

2018-UNAT-819, Mbaigolmem

UNAT Held or UNDT Pronouncements

UNAT held that the undisputed facts, the evidence of a credible report, coherent hearsay evidence pointing to a pattern of behaviour, the consistency of the witness statements, the unsatisfactory statement of the staff member, and the inherent probabilities of the situation, taken cumulatively, constituted a clear and convincing concatenation of evidence establishing, with a high degree of probability, that the alleged misconduct in fact occurred. UNAT noted that the Organisation is entitled to and obliged to pursue a severe approach to sexual harassment and that the message, therefore, needs to be sent out clearly that staff members who sexually harass their colleagues should expect to lose their employment. Accordingly, UNAT concluded that the sanction imposed by the Administration, in this case, was proportionate and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The staff member contested the decision to separate him from service. The decision was based on the finding that he had engaged in sexual harassment, specifically, by making unwelcome sexual advances towards a colleague. UNDT held that the Administration had failed to discharge its onus to prove by clear and convincing evidence that the staff member had committed misconduct in the form of sexual harassment. By way of remedy, UNDT ordered rescission of the disciplinary measure and remanded the matter to the Administration to resume the disciplinary procedure and obtain additional evidence. As an alternative, UNDT ordered in-lieu compensation in the amount of six months' emoluments.

Legal Principle(s)

The appeal in a disciplinary case requires consideration of whether the facts on which the sanction is based have been established, whether the established facts

qualify as misconduct, and whether the sanction is proportionate to the offense. A de novo hearing into findings on misconduct might not always be necessary. Much will depend on the available evidence and the circumstances of the case.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Mbaigolmem

Entity

UNHCR

Case Number(s)

2017-1108

Tribunal

UNAT

Registry

New York

Date of Judgement

22 Mar 2018

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Sexual harassment

Investigation

Standard of proof

Disciplinary cases

Applicable Law

UNDT RoP

- Article 16.2

UNDT Statute

- Article 10.4
- Article 10.5
- Article 2.1(d)

Related Judgments and Orders

UNDT/2017/051