

2018-UNAT-868, Sarwar

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT erred in reopening a matter that had already been the subject of a final judgment of UNAT. UNAT considered that UNDT exceeded its competence and erred in law by making its own determination of Mr Sarwar's harassment complaint, emphasising that the role of the Tribunal is not to substitute its own decision for that of the Administration. UNAT held that UNDT erred when it rescinded the contested decision to close the matter underlying the Appellant's formal complaint, and when it ruled that there was no need for a new investigation as the Appellant was found to be the victim of harassment and abuse of authority. UNAT held that UNDT erred by finding that there had been unlawful procedural delays with respect to reviewing Mr Sarwar's harassment complaint and that the Investigation Panel had made a commitment to hold a second interview with Mr Sarwar, and that such delay and the decision not to hold a second interview did not amount to a breach of ST/SGB/2008/5. On the issue of compensation, UNAT held that UNDT erred in law and exceeded its jurisdiction when awarded the Appellant moral damages, given that there was no causal link between the moral harm alleged and the medical evidence presented. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to reject his formal complaint of harassment and abuse of authority against the First and Second Reporting Officers (FRO and SRO). UNDT held that the Investigation Panel incorrectly found that there had been no harassment or abuse of authority within the meaning of ST/SGB/2008/5. UNDT found that there had been procedural irregularities. UNDT rescinded the contested decision to close the matter underlying the Applicant's formal complaint and held that there was no need for a new investigation as the Applicant was found to be the victim of harassment and abuse. UNDT awarded moral damages.

Legal Principle(s)

UNDT exceeds its jurisdiction when it reopens a matter that has already been the subject of a final judgment of UNAT. It is not the role of UNDT to substitute its own decision for that of the Administration. UNDT does not have the jurisdiction to conduct a de novo investigation into a harassment complaint and to substitute its own decision for that of the Secretary-General.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Sarwar

Entity

DESA

Case Number(s)

2018-1160

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Harassment (non-sexual)

Performance management

Performance evaluation

Termination (of appointment)

Unsatisfactory service

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNAT Statute

- Article 9(b)

Related Judgments and Orders

2017-UNAT-787

2017-UNAT-742

2016-UNAT-660

2010-UNAT-084

2017-UNAT-757