

2017-UNAT-718, Bagot

UNAT Held or UNDT Pronouncements

UNAT considered the appeal of Mr Bagot and the cross-appeal of the Commissioner-General. UNAT held that the Commissioner-General's cross-appeal was receivable. UNAT agreed with the findings of UNRWA DT that the established facts regarding the lunch and the events that took place in the apartment did not amount to misconduct. UNAT held that the only reasonable conclusion available to the first instance Judge was that the facts of the alleged misconduct were not established by clear and convincing evidence, in light of the plot and the sequence of the events, assessed in conjunction with the fact that Mr Bagot and the alleged victim had a friendly relationship, that he invited her to his apartment after lunch, that she accepted the invitation and they drank several cocktails and finally engaged in a personal conversation and that there was physical contact to which the alleged victim did not object at the beginning and which he immediately ceased when asked to do so. UNAT held that UNRWA DT correctly concluded that Mr Bagot's behaviour surrounding the lunch, aside from not being work-related, could not reasonably be considered unwelcome. Considering the events which followed, UNAT held that an analysis of the totality of circumstances did not reveal in a clear and unambiguous way that Mr Bagot had constructive knowledge of the unwelcome nature of his actions. UNAT held that the facts did not constitute clear and convincing evidence of misconduct. UNAT held that UNRWA DT erred in law and fact by not deciding in accordance with the principle of presumption of innocence and the applicable burden of proof. UNAT held that there was no clear and convincing evidence that Mr. Bagot's conduct as established constituted sexual harassment. UNAT held that UNRWA DT erred in law and fact in determining that Mr Bagot's conduct constituted sexual harassment. UNAT held that the conditions for harassment and abuse of authority were not satisfied. UNAT allowed the appeal in part. UNAT reversed the UNRWA DT judgment to the extent that it found that the termination of Mr Bagot's appointment was lawful. UNAT ordered Mr Bagot's reinstatement, or compensation in lieu of rescission of the separation dismissed the Commissioner-General's cross-appeal and ordered a copy of the judgment to be placed in Mr Bagot's personnel file

within two weeks of the issuance of the judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested his termination for misconduct, having been charged with sexual harassment, harassment, and abuse of authority. UNRWA DT upheld the termination decision.

Legal Principle(s)

There is no statutory provision that prevents a prevailing party from filing a so-called “conditional cross-appeal”, whose fate depends entirely on the initial appeal, meaning that if the initial appeal is denied, so too is the cross-appeal. In a system of administration of justice governed by law, the presumption of innocence must be respected. Pursuant to GSC No. 06/2010, for the behaviour of a staff member to be punishable as constituting the disciplinary offence of sexual harassment or harassment, it is not enough to be found “inappropriate”; no conduct automatically rises to the level of sexual harassment merely on the basis of its sexual overtones and lack of “appropriateness” or to the level of harassment on foot of its “inappropriate” character and this is true no matter how reprehensible one finds that conduct to be unless it involves the elements articulated in the relevant rules and jurisprudence.

Outcome

Appeal granted in part

Outcome Extra Text

Reinstatement or financial compensation; Reinstatement or financial compensation

Full judgment

[Full judgment](#)

Applicants/Appellants

Bagot

Entity

UNRWA

Case Number(s)

2016-953

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

President Judge

Judge Raikos

Language of Judgment

Arabic

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary

Disciplinary matters / misconduct

Disciplinary measure or sanction

Harassment (non-sexual)

Sexual harassment

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNRWA GSC No.06/2010

UNAT RoP

- Article 9

UNRWA International Staff Regulations

- Regulation 10.2

UNRWA International Staff Rules