

UNDT/2017/006, Auda

UNAT Held or UNDT Pronouncements

The UNDT found that the Administration's failure to timely conclude its investigation was an act of omission and an implied administrative decision receivable by the UNDT. The personal crisis of one investigator did not account for the entire three years nor justify the Administration's failure to take corrective measures to control the delay. The excessive delay breached fairness and the Applicant's due process rights. Further, the Administrations' failure to respond to the Applicant's multiple reasonable follow up queries spanning three years constituted a breach of duty owed the Applicant. The UNDT awarded US\$15,000 as compensation for the fundamental breaches of his rights.

Decision Contested or Judgment/Order Appealed

The Applicant, a former Principal Officer at the D-1 level in DGACM, contested the decision of an initial fact-finding panel ("first FFP") to delay, withhold its records, and not submit an investigation report on his complaint of prohibited conduct filed pursuant to ST/SGB/2008/5. Owing to an investigator's personal crisis, the panel after nearly two years failed to conclude and render a report, prompting appointment of a second panel to continue the investigation. The investigation was concluded over three years after the Applicant filed his complaint. The Applicant claimed inordinate delay by the Administration and sought compensation for the violation of his due process rights, abuse of process, and moral and other damages resulting of it. Respondent contested receivability and merits arguing an absence of an administrative decision since the second FFP cured lack of progress by the first FFP. The Respondent conceded to the delay but argued there was no harm to the Applicant.

Legal Principle(s)

Delay: Sec. 5.7 of ST/SGB/2008/5 provides that the “panel’s report shall be submitted to the responsible officer normally no later than three months from the date of the submission of the formal complaint,” While the word “normally” caters for unforeseeable or exceptional circumstances which may delay and extend the deadline for an investigation panel to conclude its work, any delay caused by such circumstances must remain reasonable through the taking of corrective measures—in this case appointing a new panel when it became clear that the first panel could not continue. Failure to respond to Applicant’s queries: the Tribunal viewed the Applicant’s repeated queries for status as reasonable and the Administration’s collective failure to respond as a breach of fairness and due process owed the Applicant. Relief: It is settled jurisprudence that the emotional distress of a complainant as a result of the Organization’s failure to timely respond to his or her complaint for prohibited conduct may amount to harm warranting compensation. The UNDT considered the breach of his rights of a fundamental nature giving rise to compensation.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

It is settled jurisprudence that the emotional distress of a complainant as a result of the Organization’s failure to timely respond to his or her complaint for prohibited conduct may amount to harm warranting compensation. The UNDT considered the breach of his rights of a fundamental nature giving rise to compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Auda

Entity

DGACM

Case Number(s)

UNDT/NY/2015/35

Tribunal

UNDT

Registry

New York

Date of Judgement

1 Feb 2017

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Harassment (non-sexual)

Due process

Delay

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Chapter XI

UNDT Statute

- Article 10.5
- Article 2.1