

UNDT/2019/187, Haidar

UNAT Held or UNDT Pronouncements

The Tribunal found that there was clear and convincing evidence that on the morning of 9 February 2015, at his office, the Applicant committed misconduct. The established facts legally amounted to misconduct, in violation of the norms consistently upheld by the Organization since at minimum 1992, where sexual harassment was described as unacceptable behaviour for the staff of the United Nations, and reiterated through, among other, outlawing, in 2003, sexual exploitation and abuse as serious misconduct warranting a summary dismissal, and through a detailed anti-harassment and abuse of authority at work regulation in 2008. The quality of the Complainant's testimony, the overall coherence of the story and lack of any motive for fabrication left no doubt for the Tribunal as to the truth of the facts asserted by her. With respect to due process, the Applicant's complaints were generalised and unsubstantiated. The Tribunal found that the Applicant acted against staff regulations 1.2(a) and 1.2(f), staff rules and 1.2(f) and section 2.1 of ST/SGB/2008/5. The Tribunal was satisfied that the measure of separation from service without termination indemnity was not disproportionate, as the Applicant's remaining in service would be irreconcilable with core values professed by the United Nations and the gravity of the conduct justified a severe measure. The impugned decision, however, also imposed a fine equal to one-month's salary, for which no justification was offered, and the rationale of which is difficult to understand. Considering that termination of employment presented for the affected staff member a significant financial onerousness, if not loss of livelihood, combining termination with a fine does not seem to bear rational connection with either the retributive or preventive purpose of the sanction.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Under-Secretary-General for Management's ("USG/DM") decision to impose on him the disciplinary measures of a fine of one-month of his net base salary and separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rules 10.2(a)(v) and (viii)

Legal Principle(s)

In the context of disciplinary cases, the UNDT is to examine: a) whether the facts on which the sanction is based have been established b) whether due process rights were observed. c) whether the established facts qualify as misconduct under the Staff Regulations and Rules and d) whether the sanction is proportionate to the offence. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. As determined by staff rule 10.3(b) "[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct". Factors other than the impugned behavior to be considered in assessing the proportionality of a sanction include the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency. Proportionality is a jural postulate or ordering principle requiring teleological application, which derives from the postulate of reasonableness of all administrative decisions. Tribunals intervene in disciplinary measures only where they would be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in severity. An excessive sanction will be arbitrary and irrational, and thus disproportionate and illegal, if the sanction bears no rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline.

Outcome

Judgment entered for Applicant in full or in part
Outcome Extra Text

The application was granted to the extent that the disciplinary measure of a fine of onemonth's net base salary was set aside. All other pleas were rejected.

Applicants/Appellants

Haidar

Entity

UNIFIL

Case Number(s)

UNDT/NBI/2017/056

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

26 Dec 2019

Duty Judge

Judge Milart

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Standard of proof

Disciplinary cases

Standard of review (judicial)

Sexual harassment

Applicable Law

Secretary-General's bulletins

- ST/SGB/2003/13
- ST/SGB/2008/5
- ST/SGB/253

Staff Rules

- Rule 10.2(a)(v)
- Rule 10.2(a)(viii)

Related Judgments and Orders

2021-UNAT-1076