

# **UNDT/2019/168, Nadeau**

## **UNAT Held or UNDT Pronouncements**

Section 3.2 of ST/SGB/2008/5 imposes a “duty” on the Administration “to take all appropriate measures” with a view to “promot[ing] a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct”, but very limited statutory guidance is otherwise provided in the provision on what such measures could be in practice. The only example, at least as relevant to the present case, appears to be that “complaints of prohibited conduct are promptly addressed in a fair and impartial manner”. A search of the Appeals Tribunal’s jurisprudence reveals that the Appeals Tribunal has not had the opportunity to pronounce itself on the interpretation of sec. 3.2 in terms of what the actual obligations of managers and supervisor are to achieve the goals stated in this provision. Regarding managerial decisions in general, the Administration enjoys certain margin of discretion (see, for instance, Sanwidi 2010-UNAT-084, paras. 38-42), which, in a situation as in the present case, would also appear to apply to its obligations under sec. 3.2 of ST/SGB/2008/5. When using the word “duty” and stating that “complaints of prohibited conduct are promptly addressed in a fair and impartial manner”, this would imply that when a staff member requests the Administration “to take appropriate measures” with reference to sec. 3.2, the Administration would also need to respond thereto, and depending on the circumstances, would also need to take some sort of relevant action if not rejecting the complaint. To trigger such a duty to respond, it is therefore not a prerequisite that the Administration actually finds that the relevant conduct was of a “prohibited” nature insofar as the relevant complaint simply concerned such allegation. The Administration failed to address the Applicant’s complaint under sec. 3.2 with the mandatory promptness.

## **Decision Contested or Judgment/Order Appealed**

UNDT/2018/052he Secretary-General’s failure to act in accordance with art. 3.2 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) with respect to a complaint.

## Legal Principle(s)

The regular principle of interpretation before the Dispute Tribunal is the plain meaning rule (see, for instance, Scott 2012-UNAT-225). A duty to respond constitutes a basic tenet of administrative law whereby an administration must address all genuine requests from the public—even if found groundless—within reasonable time or else incur liability. If the Administration promises the staff member to do something to address a situation, it must also then fulfill its promise to do so and take some action, even if it simply means to dismiss a request. This follows from the principle of legitimate expectations (see, for instance, Sina 2010-UNAT-094, affirming on liability definition of Sina UNDT/2010/060). The Dispute Tribunal is the primary fact-finder and that it falls within its competence to consider all the evidence presented by both parties and to determine the weight to attach to such evidence. Regarding the evidentiary value of a written assessment of a medical professional, the Appeals Tribunal has taken a flexible approach and while in some cases considering such documentation adequate evidence, it has in other cases dismissed it as insufficient.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Nadeau

## Entity

OIOS

## Case Number(s)

UNDT/NY/2015/063

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

22 Nov 2019

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

UNDT/2018/052

2010-UNAT-084

2012-UNAT-225

2010-UNAT-094

UNDT/2010/060

2012-UNAT-234

2011-UNAT-110

2011-UNAT-134

2012-UNAT-263

2012-UNAT-265

2015-UNAT-516

2015-UNAT-529

2012-UNAT-228

2016-UNAT-637