

UNDT/2021/106, Isaksson

UNAT Held or UNDT Pronouncements

Concerning the corrective measures: To the extent that the fact-finding panel's investigation resulted in a finding of actions on the part of the Applicant that called for corrective measures in the form of training and counselling, the Respondent's actions were procedurally proper. The cautionary corrective measure of providing training and counselling for the Applicant was appropriately taken in accordance with ST/SGB/2008/5 in circumstances where, although there was no misconduct, the Applicant's manner of performing his duties caused a staff member to feel harassed. Concerning the decision and the Applicant's request for its rescission: The drafting of the decision email did not clearly convey the intended message that there was no finding of misconduct and that, as a result, only managerial measures will be imposed. Thus, as there was in fact no finding of misconduct, the decision email ought to be rescinded so that it is removed from the Applicant's record. Any negative findings as to misconduct committed by the Applicant are to be expunged from his record.

Decision Contested or Judgment/Order Appealed

A decision letter from the decision-maker informing the Applicant of the outcome of a fact-finding investigation undertaken pursuant to ST/SGB/2008/5 finding that he committed harassment through abuse of authority, further imposing managerial corrective actions.

Legal Principle(s)

The Applicant challenged the emailed decision that informed him of the outcome of a fact-finding investigation panel finding he had committed harassment by means of abuse of authority. One of the grounds for contesting the decision was the view that the fact-finding panel erred by applying the procedure and standards set out in

ST/SGB/2008/5 instead of the legal regime governing the use of force under ST/AI/309/Rev.2 [Authority of United Nations Security Officers]. The Applicant also contended that the persons on the fact-finding panel lacked experience in investigating cases involving use of force, and that they failed to consider the appropriate conditions and modalities for resorting to use of force, concluding wrongly that the temporary measure of restraint characterized harassment as opposed to a proper use of force. The Applicant seeks rescission of this finding. The Applicant also seeks rescission of the administrative measures imposed. In turn, the Respondent's submission in reply is that the panel conducted a thorough investigation. This included correctly applying the Organization's policies and procedures on the use of force and investigations. Further, the Respondent asserts that the emailed decision was proper and in compliance with sec. 5.18(b) of ST/SGB/2008/5. The Respondent's position is that the findings of fact made by the panel, which were accepted by the decision-maker, were found to be insufficient to justify disciplinary proceedings. Instead only reasonable managerial measures were imposed. The Tribunal found that the emailed decision wrongly implied that the outcome of the investigation resulted in a finding of harassment and abuse of authority in the Applicant's conduct. Having considered the actual report of the panel's findings and the submission of the Respondent, it is the Tribunal's finding that there was in fact no finding that the Applicant committed acts of harassment or abuse of authority amounting to possible misconduct.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Respondent's decision to find as a fact that the Applicant engaged in acts of misconduct, namely harassment and abuse of authority is rescinded. Any record of such findings is to be expunged from the Applicant's record.

Full judgment

[Full judgment](#)

Applicants/Appellants

Isaksson

Entity

UNMIK

Case Number(s)

UNDT/GVA/2019/8

Tribunal

UNDT

Registry

Geneva

Date of Judgement

14 Sep 2021

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Non-disciplinary/administrative measures

Investigation

Fact-finding investigation

Applicable Law

Administrative Instructions

- ST/AI/309/Rev.2

Secretary-General's bulletins

- ST/SGB/2004/15
- ST/SGB/2008/5

Related Judgments and Orders

2011-UNAT-122

2013-UNAT-374

UNDT/2021/076