

2014-UNAT-409, Nogueira

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that, since the incidents in question occurred before ST/SGB/2008/5 was promulgated, it was not applicable in this case. UNAT held that it was unnecessary for UNDT to apply ST/SGB/2008/5, which was clearly not in force at the time of the incidents. UNAT held that the error committed by UNDT had not resulted in a miscarriage of justice, finding that Mr Nogueira in any event merited a compensatory award for harassment. UNAT held that Mr Nogueira was entitled to an effective remedy for the violation of his legal right to a workplace free of harassment. UNAT held that UNDT was vested with the discretion to determine the remedy it deemed appropriate to rectify the wrong suffered by Mr Nogueira. Taking into account that Mr Nogueira ceased to be a staff member of UNEP in 2008, UNAT held that UNDT had correctly decided that the only effective remedy that could be awarded was monetary compensation. UNAT held that there was no reason to differ from UNDT's determination in awarding the sum of USD 25,000, which was well within its discretion. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision which recognised that his superior had violated UN rules but did not address his professional and personal losses resulting from the abuse and harassment perpetrated by his superior and from the final loss of his job. The Applicant contested the lethargy with which the Administration responded to his complaints, the procedures employed by the Administration which lacked "transparency", and were ad hoc in manner, the lack of adherence to procedural guidance of the statutory framework (in particular administrative instructions), the lack of restraint on abuse and harassment, and finally the loss of his job due to mismanagement of his case. UNDT found that the Administration's response was inadequate and inappropriate considering the Investigation Panel's conclusion that the Applicant had been subjected to harassment. UNDT found that the Administration had not sufficiently remedied the wrongs suffered by the Applicant and thus the relief granted was not adequate. UNDT concluded that the only effective and viable remedy that could be awarded was monetary compensation, given that the Applicant had been separated from service. UNDT awarded USD 25,000 as compensation for the violation of the Applicant's right to be free from harassment at the workplace.

Legal Principle(s)

There is a general principle of law against retrospective effect/application of laws.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nogueira

Entity

SCBD

Case Number(s)

2013-459

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Disciplinary matters / misconduct

Harassment (non-sexual)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2013/026

2011-UNAT-141

2011-UNAT-143

2012-UNAT-272

2013-UNAT-309