

2016-UNAT-647, Nielsen

UNAT Held or UNDT Pronouncements

UNAT rejected the request for an oral hearing, finding that it was not necessary or would assist in the expeditious and fair disposal of the case. UNAT held that the staff member's motion to remove immunity from certain staff members, should her appeal fail, was entirely misconceived, as such a request was entirely outside of the mandate of UNAT. UNAT dismissed the appeal against UNDT Order No. 133 (GVA/2015), finding that the Appellant had failed to present compelling grounds that UNDT had exceeded its jurisdiction in restricting its judicial review to a paper-only assessment and not embarking on an oral hearing. Regarding the appeal of judgment No. UNDT/2015/060, UNAT held that UNDT had failed to refer to the "Closure Note", which apparently recorded the investigation and conclusions reached by OAS during its preliminary review about the complaints against Mrs. X. UNAT further held that UNDT had failed to require disclosure of the written record of the investigation as offered by the Respondent. UNAT held that UNDT had erred in assessing the receivability only, when it should have judicially reviewed the decision of OAS which was the body mandated under the 2013 UNFPA Policy to conduct such an assessment, particularly in circumstances where there was a written record capable of being disclosed to UNDT. UNAT held that besides the procedural deficiency identified by UNAT in relation to the failure of UNDT to procure the written record of OAS' preliminary review of the Appellant's complaint against Mrs X., none of the arguments put forward by the Appellant satisfied the requirements of Article 2. 1 of the UNAT Statute. UNAT rejected to remove the anonymity which UNDT saw fit to give the two staff members who were the subject of judgment No. UNDT/2015/060. UNAT further held that the appeal raised a myriad of other matters which did not have any bearing on judgment No. UNDT/2015/060. UNAT upheld the appeal in part and vacated the UNDT judgment insofar as it rejected the Appellant's application relating to Mrs X. and remanded to UNDT for reconsideration. UNAT affirmed the remainder of the judgment.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application to contest UNFPA's inaction on her complaints of misconduct against Mrs. X entailing harassment and undermining her, as well as against Mr. Y. The Applicant later filed a motion requesting UNDT to hear the witness of Mrs. X. The Applicant reiterated the request in a new motion filed. By a new motion, the Applicant submitted a list of additional questions for Mrs. X to answer. In Order No. 133 (GVA/2015), UNDT informed the parties that the case would be decided on papers, without further hearings or submissions. UNDT rendered its judgment on the merits, finding that the Applicant's challenge to the Office of Audit and Investigations Services' (OAIS) decision vis-à-vis Mr Y. was not receivable since no complaint was ever received by OAIS with respect to Mr Y. and thus, no contestable administrative decision was taken in this regard. Regarding the merits of the Applicant's challenge to OAIS' decision vis-à-vis Mrs X., UNDT found that her complaint with OAIS had been filed more than six months after the date of the last incident of harassment of which she complained, and thus did not respect the time limit set forth in section 9. 3. 1 of UNFPA's Policy on Harassment, Sexual Harassment and Abuse of Authority (2013 UNFPA Policy). UNDT concluded that the Applicant's complaints were not receivable by OAIS and that OAIS' refusal to investigate these complaints did not breach any of the Applicant's rights. Accordingly, UNDT rejected the application. The Applicant filed an appeal against the UNDT judgment and Order No. 133 (GVA/2015).

Legal Principle(s)

Pursuant to Article 16. 1 of the UNDT RoP, it is for the judge hearing the case to decide whether an oral hearing is to be held. UNAT has consistently afforded UNDT wide discretion in matters of case management and UNAT will not lightly interfere in such matters.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Nielsen

Entity

UNFPA

Case Number(s)

2015-735

Tribunal

UNAT

Registry

New York

Date of Judgement

24 Mar 2016

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Harassment (non-sexual)

Procedure (first instance and UNAT)

Oral hearings

Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1

UNDT RoP

- Article 16.1

UNDT Statute

- Article 11.1

Related Judgments and Orders

UNDT/2015/060

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