

UNDT/2021/049, Fosse

UNAT Held or UNDT Pronouncements

The contested decision fell within the Administration's margin of appreciation and was a reasonable exercise of discretion. Under the applicable legal framework, the Applicant is not entitled to force the Administration to investigate her complaint. To the contrary, the responsible official is provided with a discretion to initiate or not to initiate an investigation under the applicable legal framework. The decisionmaker reasonably decided not to investigate the Applicant's complaint in light of the alleged harasser's resignation. The decision was also procedurally compliant as the decisionmaker notified the Applicant of the decision in about three months as required by the applicable legal framework. The Applicant was not entitled to monetary or other compensation under the applicable legal framework as there was no finding of misconduct. The contested decision in this case was the closure of the Applicant's complaint following a preliminary assessment, and while a term "informal resolution" used in the notification of the contested decision might have caused some confusion, the Respondent had no obligation to respond to the Applicant's "informal resolution" offer or otherwise compensate her for harm she reportedly suffered. Furthermore, the Tribunal cannot award any compensation for harm either since there is no finding of an illegality relating to the contested decision. The judgments cited by the Applicant are distinguishable from the Applicant's case since in the judgments relied upon by the Applicant, there was a finding of an unlawful act (e.g. harassment) that caused harm to the applicant, which is absent in the present case. Therefore, the contested decision was lawful.

Decision Contested or Judgment/Order Appealed

The decision not to investigate the complaint of prohibited conduct.

Legal Principle(s)

The Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review. When defining the issues of a case, the Dispute Tribunal may consider the application as a whole. The Organization has a degree of discretion how to conduct a review and assessment of a complaint of prohibited conduct. The judicial review of an administrative decision involves a determination of the validity of the contested decision on grounds of legality, reasonableness and procedural fairness. When reviewing the Administration's exercise of discretion, it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him, but its role is to determine whether the contested decision was legal, reasonable, and procedurally fair. Under art. 10.5(b) of the Dispute Tribunal's Statute, compensation for harm should be supported by evidence, and it should be supported by three elements: the harm itself, an illegality, and a nexus between them, and the claimant bears the burden of proof to establish that the harm is directly caused by the Administration's illegal act.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Fosse

Entity

UNEP

Case Number(s)

UNDT/NY/2020/030

Tribunal

UNDT

Registry

New York

Date of Judgement

3 May 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/8

UNDT Statute

- Article 10.5(b)