

UNDT/2021/043, Applicant

UNAT Held or UNDT Pronouncements

UNDT held that there was sufficient evidence in the investigation report that the Applicant harassed staff members and created a hostile work environment. UNDT held that there was no clear and convincing evidence, against the Applicant, that the recruitment of two local consultants was an act of misconduct on his part, as it was a managerial process in which he was not regularly involved. UNDT thus held that there was no basis for the inclusion of irregular recruitment in the charges against him. UNDT held that there was not clear and convincing evidence of sexual harassment of C1 by the Applicant. UNDT noted that the timing of C1's complaint and her narration of the facts of her allegations were inconsistent and lacked credibility. UNDT also did not find C2's allegations to be credible and found that the Applicant's theory of her motive for retaliation provided a more plausible explanation. UNDT also held that there was no clear and convincing basis that the Applicant sexually assaulted C3, but found that it was credible that the Applicant made C3 feel uncomfortable in her professional capacity. UNDT did not find any clear and convincing evidence that the Applicant engaged in abuse of authority. UNDT held that there was sufficient evidence in the staff members' interviews on record to find that the Applicant engaged in giving gifts to third parties within the PNG government, although the seriousness of the gift giving remained unclear. UNDT held that the key elements of the Applicant's due process requirements were met, the one shortcoming was in the failure to review some witnesses identified by the Applicant. UNDT noted that said witnesses may have further clarified that the case of sexual harassment was not clear and convincing enough for a finding of misconduct to be made justifying summary dismissal. UNDT held that summary dismissal was disproportionate under the circumstances. However, UNDT held that the relief of reinstatement sought by the Applicant was without merit, given the clear and convincing evidence of a hostile work environment. UNDT held that separation from service with notice and termination indemnity would have been a proportionate sanction. UNDT issued orders on anonymity and held an in camera hearing to protect the alleged victims of sexual harassment, noting that there are

instances when anonymizing the name of the Applicant may be necessary to minimize identifiability of the complainants. UNDT held that the Respondent failed to duly act in the interests of the Papua New Guinea Country Office as a whole, and the Applicant in particular. UNDT held that the Applicant did not receive the support or the assistance that was necessary to fix the issues facing the Country Office. UNDT granted the application in part; UNDT rescinded the finding of sexual harassment committed by the Applicant; the Applicant's summary dismissal was to be replaced with the sanction of separation from service with notice and termination indemnity; in lieu of recission, the Respondent may elect to compensate the Applicant in the amount of six months net-base salary; and all other grounds of appeal were rejected.

Decision Contested or Judgment/Order Appealed

The Applicant contested his summary dismissal for abuse of authority, harassment, and sexual harassment.

Legal Principle(s)

Any witness testimony should be evaluated to determine whether it is believable and should be credited as establishing the true facts in a case.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNICEF

Case Number(s)

UNDT/GVA/2019/009

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Apr 2021

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual harassment

Evidence

Applicable Law

Staff Regulations

Related Judgments and Orders

2017-UNAT-718

