

# UNDT/2021/007, Applicant

## UNAT Held or UNDT Pronouncements

The past practice of the Organization in cases involving sexual harassment shows that disciplinary measures have been imposed at the strictest end of the spectrum, namely, separation from service or dismissal in accordance with staff rule 10.2(a), which has been affirmed by the Appeals Tribunal in various judgments

## Decision Contested or Judgment/Order Appealed

The decision to impose the disciplinary measure of separation from service with compensation in lieu of notice, and with termination indemnity in accordance with Staff Rule 10.2(a)(viii) for sexual harassment

## Legal Principle(s)

As a point of departure, kissing or attempting to kiss someone in the workplace of the United Nations would typically constitute sexual harassment. The key subjective element is whether the potential victim consented to the kiss, and if s/he did not explicitly do so, if the alleged perpetrator had reasonable grounds to believe that the kiss would be welcomed by the words and gestures of the victim. Also, the context is important, including the occasion and cultural environment—in principle, no one should expect to be kissed in the workplace, and if it occurs, the power dynamics between the alleged perpetrator and the victim must also be taken into consideration. The very objective of anonymizing all names in the present case is exactly to protect victims of misconduct, as well as the identity of witnesses and the confidentiality of the disciplinary records of the Administration.

## Outcome

Dismissed on merits

Outcome Extra Text

The application rejected

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNS

Case Number(s)

UNDT/NY/2019/047

Tribunal

UNDT

Registry

New York

Date of Judgement

3 Feb 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary

Disciplinary matters / misconduct

Disciplinary measure or sanction

Sexual harassment

Investigation

Fact-finding investigation

Applicable Law

Staff Rules

- Rule 10.2(a)
- Rule 10.3(b)

Related Judgments and Orders

2019-UNAT-955

2010-UNAT-084

2019-UNAT-956

2020-UNAT-1033

2020-UNAT-1061

2013-UNAT-302

2015-UNAT-523

2018-UNAT-859

2013-UNAT-280

2014-UNAT-486

2019-UNAT-918

2018-UNAT-819