

2012-UNAT-209, Applicant

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General against the judgment on the merits (UNDT/2011/054) and two further appeals by both the Secretary-General and the Applicant of the judgment on compensation (UNDT/2011/131). Relying on its previous holding in Bertucci (2011/UNAT/114), UNAT held that UNDT erred in finding that the Administration violated the Applicant's due process rights, as no actual prejudice was found. UNAT held that the established facts, as admitted by the Applicant, clearly demonstrated that he engaged in the sexual harassment of local employees and used his position of authority to do so. UNAT held that the imposed sanction was proportionate, given the gravity of the offences. UNAT granted the Secretary-General's appeal and vacated the UNDT judgment on the merits, rendering moot the appeals against the judgment on compensation.

Decision Contested or Judgment/Order Appealed

The Applicant challenged his summary dismissal for misconduct in the form of sexual harassment. UNDT found that the summary dismissal was unlawful because it breached the rules and procedures for disciplinary investigations as well as the general requirements of due process.

Legal Principle(s)

There are no legal grounds that can justify an award of compensation when no actual prejudice is found. In reviewing a disciplinary case, UNAT has to examine the following: (1) whether the facts on which the disciplinary measure was based have been established; (2) whether the established facts legally amount to misconduct under the Regulations and Rules; and (3) whether the disciplinary measure applied is proportionate to the offence.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNHCR

Case Number(s)

2011-215

2011-250

2011-253

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Mar 2012

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Sexual harassment

Termination (of appointment)

Summary dismissal

Applicable Law

Administrative Instructions

Former Staff Rules

- Rule 110.4

Related Judgments and Orders

UNDT/2011/054

2011-UNAT-114

2010-UNAT-084

2010-UNAT-018