

UNDT/2021/093, Reilly

UNAT Held or UNDT Pronouncements

Regardless of the source of information published in public articles, the decision to issue a press release in response to publications falls, as a matter of principle, within the discretion of the Organization and is a managerial prerogative. Organizations subject to a high level of public scrutiny, which is the case of the UN, have a right to respond to public allegations and to defend their interests, their image, and, ultimately, their work within the boundaries set by their internal law. In the current case, the Tribunal needs to assess if the content of a press release impacted the Applicant's rights and her terms of employment, which include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance. The evidence on file does not show that the Applicant suffered any reputational harm exclusively emerging from the press release. The mere fact that a staff member claims to be a whistle-blower does not immediately place him or her under the protection of the applicable policy. The Tribunal agrees with the Respondent in relation to the accuracy of the press release but only insofar as the Applicant's allegations under ST/SGB/2008/5, involving harassment and abuse of authority, were found to be unsubstantiated. The matter related to the performance management and development system was found to be substantiated. Only in this regard, there is, indeed, a lack of accuracy in the content of the press release. Although there is an inconsistency in the press release, it does not appear to be of sufficient gravity as it needs to be understood as a response from the Organization to minimize the damage made to its image and operations, caused by the disclosure of its internal affairs which were being dealt with through its own internal procedures. The Tribunal found that the allegation of conflict of interest against one of the Investigation Panel members was not supported by the available evidence. The Tribunal also found that the Applicant did not provide "clear and convincing evidence" that she suffered any reputational harm as a consequence of the issuance of the press release or of the investigation of her complaint for harassment and abuse of authority under ST/SGB/2008/5. As a consequence, no remedy was granted to her on these grounds. In relation to the way in which her complaint was investigated, the Tribunal did not find it necessary to remand the case for a "de novo investigation" due to the time elapsed between the date the events took place and the date at which the investigation was initiated (more or less 5 years). The Tribunal rather found it sufficient to order, pursuant to art. 10.5(a) of its Statute, that the same Panel interview the former Chief, Human Resources, OHCHR, and adds to the initial report a critical assessment of his testimony and elaborate, if necessary and adequate, new findings of fact. Finally, the Tribunal found that there were elements demonstrating that the Applicant suffered, at least between 2015 and 2017, from stress and anxiety due to the situation she faced in her work environment as a consequence of the way in which her complaint for harassment was handled and the inaccuracies in the press release. Consequently, the Tribunal awarded her USD3,000 as moral damages.

Decision Contested or Judgment/Order Appealed

The Applicant contests a) the "ongoing workplace harassment based on protected activity for reporting and objecting to wrongdoing by management", including the decision to conclude an investigation of harassment only with managerial actions; and b) the "violation of [her] privacy rights and defamation of character", including the related decision to state that her claims were found unsubstantiated in a press release.

Legal Principle(s)

In the UN legal system, there is well-established case law that imposes on the Organization's structure a duty of care, respect, and preservation of staff members' reputation and character. This protective framework does not exempt applicants from meeting their burden of proof in the context of judicial proceedings in respect to the Organization's alleged wrongdoing. It is a general principle of law that a person called upon to take a decision

affecting the rights or duties of other persons subject to his/her jurisdiction must withdraw in cases in which his/her impartiality may be open to question on reasonable grounds.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Reilly

Entity

OHCHR

Case Number(s)

UNDT/GVA/2017/52

Tribunal

UNDT

Registry

Geneva

Date of Judgement

29 Jul 2021

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Applicable Law

Other UN issuances (guidelines, policies etc.)

- OHCHR/PSMS/01/6

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2007/6
- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(f)

UNAT Statute

- Article 10.5(b)
- Article 7.5

UNDT Statute

- Article 10.5(a)

- Article 2.1