

2021-UNAT-1137, Appellant

UNAT Held or UNDT Pronouncements

UNAT found the UNDT correctly reviewed and rescinded the contested decision because of the procedural irregularities encountered during the investigation. But in addition to the procedural issues, UNAT also noted there were other significant errors. The Tribunal found that the panel erred when it sought to determine the Medical Officer's intent during the breast examination. The panel had previously concluded that there was no clear and convincing evidence that the actions of the Medical Officer during the breast examination were sexual in nature. Referring to Section 1.3 of ST/SGB/2008/5, the Tribunal explained the determination whether a particular conduct or behavior is of a "sexual nature" does not rest on the intent of the perpetrator. Other factors to be considered include the circumstances surrounding the conduct, the type of conduct complained of, the relational dynamics between the complainant and the perpetrator, the institutional culture that is generally accepted in the circumstances, and the complainant's perception of the conduct. To determine whether harassment has occurred, there must be an objective examination into whether the alleged conduct could cause offense or humiliation to a reasonable person. This, the panel did not do, as it actually focused part of its inquiry in determining the intent of the Medical Officer. Therefore, given the flaws in the investigation process, the Tribunal agreed with the UNDT that the contested decision needed to be rescinded. The matter was to be reopened and again decided by the Administration.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision of the Administration not to refer a Medical Officer for accountability, following a complaint she had lodged that the Medical Officer sexually harassed her during a medical examination. Following the complaint, the Registrar of the IRMCT convened a fact-finding panel to investigate the allegations. Although the panel found the staff member and her supporting witnesses were credible, it concluded that there was no clear and convincing evidence that the actions of the Medical Officer during the breast examination were sexual in nature. Based on the investigation report, the Registrar informed the staff member that he did not find sufficient evidence to indicate sexual harassment on the part of the Medical Officer and that the case would not be referred for disciplinary action. The staff member filed an application challenging the Registrar's decision with the UNDT. The tribunal found that the Registrar had failed to take relevant matters into consideration before making the administrative decision – he and the panel had failed to consult the Medical Services Director in a timely manner to determine whether the Medical Officer's conduct amounted to prohibited conduct or whether it was professional incompetence. This defect, reasoned the UNDT, rendered the decision irrational. It accordingly rescinded the decision and "remanded" the matter to the IRMCT to decide whether additional supervisory or other measures were required for the Medical Officer. Regarding damages, the UNDT dismissed the staff member's claim that the contested decision had a negative impact on her career, given that she had since been promoted to a P-3 post at the Secretariat. However, because of the procedural irregularities in handling her complaint, the UNDT awarded her \$12,500 in compensation for emotional distress. The staff member appealed the UNDT Judgment on the premise that it failed to recognize certain errors made by the IRMCT during the complaint and investigation process.

Legal Principle(s)

Determining whether a particular type of conduct is of a "sexual nature" does not rest on the intent of the perpetrator. Other factors to be considered include the circumstances surrounding the conduct, the type of conduct complained of, the relational dynamics between the complainant and the perpetrator, the institutional culture that is generally accepted in the circumstances, and the complainant's perception of the conduct. To

determine whether sexual harassment has occurred, there must be an objective examination into whether the alleged conduct could cause offense or humiliation to a reasonable person.

Outcome

Appeal dismissed on merits

Outcome Extra Text

The UNDT Judgment is affirmed on different grounds, and the appeal is dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Appellant

Entity

IRMCT

Case Number(s)

2020-1434

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jun 2021

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual harassment

Investigation

Fact-finding investigation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNAT Statute

- Article 9.5

UNDT Statute

- Article 10.4
- Article 10.5

UNRWA DT Statute

- Article 10.8