

UNDT/2021/124, Fosse

UNAT Held or UNDT Pronouncements

The Tribunal acknowledges that the 120-day deadline for OIOS to complete a retaliation investigation is not mandatory. However, the Tribunal is of the view that a departure from this deadline has to be just. Given the circumstances of the case, even if the 120-day deadline to complete a retaliation investigation is not mandatory, the Tribunal cannot but conclude that the delays and unjustified attempts to suspend or terminate the investigation in this case constitute an egregious violation of ST/SGB/2017/2/Rev.1. By not initiating its investigation in due course, OIOS rendered itself unable to interview the individual having allegedly perpetrated the retaliatory acts under investigation. In the Tribunal's view, this error is, in itself, fatal. Finding otherwise would render the framework on protection against retaliation meaningless as all the Administration would need to do when faced with retaliation allegations would be to delay any action until the allegedly responsible officials separate from the Organization. Remand of the case for a fresh investigation would be meaningless at this point because the Administration cannot cure the fatal errors. The Applicant is therefore deprived of her right as a staff member to have her complaint of retaliation handled appropriately and is compensated with USD5000 for the procedural irregularities. The Applicant is further compensated with USD5000 for the harm caused by the unlawful decision.

Decision Contested or Judgment/Order Appealed

Administration's decision that no retaliation was established with respect to the Applicant's complaint of retaliation.

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 preliminary review of a complaint of retaliation carried out by the Ethics Office is quite distinct from the investigation carried out by OIOS. Whereas the Ethics Office's review is limited to the information provided by the complainant, OIOS must conduct a full investigation of all the relevant aspects of the case. Moreover, the purpose of the OIOS investigation of retaliation is to allow the Ethics Office to determine whether the Administration has proved by clear and convincing evidence that it did not engage in retaliation. In light of this very exigent test, it would at least be good practice to interview the complainant to ensure that all relevant aspects of the case were considered. Only substantial procedural irregularities can render an administrative decision unlawful. In light of this jurisprudence, the Tribunal's role is to examine whether, in this case, the established procedural irregularities impacted the outcome of the decision.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Fosse

Entity

UNEP

Case Number(s)

UNDT/NY/2021/8

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Oct 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Applicable Law

Secretary-General's bulletins

- ST/SGB/2017/2/Rev.1

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

2017-UNAT-765

2018-UNAT-876

2020-UNAT-978