

UNDT/2018/018, Kebede

UNAT Held or UNDT Pronouncements

Noting that there is nothing in the strict interpretation of section 1.2 of ST/SGB/2008/5 to exclude a series of discrete acts performed by more than a single individual from constituting prohibited conduct for which the Organization bears responsibility, the Tribunal found that the Applicant's allegations of institutionally enabled, or tolerated, harassment did not relate to one off incidents. Under ST/SGB/2008/5, the ES's duty was to examine the complaint in its entirety to see whether it raised issues of prohibited conduct to which the Applicant may have still been suffering from. Instead the ES focused just on the two instances concerning AG and RA as isolated instances and asked if the complaints were receivable thereby conflating and confusing the regulatory regime concerning prohibited conduct and the technical requirements of receivability under the formal system of justice. Further he failed to appreciate that the complaint raised the wider allegation of systemic or institutionalised behavior that was not consistent with ST/SGB/2008/5 and the Organization's wider policy commitments. Under ST/SGB/2008/5, it is not open to the responsible official to exclude from consideration allegations which may have been the subject of a settlement agreement. The relevant question is whether it appears from a fresh examination of a complaint that prohibited conduct may have occurred but, more importantly, may still be continuing irrespective of whether there was any settlement. The decision whether to commission a fact-finding investigation is not dependent on historical settlements but on whether the material before the responsible official merits a fact-finding investigation. The ES/ECA misinterpreted and misapplied the applicable test under ST/SGB/2008/5 by giving weight to the fact that the Applicant's complaints may not have met the technical requirements of receivability before the UNDT. The right conferred on staff members under ST/SGB/2008/5 is distinctly different to the rights to redress under the formal system of justice and that to conflate the two in discharging a duty under ST/SGB/2008/5 was an erroneous interpretation and understanding of the regulatory regime giving effect to the Organization's policy on prohibited conduct.

Decision Contested or Judgment/Order Appealed

The decision by the Executive Secretary of the Economic Commission for Africa (ES/ECA) to not set up a fact-finding investigation panel to investigate the Applicant's complaints about workplace discrimination and harassment.

Legal Principle(s)

The role of the Tribunal when examining decisions relating to ST/SGB/2008/5 is to examine whether the decision was procedurally correct, whether the decision maker failed to consider matters which he reasonably ought to have considered and particularly whether his identification of the complaints was rather narrowly constrained thereby overlooking significant aspects of the complaint, whether there was a proper self-direction as to the applicable law and whether the decision was a permissible option arrived at in a procedurally correct manner. Section 1.2 of ST/SGB/2008/5 states that "harassment normally implies a series of incidents". The word "normally" suggests that it should not be read to exclude one off incidents. The definition of harassment in section 1.2 covers the entirety of the behaviours complained of irrespective of whether they were several acts allegedly performed by a single person or single acts by several individuals. The definition does not exclude institutional or systemic failures. The focus of the examination should be on the nature and number of occurrences of alleged prohibited conduct regardless of the number of discrete acts committed by one or more individuals.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal rescinded the impugned decision and remanded the complaint back to the ES/ECA for proper consideration under section 5.14 of ST/SGB/2008/5. The Tribunal also awarded the Applicant USD3,000 for moral damages.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kebede

Entity

ECA

Case Number(s)

UNDT/NBI/2016/077

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

8 Feb 2018

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Investigation

Fact-finding investigation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2014/3

UNDT Statute

- Article 10.5

Related Judgments and Orders

2018-UNAT-874