

2021-UNAT-1136, Abdulhamid Al

Fararjeh

UNAT Held or UNDT Pronouncements

UNAT held that the facts upon which UNRWA based its decision were established, in full respect of his due process rights. UNAT held that UNRWA DT did not err as there was clear and convincing evidence that the Appellant committed sexual exploitation and abuse against a beneficiary of UNRWA; neither did it err in concluding that the disciplinary sanction was proportionate and lawful. UNAT held that the Appellant, by having the complainant remove her pants and underwear and engaging in a such a sensitive and specific medical examination, which he did not have the required competencies and entitlements to do, violated his obligations, and his conduct amounted to sexual abuse and exploitation against a beneficiary in a vulnerable situation. UNAT held that the sanction was not unreasonable, absurd or disproportionate. UNAT held that UNRWA correctly held that he had violated the relationship of trust between him and UNRWA and that his conduct was particularly grave in light of the position he held as a Practical Nurse, which involved daily interactions with physically and emotionally vulnerable beneficiaries. UNAT noted the fact that, as a woman, the complainant fell within a “most vulnerable” status and by exploiting this status, the Appellant placed the complainant in a potentially harmful position where she could suffer retaliation by her community because of such an incident and for having made a complaint about it. UNAT held that UNRWA DT did not err in finding the sanction proportionate to the disciplinary offence in the case. On the specific issue of being able to confront and cross-examine his accusers, UNAT held the due process rights of a staff member are complied with as long as she or he has a meaningful opportunity to mount a defence and to question the veracity of the statements against him or her. UNAT held that the key elements of the Appellant’s right to due process were met and the interests of justice were served. UNAT found no error in UNDT’s finding that there were no breaches of the Appellant’s due process rights during the investigation and disciplinary process. UNAT dismissed the appeal and affirmed the UNRWA DT Judgment.

Decision Contested or Judgment/Order Appealed

The Appellant contested his separation from service without termination indemnity for sexual exploitation and abuse committed against a beneficiary. UNRWA DT dismissed the application, finding that UNRWA had made the case of misconduct against him by clear and convincing evidence.

Legal Principle(s)

Judicial review of a disciplinary case requires UNRWA DT to consider the evidence adduced and the procedures utilised during the course of the investigation by the Administration. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When termination is a possible outcome, misconduct must be established by clear and convincing evidence. The presumption of innocence must be respected. The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. The Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. The appeals procedure is of a corrective nature and not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. An Appellant has the burden of satisfying UNAT that the judgment he or she seeks to challenge is defective. Due process does not always require that a staff member defending a disciplinary action of separation has the right to confront and cross-examine his accusers. Due process rights of a staff member are complied with as long as she or he has a meaningful opportunity to mount a defence and to question the veracity of the statements against him or her.

Outcome

Appeal dismissed on merits

Outcome Extra Text

N/A

Full judgment

[Full judgment](#)

Applicants/Appellants

Abdulhamid Al Fararjeh

Entity

UNRWA

Case Number(s)

2020-1463

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jun 2021

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Sexual exploitation and abuse

Due process

Right to confront complainant

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1(e)
- Article 8.3

UNRWA Area Staff Regulations

- Regulation 1.1
- Regulation 1.4
- Regulation 10.2

UNRWA Area Staff Rules

- Rule 110.1
- Rule 110.3

UNRWA Personnel Directives

- PD A/10

Related Judgments and Orders

2015-UNAT-550

2017-UNAT-718

2016-UNAT-700

2012-UNAT-207

2013-UNAT-379

2014-UNAT-467

2011-UNAT-123

2020-UNAT-1024

2018-UNAT-889

2018-UNAT-859

2018-UNAT-870

2018-UNAT-849

2020-UNAT-1061

2017-UNAT-797

2013-UNAT-295

2013-UNAT-302

2015-UNAT-537

2018-UNAT-879

2017-UNAT-733

2018-UNAT-829

2016-UNAT-669