

# **2018-UNAT-873, Belkhabbaz (formerly Oummih)**

## **UNAT Held or UNDT Pronouncements**

UNDT's findings that the former supervisor may have retaliated against the staff member for her work-related conduct and for seeking recourse in the internal justice system and that he used his position of authority to improperly influence her work conditions are supported by the available evidence. UNAT found that the former supervisor had evicted the staff member from her functions preventing her from carrying out her duties and intended to humiliate and embarrass her by unjustifiably copying uninterested persons in personal and confidential communications concerning her performance. The former supervisor adopted an aggressive and abrasive tone, made demeaning remarks in his communications to the staff member, and thereby created a hostile and offensive work environment. Such actions constituted possible misconduct or harassment as defined in ST/SGB/2008/5. For these reasons, the contested decision to take no further action into the staff member's complaint against her former supervisor was irrational and not one that a reasonable decision-maker could reach. UNAT concluded that the rescission of the contested decision by UNDT was therefore correct and within its remedial powers under Article 10(5) of the UNDT Statute. As for the contention that the investigation panel was improperly constituted, UNAT noted that Section 5. 14 of ST/SGB/2008/5 does not introduce a mandatory condition that the panel be constituted by individuals from the department, office, or mission and only exceptionally from the OHRM roster, but merely professes a preference. UNAT held that non-compliance with that preference will not lead to the nullity of any appointment from the roster provided that the selection is not unreasonable. UNAT further held that UNDT's order directing the ASG/OHRM to "institute" disciplinary proceedings impinges upon the discretion of the ASG/OHRM. UNAT modified the order of UNDT to direct the ASG/OHRM to act in terms of Section 5. 18(c) of ST/SGB/2008/5. UNAT further found that the medical evidence convincingly established that the staff member suffered psychological harm from the alleged harassment and the manner of the

investigation of her complaints. Nonetheless, UNAT noted that the staff member had contributed to several months of delay and that she did not lose an opportunity to have her complaint properly investigated. Therefore, UNAT reduced UNDT's award of moral damages to USD 10,000.

## Decision Contested or Judgment/Order Appealed

The staff member filed a complaint against her former supervisor and former colleague, pursuant to ST/SGB/2008/5. The complaint alleged improper deprivation of functions, discrimination, and abuse of authority, retaliation through performance appraisals, defamation, and preferential treatment of another staff member. The complaint was investigated by two separate fact-finding panels resulting ultimately in the decision of the ASG/OHRM that no prohibited conduct took place and a decision to close the matter without further action. The staff member contested the decision to take no further action on her complaint. UNDT concluded that the contested decision was unjustifiable and unlawful. Its conclusion was based on various findings of procedural unfairness and unreasonableness. UNDT rescinded the contested decision to take no further action and remanded the case to the ASG/OHRM to institute disciplinary procedures against the staff member's former supervisor. It also ordered that the staff member be paid moral damages in the amount of USD 20,000 for the psychological harm she suffered as supported by medical evidence, as well as compensation in the amount of USD 10,000 for the harm of a loss of opportunity to have her complaint fully and properly investigated, as a result of the impossibility to conduct a third investigation after the first two had been vitiated as irregular.

## Legal Principle(s)

A Tribunal's order directing the Assistant Secretary-General of the Office of Human Resources Management (ASG/OHRM) to "institute" disciplinary proceedings impinges upon the discretion of the ASG/OHRM. The appropriate order is one directing the ASG/OHRM to act in terms of section 5.18(c) of ST/SGB/2008/5.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Belkhabbaz (formerly Oummih)

## Entity

OAJ

## Case Number(s)

2018-1165

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

26 Oct 2018

## President Judge

Judge Murphy

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Harassment (non-sexual)

Retaliation

Investigation

Fact-finding investigation

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 10.5(b)

## Related Judgments and Orders

UNDT/2018/016

2015-UNAT-534

2010-UNAT-084

2015-UNAT-537

2018-UNAT-862

2014-UNAT-408

2013-UNAT-364

2014-UNAT-407

2011-UNAT-123

2013-UNAT-302

UNDT/2018/090

2015-UNAT-523

2018-UNAT-818