

UNDT/2020/124, Dore

UNAT Held or UNDT Pronouncements

The Tribunal found that because separation was not the sanction imposed on the Applicant, the applicable standard of proof was one on a preponderance of evidence. This standard was lower than clear and convincing evidence which the Respondent had to prove to show that the Applicant committed misconduct as alleged. It was evident from the facts that the Applicant and at least one other person led a group to the Complainant's house. The Applicant played an active role in the alleged harassment. This fact was proved to the requisite standard. The Tribunal found that a group of at least five local staff members led by the Applicant went to the Complainant's house where they confronted the Complainant by exchanging bitter words with her and causing her fear. There were undisputed facts showing a sequence of events that culminated into the unfortunate incident at the Complainant's house that proved on a preponderance of the evidence that the incidents described by the Complainant occurred. It was easy to conclude that the Complainant operated under an apprehension of fear of local staff and that the Applicant's behaviour did not help to alleviate that fear. It was clear from the Tribunal's analysis of the uncontroverted evidence that the Applicant violated the Staff Regulations and Rules and the policy on discrimination through his unwelcome and improper conduct. The acts constituted harassment. The Tribunal found and held that the Respondent had demonstrated that the Applicant's conduct was inconsistent with a staff member's basic obligations set out in staff regulation 1.2(b). He also breached staff rule 1.2(f). There was no proof that the Applicant's due process rights were violated. The sanction was proportionate to the offence because the Respondent considered the parity principle, which requires equality and consistency in the treatment of employees. The Applicant's mitigating factors were also taken into account. There were no aggravating factors.

Decision Contested or Judgment/Order Appealed

The Applicant was contesting the UNHCR High Commissioner's decision finding him guilty of misconduct and the imposition of two disciplinary measures the loss of two steps in grade and a written censure, a copy of which was placed in his official status file

Legal Principle(s)

Where the facts on which the disciplinary measure was based have been established and the disciplinary sanction imposed is not termination but a fine and a written censure, it is sufficient that the Tribunals find that there was a preponderance of evidence. There are four elements that the Tribunal must evaluate and make a decision on. These are (i) whether the facts on which the disciplinary measure is based have been established (ii) whether the established facts amount to misconduct (iii) whether the sanction is proportionate to the offence and (iv) whether staff member's due process rights were respected.

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal found that the disciplinary sanction was proportionate to the offence because the Respondent considered the parity principle, which requires equality and consistency in the treatment of employees and dismissed the application in its entirety.

Full judgment

[Full judgment](#)

Applicants/Appellants

Dore

Entity

UNHCR

Case Number(s)

UNDT/NBI/2018/063

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

22 Jul 2020

Duty Judge

Judge Sikwese

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary matters / misconduct

Harassment (non-sexual)

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR/HCP/2014/4 Policy on Discrimination

Staff Rules

- Rule 1.2(f)