

2014-UNAT-443, Hunt-Matthes

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT noted that it was not disputed that the evidence given by Mr Verwey (a witness called by the staff member) regarding the alleged falsification of allegations of breach of confidentiality by the staff member's former supervisor and the former Deputy Inspector-General, was not disclosed in Mr Verwey's summary of evidence. UNAT held that UNDT erred in not attaching any importance to this omission. UNAT held that the summary that was provided was vastly different from the oral evidence given by Mr Verwey. UNAT held that the Secretary-General's representative was entitled to expect that Mr Verwey's sworn testimony would accord with the previously provided summary of his evidence. Noting that at the hearing the Secretary-General did not challenge either the staff member or Mr Verwey on their evidence about retaliation, UNAT held that the Secretary-General should have done so and should also have objected to Mr Verwey's evidence as soon as it became clear that he was departing from the summary which had been previously provided. UNAT held that the fault rested with the staff member for calling a witness who gave evidence that had not previously been disclosed to the Secretary-General and which was not only potentially damaging to the Secretary-General's case, but also damaging to the reputation of the former supervisor and the former Deputy Inspector-General. UNAT held that the interests of justice demanded that the Secretary-General be given the opportunity to answer Mr Verwey's previously undisclosed accusations by calling a witness in rebuttal. UNAT held that UNDT improperly exercised its discretion by giving the timetable of the case priority over the fair trial rights of the Secretary-General and by refusing to consider the written statement of the former supervisor, resulting in the Secretary-General being left with no way to answer an important part of the case against him. UNAT held that UNDT's refusal of the Secretary-General's motion to call a witness was a clear violation of due process. UNAT upheld the appeal in part, vacated the UNDT judgment, and remanded the case to UNDT for a hearing *de novo* before a different judge.

Accountability referral: The Dispute Tribunal referred three UNHCR offices (Executive Office, Department of Human Resources Management and Legal Affairs Unit) to the Secretary-General for accountability. The UNAT found it unnecessary to examine that part of the appeal. The UNAT set aside the accountability referral.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision not to renew her fixed-term appointment. UNDT held that the decision not to renew the Applicant's appointment was unlawful and that there had been a failure to comply with the performance management process. UNDT held that the preparation of the performance appraisal was retaliatory. UNDT awarded the Applicant one year's salary and benefits, USD 50,000 for moral damages and costs of GBP 6,074. 50 for manifest abuse of proceedings by Counsel for the Secretary-General. UNDT also referred three UNHCR offices to the Secretary-General for accountability.

Legal Principle(s)

UNDT has the discretion to issue any order or give any direction appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Hunt-Matthes

Entity

UNHCR

Case Number(s)

2013-510

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Jun 2014

President Judge

Judge Lussick

Judge Simón

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Retaliation

Due process

Right to comment/respond

Evidence

Admissibility

Referral for accountability

Applicable Law

UNDT RoP

- Article 19

Related Judgments and Orders

UNDT/2013/084