

UNDT/2018/039, Rehman

UNAT Held or UNDT Pronouncements

It is unequivocally incumbent upon the Organization to provide anyone who files a complaint with a properly reasoned decision, especially when the complaint is being rejected. This also enables the staff member to promptly exercise other available options including a challenge to that decision. Endless email communications do not provide staff members with finality of a determination, thus placing them in a precarious situation if they are to challenge such a decision taking note of statutory time-limits.; This Tribunal found that the decision of the former UNICEF Representative PCO not to renew the Applicant's contract was unlawful (see Judgment Rehman UNDT/2018/031, affirmed by UNAT Judgment Rehman 2018-UNAT-882) and that the failure of UNICEF PCO to notify the Applicant of her non-selection breached UNICEF rules and regulations (see Judgment Rehman UNDT/2018/038, vacated with respect to award of damages and interest by UNAT Judgment Rehman 2018/UNAT/886). In light of all the available evidence within the context of the Applicant's three cases before the Tribunal, it was the Tribunal's view that the Applicant's complaints may have had some justification and merit, and it was upon OIAI, UNICEF, to properly examine them and reach a detailed and reasoned decision on how to act upon them.; A perusal of the written record by the investigation unit is an appropriate starting point from which the Tribunal should commence a legal and factual review to determine whether the investigation unit's conclusion not to investigate the Applicant's claims had a proper legal basis.; Since there was no report from OIAI to the Applicant informing her of how OIAI assessed her complaints and reached a conclusion that they did not warrant an investigation, thus summarily closing her cases, the Tribunal had no findings of fact by OIAI on which to base its assessment on whether the Applicant's complaints were established or not. Consequently, the Tribunal remanded the Applicant's complaints back to the Director.; OIAI, UNICEF, to have the Applicant's complaints properly analyzed with the outcome of such assessment supported by factual findings. In this connection, the Tribunal was of the view that the COI and the Investigation Specialist who previously handled the Applicant's complaints had to be recused from dealing with the remanded complaints.; The Applicant's requests were not properly analyzed thus leading to several incomplete, rushed and unreasoned communications that did not accurately address the totality of the Applicant's complaints.; The Applicant submitted that the handling of her complaints caused her mental stress and anxiety. Additionally, the lack of receiving any official notification and analysis of her complaints of harassment created a very uncomfortable feeling that UNICEF had conspired to protect senior staff members by denying her a proper assessment of her complaints. Having found that OIAI improperly dealt with the Applicant's complaints of; harassment and abuse of authority, the Tribunal awarded the Applicant USD1,000 in moral damages.; The Applicant's claim for compensation for being the subject of an investigation into the allegations of fraud were rejected because she did not present any proof on how being a subject of the investigation affected her reputation or career or that it even caused symptoms of anxiety or depression.

Decision Contested or Judgment/Order Appealed

The Applicant challenges the decision of the Office of Internal Audit and Investigation ("OIAI") to close the investigation into complaints of harassment, discrimination and abuse of authority, lodged by the Applicant against other staff members.

Legal Principle(s)

When a claim regards issues covered under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), a staff member is entitled to administrative processes and if dissatisfied, may request judicial review of administrative decisions taken under the bulletin. The scope of

judicial review in harassment and abuse of authority cases is not limited to the ultimate decision to take no further action on a complaint of harassment, but may also encompass the overall handling of the complaint, and an examination by the Tribunal whether the steps preceding that decision were procedurally correct.; The Dispute Tribunal is not invested with jurisdiction to investigate harassment complaints under art. 2 of its Statute. However, for the purpose of determining if the impugned administrative decisions were improperly motivated, it is within the competence of the UNDT to examine allegations of harassment.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Judgment affirmed by UNAT Judgment Rehman 2018-UNAT-885 despite UNAT's finding that "there was no evidence to support a claim for moral damages apart from [the Applicant's] own claims" and that the "UNDT ... had no jurisdiction to award her moral damages". UNAT decided to allow the award of moral damages to stand in view that the Secretary-General did not appeal Judgment Rehman UNDT/2018/039.

Full judgment

[Full judgment](#)

Applicants/Appellants

Rehman

Entity

UNICEF

Case Number(s)

UNDT/GVA/2016/94

Tribunal

UNDT

Registry

Geneva

Date of Judgement

15 Mar 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Remedies

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 10.5

UNAT Statute

- Article 2.1(a)

UNICEF Executive Directives

- CF/EXD/2012-007

Related Judgments and Orders

2010-UNAT-099

2011-UNAT-123

2016-UNAT-612

UNDT/2018/031

2016-UNAT-647

2012-UNAT-254