

2019-UNAT-918, Nadasan

UNAT Held or UNDT Pronouncements

On the delay before UNDT, UNAT agreed that the delay was unfortunate but held that the Applicant had not demonstrated that it was a procedural error affecting the outcome of the case. UNAT held that UNDT erred in exercising its case management discretion when it refused the request for an oral hearing, but that this error did not affect the decision of the case. UNAT held that UNDT did not err as there was clear and convincing evidence that the Applicant had committed sexual harassment. UNAT held that the disciplinary sanction of separation from service with compensation in lieu of notice and with termination indemnity was proportionate and lawful. UNAT held that as the Appellant's actions were not work-related in a strict sense, it would have been better for UNDT to have relied on Staff Regulation 1. 2(a) and 1. 2(f). UNAT held that the Secretary-General's determination that the Appellant's behaviour amounted to serious misconduct was a reasonable exercise of his discretion. UNAT held that it was a reasonable exercise of the Secretary-General's discretion to determine that the Appellant's behaviour rendered him unfit for further service with the Organisation. UNAT held that the main requirements of due process were met and that any other possible procedural irregularities during the disciplinary investigation, such as the UNDT's decision not to hold an oral hearing, were of no consequence given the kind and amount of evidence proving the misconduct, applying the no-difference principle. UNAT rejected the Appellant's claim for compensation. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose upon him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity for misconduct. UNDT found that the material facts on which the disciplinary measure was based were sufficiently established and amounted to sexual harassment, which was serious misconduct, and that the disciplinary sanction

was proportionate.

Legal Principle(s)

Only substantial procedural irregularities can render a disciplinary sanction unlawful. The no-difference principle may be applied where a lack or a deficiency in due process is no bar to a fair or reasonable administrative decision or disciplinary action should it appear that better due process would have made no difference.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nadasan

Entity

UNMIL

Case Number(s)

2018-1213

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Mar 2019

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Sexual harassment

Due process

Right to a hearing

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(f)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3
- Article 9.1(b)

UNDT RoP

- Article 16

UNDT Statute

- Article 2.1(b)

Related Judgments and Orders

UNDT/2018/095