

UNDT/2016/206, Awe

UNAT Held or UDT Pronouncements

The fact-finding panel established that the allegations were well founded and the conduct in question amounted to possible misconduct. In the circumstances, the mandatory language of section 5.18(c) of ST/SGB/2008/5 required a referral to the ASG/OHRM for disciplinary action in accordance with the applicable disciplinary procedures. Failure to make such a referral on the part of the Head of Mission was an error of procedure which denied the Applicant his contractual right to be afforded the benefit and protection against prohibited conduct in accordance with ST/SGB/2008/5. The Administration failed to draw a distinction between action, if any, to be taken against an alleged offender following a report and findings of a fact-finding panel and the harm, if any, suffered by the alleged victim. The former involved a proper construction of section 5.18 of ST/SGB/2008/5, regarding the duty of the responsible official, which was a matter for the administration, and the latter which related to action to mitigate or ameliorate the harm suffered by the alleged victim. The stress and moral injury in this case stemmed from the “unsubstantiated derogatory remarks” made against the Applicant by the Chief of Staff. The Chief of Staff’s comments were made in the presence of the senior-most managers in the Mission and then recorded and circulated as minutes to several people. The fact-finding panel took issue with both the comments and the circulation of minutes containing the offending remarks, and found it to be conduct unbecoming of a staff member. Specifically, the Panel found it to have been a violation of the Applicant’s right to be treated with dignity and respect. The Applicant’s claim was well founded; he suffered damage to his reputation and professional standing exacerbated by the continuing and unacceptable delay in affording him the relief to which he was entitled. The Respondent was ordered to: a) remove from the records the offending references in the minutes of the SMT meeting on 22 January 2014 and to send written confirmation to all recipients of the minutes to inform them of the findings of the fact-finding panel that there was no basis to support the damaging comments made against the Applicant; b) pay the Applicant the sum of USD3,000 for procedural error and USD15,000 for harm suffered.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Respondent’s failure, following the outcome of the investigation of his allegations pursuant to ST/SGB/2008/5 (Prohibition of; Discrimination, Harassment, including Sexual Harassment and Abuse of Authority), to grant him an effective remedy/redress for the harm caused to him.

Legal Principle(s)

Managers and supervisors also have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to fulfil their obligations under the Bulletin “may be considered a breach of duty which, if established, shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate”. It is settled law that taking disciplinary action is a prerogative of the Secretary-General and not that of the affected staff member. This function has been delegated to the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM) and it is not for the responsible officials to ignore the clear duty placed on them by section 5.18(c) to refer a case to the ASG where the allegations have been proven to be well founded and the conduct in question amounts to possible misconduct. It is for the Organization to take the next steps in the process, under the guidance and responsibility of the ASG/OHRM, and not for individual managers to purport to exercise a discretion which they do not have under section 5.18(c).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Applicant was awarded monetary compensation and specific performance.

Full judgment

[Full judgment](#)

Applicants/Appellants

Awe

Entity

UNAMI

Case Number(s)

UNDT/NBI/2015/177

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

18 Nov 2016

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Fact-finding investigation

Remedies

Compensation (see also, Compensation)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Related Judgments and Orders

2017-UNAT-774

2018-UNAT-845

2019-UNAT-963