

2013-UNAT-302, Applicant

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the weight of the evidence, in that case, justified the decision taken by UNICEF. UNAT held, while acknowledging the importance of confrontation and cross-examination of witnesses, that due process did not always require that a staff member defending himself against disciplinary action for summary dismissal had the right to confront and cross-examine his/her accusers. Under certain circumstances, denial of this right did not necessarily fatally flaw the entire process, so long as it was established to UNAT's satisfaction that the accused was afforded fair and legitimate opportunities to defend his/her position. In the instant case, UNAT was satisfied that the key elements of the staff member's rights of due process were met: he was fully informed of the charges against him and the identity of his accusers and their testimony. UNAT held that the staff member was able to mount a defence and to call into question the veracity of their statements. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT Judgment: The Applicant contested the decision to summarily dismiss him based on allegations of sexual harassment. UNDT concluded that the sanction of summary dismissal was based on unsubstantiated charges and that the Applicant's due process rights were violated when he could not cross-examine the complainants, who did not appear at the hearing before UNDT.

Legal Principle(s)

Due process does not always require that a staff member defending himself against disciplinary action for summary dismissal has the right to confront and cross-examine his/her accusers.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNICEF

Case Number(s)

2012-334

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Mar 2013

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Sexual harassment

Due process

Right to confront complainant

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

Staff Regulations

- Regulation 1.2(b)
- Regulation 10.2

Related Judgments and Orders

UNDT/2012/054

2010-UNAT-081

2011-UNAT-164

2010-UNAT-087

2010-UNAT-018

2010-UNAT-084

2010-UNAT-098

2011-UNAT-123