

2016-UNAT-648, 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. With regards to the motion to extend the Appellant's rights as a staff member, UNAT held that there were no exceptional circumstances that would warrant the granting of the motion and the motion configured an attempt to supplement arguments already made in the appeal submissions. With regards to the motion to have UNAT remove immunity from certain staff members should her appeal fail, UNAT held that the motion was entirely misconceived, as such a request was entirely outside of the UNAT mandate. 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 against judgment No. UNDT/2015/061, UNAT held that UNDT had failed to refer to the internal document "Closure Note", which apparently recorded the investigation and conclusions reached by OAIS during its preliminary review about the complaints against Mrs C. UNAT was not satisfied that the conclusions reached by UNDT had a proper legal basis in the absence of the aforesaid documentary record. UNAT rejected to remove the anonymity which UNDT saw fit to give Ms C. UNAT further held that the appeal raised a myriad of other matters which did not have any bearing on UNDT judgment, No. UNDT/2015/061. UNAT allowed the appeal and remanded the case to UNDT for reconsideration.

Decision Contested or Judgment/Order Appealed

The Applicant contested UNFPA's inaction on her complaints of misconduct against Mrs C. By way of 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 merits, finding that the Applicant's complaint of 22 August 2014 to the Office of Internal Oversight Services (OAIS) was sent almost seven

months after she had transferred teams, such that she no longer worked with Ms C., and more than 11 months after she had been placed on Special Leave with Full Pay (SLWFP). UNDT found that her complaint with OAS was 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 out in section 9. 3. 1 of UNFPA's Policy on Harassment, Sexual Harassment, and Abuse of Authority (2013 UNFPA Policy). UNDT dismissed the application. The Applicant filed an appeal against the UNDT judgment and order No. 133 (GVA/2015). The Applicant later filed a motion to request UNAT to extend her rights as a staff member or to admit that they were extended by the Executive Director, UNFPA. The Applicant further filed a motion requesting UNAT, should it reject her case, to "at least remove the immunity from the involved staff members", so that she may bring her discrimination and harassment complaints against the concerned staff members in the Danish courts.

Legal Principle(s)

UNAT has consistently afforded UNDT wide discretion in matters of case management and will not lightly interfere in such matters.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nielsen

Entity

UNFPA

Case Number(s)

2015-736

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/2015/061

2015-UNAT-546