNDT judgment on the ground that the Dispute Tribunal did not exercise sufficient judicial scrutiny in not reviewing the Closure Note of the OAIS in respect of the Applicant’s complaint and remanded the case for it to be considered with the benefit of the full OAIS record.

Legal Principle(s)

N/A

Outcome

Dismissed as not receivable

Full judgment

Full judgment

Applicants/Appellants

Nielsen

Entity

UNFPA

Case Number(s)

UNDT/GVA/2015/2/R1

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Aug 2016

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Harassment (non-sexual)
Jurisdiction / receivability (UNDT or first instance)
Temporal (ratione temporis)

Applicable Law

Other UN issuances (guidelines, policies etc.)
UNDT Statute

- Article 11.1

Related Judgments and Orders

UNDT/2015/061
UNDT/2014/123
2015-UNAT-518

2010-UNAT-099
2010-UNAT-100