

2011-UNAT-123, Messinger

UNAT Held or UNDT Pronouncements

UNAT held that UNDT correctly found that it did not have jurisdiction to conduct a de novo investigation of the Appellant's formal complaint of harassment; rather its task was to determine if there was a proper investigation into the allegations. UNAT held that UNDT awarded adequate compensation to the Appellant for the infringement of his rights with regard to the harassment complaint. UNAT held that UNDT did not make any errors of procedure in deciding upon the weight to be given to written statements tendered by the Appellant. UNAT held that it was not persuaded that UNDT made any errors of fact resulting in a manifestly unreasonable decision in concluding that the abolition of the Appellant's post was not motivated by ill-will or a calculated scheme to remove him. UNAT held that there was no reason to overturn the UNDT's findings concerning the decision to abolish the Appellant's post. With respect to the UNDT's decision concerning the Appellant's challenge to his non-selection for another post, UNAT held that UNDT did not err in its interpretation of former Staff Rule 109. 1(c), which required that preference be given to the Appellant as a staff member occupying a post due to be abolished, or in finding that the Rule was followed in the selection process for the post. UNAT held that the Appellant failed to establish any errors warranting a reversal of the judgment. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested decisions relating to the abolition of his post and his non-selection for another post. UNDT rejected his application as it pertained to the decisions, but found that his harassment complaint had not been properly investigated and awarded him compensation.

Legal Principle(s)

UNDT has no jurisdiction to investigate de novo a complaint of harassment. UNDT has a broad discretion to determine the admissibility of evidence and the weight to be attached thereto. It is not sufficient for an appellant to state that he or she disagrees with the findings of fact or to repeat the arguments submitted before UNDT; an appellant must identify the apparent error of fact in the judgment and the basis for contending that an error was made. Some degree of deference must be given to the factual findings of UNDT as the court of first instance, particularly where oral evidence is heard.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Messinger

Entity

UNICEF

Case Number(s)

2010-120

Tribunal

UNAT

Registry

New York

Date of Judgement

11 Mar 2011

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Compensation

Loss of chance

Staff selection (non-selection/non-promotion)

Selection decision

Applicable Law

Administrative Instructions

Former Staff Rules

- Rule 109.1(c)

UNAT Statute

- Article 2.1

UNDT RoP

- Article 18.1

UNDT Statute

Related Judgments and Orders

UNDT/2010/116

2011-UNAT-110

