

# **2014-UNAT-415, Santos**

## **UNAT Held or UNDT Pronouncements**

UNAT considered an appeal by the Secretary-General. As a preliminary matter, UNAT rejected the request for an oral hearing finding there was no need for further clarification. UNAT held that the reliance of the Administration on disciplinary/administrative measures to deny the staff member's conversion to permanent appointment did not give UNDT a carte blanche to go behind the agreed sanctions imposed on 20 April 2009. UNAT held that it was not within UNDT's competence or jurisdiction to embark on an inquiry into whether the 2009 disciplinary sanctions were lawfully imposed or otherwise excessive or disproportionate. UNAT held that UNDT, in reopening the referred to disciplinary matter and purporting to make findings of fact in respect thereof, exceeded its competence. UNAT held that the scope of judicial review to be undertaken by UNDT was to ascertain, against established legal norms, whether the Secretary-General's refusal to grant the staff member a permanent appointment because of a prior disciplinary issue met the test of procedural fairness and to inquire whether the decision was free from arbitrariness, capriciousness, or discriminatory conduct. UNAT held that the Administration, in considering the staff member's suitability for a permanent position, was entitled to take into account the fact that misconduct was recorded in his official status file and that that this misconduct merited a series of sanctions by way of a disciplinary measure. UNAT held that the Administration had not exercised its discretion unfairly or capriciously in considering the consequences of the recorded misconduct and the proximity of that misconduct and the disciplinary measures imposed to the staff member's application for conversion to a permanent appointment. UNAT held that UNDT had erred in law in holding that the Administration had a duty to inform the staff member of the consequences of agreeing to a disciplinary sanction. UNAT upheld the appeal and vacated the UNDT judgment.

## **Decision Contested or Judgment/Order Appealed**

UNDT Judgment: The Applicant contested the decision not to grant him permanent appointment. UNDT found that in 2008, the Office of Human Resources Management (OHRM) had mischaracterized the Applicant's offence as sexual harassment rather than harassment in the previous disciplinary proceedings and had improperly relied on this mischaracterization to deny him the conversion to a permanent appointment. UNDT found that there was a breach of the Administration's duty to fully inform the Applicant, when he was induced into agreeing the disciplinary measures in that they did not mention the important adverse consequence that it would affect his prospect of being granted a permanent appointment. UNDT ordered the rescission of the decision to deny the Applicant a permanent appointment and that any consequential loss in salary or other benefits, if any, be made good by the Secretary-General. UNDT ordered non-pecuniary damages in the amount of USD 10,000 for the distress suffered.

## Legal Principle(s)

The mere existence of administrative/disciplinary sanctions on a staff member's official status file is not a charter for the Administration to refuse conversion, as the decision not to grant a permanent appointment is always subject to judicial review in cases where procedural or substantive unfairness is alleged by a staff member. It is recognized by the jurisprudence of UNAT that the Secretary-General has broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of UNDT or UNAT to substitute its own decision with that of the Secretary-General regarding the outcome of a selection or, by analogy, a conversion process.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Santos

## Entity

DGACM

## Case Number(s)

2013-466

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

2 Apr 2014

## President Judge

Judge Faherty

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Permanent appointment

Disciplinary matters / misconduct

Disciplinary measure or sanction

Standard of review (judicial)

Judicial review (general)

## Applicable Law

### Former Staff Rules

- Rule 111.4(b)

### GA Resolutions

- A/RES/51/226

### Secretary-General's bulletins

- ST/SGB/2009/10

### Staff Regulations

- Regulation 4.13
- Regulation 4.5

### Staff Rules

- Rule 110.4(b)(i)

### UNAT Statute

- Article 2.5
- Article 8.3

### UNDT Statute

- Article 8.1(d)(ii)

## Related Judgments and Orders

UNDT/2013/038

2010-UNAT-084

2012-UNAT-216

2012-UNAT-265

2013-UNAT-357

2013-UNAT-340

2012-UNAT-242

2011-UNAT-110

2013-UNAT-368