

UNDT/2017/007, Auda

UNAT Held or UNDT Pronouncements

The irregularities in the investigative process were egregious and warranted compensation. In addition, during the three years the investigation was delayed, the subject was no longer with the Organization, making it not possible to convene a new investigation. Relief: The Tribunal found the Applicant suffered emotional harm in having to prosecute his complaint for three years, harm to his reputation, and that such harm was demonstrated by the Applicant at trial and observed by the Judge as trier of fact. The UNDT found the decision of the responsible official to close the case was improper as it was based on an investigation process that was tainted by several irregularities including a conflict of interest by a witness; there was also a three year delay and repeated failure by the Administration to respond to the Applicant's queries for status on the investigation. The responsible official's omission to consider the procedural irregularities of the investigation when deciding to close the case was improper as the irregularities were a breach of the Applicant's due process rights. The Respondent argued that there was no harm suffered and the decision to close the case was based on findings of the second FFP. The Tribunal finding that the Applicant, a pro se litigant demonstrated harm to reputation and emotional distress at the hearing, and was thus granted compensation in the amount of USD5,000.

Decision Contested or Judgment/Order Appealed

The Applicant, a former Principal Officer at the D-1 level in DGACM, contested the decision of the USG/DGACM, based on the report of a second constructed fact-finding panel ("second FFP") to close his complaint made pursuant to ST/SGB/2008/5, without taking any action. The Applicant seeks rescission of the decision to close his case or, in the alternative, an order that the report of the second FFP be transferred to the Office of Human Resources Management ("OHRM") for action. The Applicant's related application regarding a three year-delay in the handling of the first FFP is addressed in Case No. UNDT/NY/2015/035 Judgment Auda

Legal Principle(s)

Duty of responsible official: In accordance with the Tribunal's jurisprudence, in particular Wasserstrom UNDT/2012/092, paras. 32 and 49 a decision-maker's duty when reviewing an investigation report should include an assessment of the procedure leading to the preparation of the investigation report and its annexes including the witness statements prepared and taken by the fact-finding panel to ensure that the statements' content is properly reflected in the investigation report. There is a plethora of case law from the United Nations Appeals Tribunal stating that the administration has a degree of discretion as to how to conduct a review and assessment of a complaint and may decide whether to undertake an investigation regarding all or some of the allegations (Masyllkanova; Benfield-Laporte 2015-UNAT-505; Oummih 2015-UNAT-518; Rangel 2015-UNAT-535). The Tribunal will not interfere with the discretion of the administration and substitute its opinion for that of the administration in the absence of evidence that the decision is tainted by error or illegality, is arbitrary, excessive, abusive, discriminatory or absurd. The Tribunal notes that sec. 5.17 of ST/SGB/2008/5 does not appear to authorize a FFP to draw legal conclusions or legally characterize the facts. In fact, the provision limits the authority of the FFP to the preparation of a detailed report, giving a full account of the facts that they have ascertained in the process. However, the Tribunal must also take into consideration the valid exercise of the discretion of the administration when reviewing an investigation report and the facts substantiated therein.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal found the Applicant suffered emotional harm in having to prosecute his complaint for three years, harm to his reputation, and that such harm was demonstrated by the Applicant at trial and observed by the Judge as trier of fact.

Full judgment

[Full judgment](#)

Applicants/Appellants

Auda

Entity

DGACM

Case Number(s)

UNDT/NY/2015/62

Tribunal

UNDT

Registry

New York

Date of Judgement

1 Feb 2017

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Disciplinary matters / misconduct

Abuse of authority
Harassment (non-sexual)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Chapter XI

UNDT Statute

- Article 10.5
- Article 2.1

Related Judgments and Orders

UNDT/2015/088

UNDT/2012/092

2016-UNAT-637

2015-UNAT-535