

# UNDT/2020/195, Andriantseho

## UNAT Held or UNDT Pronouncements

The Applicant's attempt to hug V01 did not on its own qualify as an unwelcome sexual advance or request for sexual favour or verbal or physical conduct or gesture of a sexual nature or any other behaviour of a sexual nature. The Applicant's asking for V01's room number on multiple occasions did not constitute sexual harassment. The facts did not establish sexual harassment as defined in ST/SGB/2008/5 and as interpreted in various jurisprudence. The Respondent's investigations were skewed toward finding a case for sexual harassment regardless of the inadequacy of evidence to substantiate the allegations. Had the Respondent conducted the investigation in good faith, it would have found that the case of sexual harassment by both V01 and V02 was not made out. The Tribunal was not satisfied that the Respondent has adduced clear and convincing evidence to sustain a finding that the Applicant violated any rule or regulation. The Tribunal ordered rescission of the contested decision or, if the Administration so chose, an award to the Applicant of two years' net base salary at the rate in effect at the date of the Judgment in lieu of rescission of the dismissal. The Tribunal found that the Applicant had not justified his claims for moral damages with credible corroborative evidence. The Applicant's other various monetary claims were not supported by the law. The Applicant's motion for confidentiality was declined. Related

## Decision Contested or Judgment/Order Appealed

The Applicant contested the Under-Secretary-General for Management, Strategy, Policy and Compliance's ("USG/DMSPC") decision to separate him from service with compensation in lieu of notice and with termination indemnity for serious misconduct.

## Legal Principle(s)

Judicial review of a disciplinary case requires this Tribunal to consider the evidence adduced and procedures utilized during the course of investigation by the Administration. In this context, the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct under the Staff Regulations and Rules, and whether the sanction is proportionate to the offence. The Tribunal's role is also to consider whether a staff member's due process rights were respected. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse". According to section 9.1 of ST/AI/2017/1, the applicable standard of proof is clear and convincing evidence, for imposing separation or dismissal of the subject staff members. Facts will constitute sexual harassment if there is a combination of any unwelcome sexual advance, a request for a sexual favour, verbal or physical conduct or gesture of a sexual nature or any other behaviour of a sexual nature that either creates a reasonable expectation or perception to cause offence or humiliation to another and interferes with work or is made a condition of employment or creates an intimidating, hostile or offensive work environment. The Tribunal has wide discretion in setting the amount of compensation in lieu of rescission, however it must be guided by judicious principles. A motion for anonymity must be justified by valid reasons. The purpose of confidentiality is to protect victims of misconduct.

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal found that the Respondent ignored relevant factors pertaining to the legal framework to sustain a case of sexual harassment. Consequently, he arrived at a decision that was not supported by law.

Full judgment

[Full judgment](#)

Applicants/Appellants

Andriantseho

Entity

UNHCR

Case Number(s)

UNDT/NBI/2019/152

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

20 Nov 2020

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual harassment

Evidence

Standard of proof

Disciplinary cases

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

Staff Rules

- Rule 1.2(f)