

2021-UNAT-1076, Haidar

UNAT Held or UNDT Pronouncements

UNAT considered both appeals by the Secretary-General and by Mr Hussein Haidar. UNAT denied the request for an oral hearing. UNAT held that UNDT did not err in concluding that the facts, on which the disciplinary measure was based, had been established by clear and convincing evidence. UNAT held that UNDT correctly concluded that the established facts legally amounted to serious misconduct. UNAT held that UNDT did not commit an error in procedure such as to affect the decision of the case when considering one of the statements. UNAT found no error in UNDT's finding that the measure of separation from service without termination indemnity was not a disproportionate sanction, given that remaining in service would be "irreconcilable with core values professed by the United Nations and the gravity of the conduct". UNAT held that UNDT did not err in deciding that in the present case, the conduct of sexual harassment, in the context of workplace relation between two staff members, even of uneven position, only amounted to a violation of Staff Rule 1.2(f). UNAT held that, regarding the alleged excess of jurisdiction by UNDT in substituting the Secretary-General's discretion with its own, in considering that separation from service was an onerous enough sanction and that the fine of one-month salary should be set aside, UNDT had correctly applied the proportionality test and did not err in considering that the disciplinary measure of a fine should be lifted. UNAT dismissed the appeals and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision to impose the disciplinary measures of separation from service with compensation in lieu of notice and without termination indemnity and a fine for repeatedly touching the breasts of another staff member, who was working in a subordinate position in his office. UNDT found that the measure of separation from service without termination indemnity was not a disproportionate sanction. However, UNDT found the fine was "arbitrary and irrational," and deemed it a form of "disguised dismissal" and allowed the applicant

to have the benefit of compensation in lieu of notice in the same amount as the fine.

Legal Principle(s)

Staff Rule 1.2(e) does not apply to all forms of sexual harassment or degrading behaviour, but more specifically to different forms of sexual exploitation and sexual abuse with, for example, “exchange of money, employment, goods or services for sex”. It should be distinguished from Staff Rule 1.2(f), which focuses on sexual harassment and abuse in any form at the workplace or in connection with work. While UNDT (or the first-instance tribunal) must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable, and procedurally fair. So far as termination of employment presents for the affected staff member a significant financial onerousness, if not loss of livelihood, combining termination with a fine does not seem to bear rational connection with either the retributive or preventive purpose of the sanction.

Outcome

Appeal dismissed on merits; Appeal dismissed on receivability

Full judgment

[Full judgment](#)

Applicants/Appellants

Haidar

Entity

UNFIL

Case Number(s)

2020-1368

2020-1369

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Neven

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Sexual exploitation and abuse

Sexual harassment

Jurisdiction / receivability (UNDT or first instance)

Manifest excess of jurisdiction

Separation from service

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Rule 1.2(e)
- Rule 1.2(f)
- Rule 10.2(a)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3

Related Judgments and Orders

UNDT/2019/187
2017-UNAT-781
2010-UNAT-040
2010-UNAT-084
2015-UNAT-523
2018-UNAT-859
2014-UNAT-487
2015-UNAT-579
2015-UNAT-594
2018-UNAT-849
2018-UNAT-870
2019-UNAT-896
2019-UNAT-974
2020-UNAT-1033
2011-UNAT-164
2011-UNAT-123
2010-UNAT-098
2010-UNAT-087
2010-UNAT-018
2010-UNAT-024