

2012-UNAT-270, Marshall

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General and a cross-appeal by Mr Marshall. Regarding the Secretary-General's appeal, UNAT held that any reasonable or logical reading of Staff Regulation 1.2 mandated the Organisation to investigate when the Complainant, in her letter of 15 August 2005, called Mr Marshall's conduct into question. UNAT held that UNDT had erred in law and fact in determining otherwise. UNAT held that there was no basis in law or fact for the pronouncements made by UNDT in paragraphs 112-113 of its judgment. UNAT held that UNDT had applied an unduly restrictive interpretation to former Staff Rule 101.2(d). UNAT agreed with UNDT, regarding the report duly produced by the Ad hoc Panel, that the reliance by the Panel on what was "plausible" or on what someone "strongly believed" and the Panel's ultimate assessment that "the allegation might well be founded" did not satisfy the requirements of ST/AI/371. UNAT held that the failure of the Ad hoc Panel to adhere to the standards, required by ST/AI/371, called into question all steps taken by the Organisation post 30 September 2005, included the decision taken by Management in October 2005 to forward the report for further action and the decision taken in August 2006 to charge Mr Marshall with verbally and physically assaulting the Complainant and with acting in a manner unbecoming of his status as an international civil servant. UNAT held that UNDT had erred in awarding compensation of such a magnitude. UNAT held that the decision to award compensation was based, in large part, on the UNDT's erroneous finding that the Organisation was not entitled to investigate allegations of misconduct in this case, and that the Organisation's role ought to have been limited to being the conduit through which Mr Marshall and the Complainant's disputes could have been directed "to the relevant authorities, namely a family court". UNAT reduced the amount to be paid as compensation to four months' net base salary. UNAT held that, having regard to the findings of UNDT as to the shortcomings of the Ad hoc Panel, Mr Marshall was entitled to receive the difference in pay (i. e., the SPA) from 19 October 2005. UNAT held that there was no error on the part of UNDT in determining that the cautionary language contained in the Office of Human Resources Management's (OHRM) letter of 19 December 2006 to Mr Marshall constituted a "disciplinary sanction by stealth" and that Mr Marshall was entitled to the excision of the cautionary language from the memorandum in question. Regarding Mr Marshall's cross-appeal, UNAT held that the "do not hire" status did not appear on any of the selection exercises carried out in respect of the other ten posts for which Mr Marshall applied. UNAT held that UNDT did not act in a manifestly unreasonable manner in determining that no direct link was established between the allegations against Mr Marshall and the failure to select him for the posts in question. UNAT rejected the request for costs against the Secretary-General since no abuse of process had been established. UNAT upheld the Secretary-General's appeal partially. UNAT substituted the compensation awarded by UNDT to the lesser award of four months' net base salary, together with payment of a SPA from 19 October 2005 to the applicable date in December 2005. UNAT dismissed Mr Marshall's cross-appeal.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions: 1) to initiate a preliminary investigation against him for misconduct; and 2) to put a cautionary note on his personnel record. UNDT found that the disciplinary process carried out against the Applicant was non-compliant with the requirements of due process and that, therefore, the Organisation abused its authority. UNDT found that these processes had caused damage to the Applicant's professional and social reputation, especially when adverse material was publicly disseminated regarding personal information and criminal allegations against him, as well as moral damage and extreme stress as a result of the Organisation's mishandling of his case and the international custody battle he had to face. UNDT found that the Applicant's removal from his job did not comply with the requirements established within the Organisation. UNDT ordered the rescission and nullification of the cautionary note, the removal of the said note from the

personnel record, and awarded compensation.

Legal Principle(s)

Misconduct does not require a nexus between the alleged misconduct and the workplace. Not every violation of an employee's due process entitlements will result in an award of compensation.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Marshall

Entity

UNMEE

Case Number(s)

2012-296

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Disciplinary matters / misconduct

Disciplinary measure or sanction

Investigation

Due process

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 101.2(d)

Staff Regulations

- Regulation 1.2

Related Judgments and Orders

UNDT/2011/205