

2014-UNAT-417, Luvai

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that no reasonable or objective analysis of Mr Luvai's submissions to management, prior to his application to UNDT, regarding his non-selection for the posts could lead to a conclusion that the revocation of his firearm licence was sufficiently linked to the non-selection decisions such as to deem the matter as receivable by UNDT. UNAT held that UNDT had erred in fact and law in deciding otherwise and that, in purporting to adjudicate on the revocation of Mr Luvai's firearm licence, UNDT exceeded its competence. UNAT held that UNDT did not have statutory authority to receive the issue of the firearm permit revocation, it similarly lacked jurisdiction to make any determination on its restoration. UNAT held that UNDT erred manifestly in concluding that Mr Luvai's non-selection was unlawful and that Mr Luvai was unfairly treated at the interview stage, in circumstances where the interview panel recommended him as one of eleven candidates to be considered for selection notwithstanding that he had not passed a UN firearms qualification course. UNAT held that UNDT erred in concluding that the decision to suspend Mr Luvai's Lotus Notes e-mail account was unlawful. UNAT held that the staff might initiate in the future a request to his employer for the restoration of his e-mail access and, depending on the management response thereto, it remained open to him to request management evaluation of the response and indeed to challenge any negative decision by application to the UNDT. UNAT held that UNDT's assessment and conclusions regarding the staff member's harassment complaints went far beyond the permitted judicial review of such complaints as laid down in the UNDT Statute and clarified in the Messinger jurisprudence (judgment No. 2011-UNAT-123). UNAT rejected the Secretary-General's request for confidentiality and redaction regarding the naming the Chief of Security, Deputy Chief of Security, and the Human Resources Officer. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decisions to revoke his license to bear an official firearm, to suspend his access to his Lotus Notes and not to select him for the post of Security Lieutenant. In judgment No. UNDT/2013/035, UNDT held that the Applicant's claim against the 2006 decision to revoke his licence to bear an official firearm was receivable, as it was interlinked with the selection process and did not stand alone. UNDT noted that the Management Evaluation Unit (MEU) had dealt with the firearm qualification issue as part of the Applicant's submissions on his non-selection decision. On the merits, UNDT found that the Applicant's candidacy for the Security Lieutenant posts had not been fairly and fully considered, that he was a victim of harassment in the workplace, that the Chief of United Nations Office at Nairobi's Department of Safety and Security (UNON/DSS) had abused and exceeded his authority by revoking the Applicant's firearm licence without providing reasons for his decision and by not restoring his access to Lotus Notes after the investigations had been completed and no further action had been taken on the matter. UNDT found that the Chief of UNON/DSS, the Assistant Chief of Security UNON and the Human Resources Officer, UNON, had abused their authority by usurping the powers of the Medical Director and declaring the Applicant mentally unstable. UNDT ordered that the Applicant's licence to bear a firearm be reinstated, that his access to Lotus Notes be restored and that he be awarded compensation for the violation of his right to full and fair consideration in the selection process and for being subjected to harassment and abuse of authority.

Legal Principle(s)

The specific nature of judicial review reserved to UNDT, under its Statute regarding management and disciplinary measures, includes the power to review how management has responded or not responded, as the case may be, to a complaint of harassment or abuse of power. On appeal, it falls to UNAT to review the conduct of UNDT's judicial review. Thus, in harassment and abuse of authority cases, between ST/SGB/2008/5 and the jurisdiction which is vested in both Tribunals, there is a continuum of substantial and procedural protection for both complainants and alleged offenders which must be respected.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Luvai

Entity

UNON

Case Number(s)

2013-469

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Harassment (non-sexual)
Jurisdiction / receivability (UNDT or first instance)
Manifest excess of jurisdiction
Staff selection (non-selection/non-promotion)
Full and fair consideration
Standard of review (judicial)
Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 111

Secretary-General's bulletins

- ST/SGB/2000/15
- ST/SGB/2008/5

Related Judgments and Orders

UNDT/2013/035
2011-UNAT-122
2012-UNAT-200
2011-UNAT-123
2010-UNAT-070
2011-UNAT-110
2010-UNAT-014
UNDT/2009/074
2011-UNAT-108
2010-UNAT-049