

# 2021-UNAT-1171, null Secretary-General

## UNAT Held or UNDT Pronouncements

UNAT granted the appeal by the Secretary-General and vacated the UNDT Judgment.

## Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Conteh contested the decision to separate him from service with compensation in lieu of notice and without termination indemnity, for misconduct. In Judgment No. UNDT/2020/189, the UNDT found that Mr. Conteh committed four acts of sexual harassment, but that Mr. Conteh had been sanctioned for a behaviour that was essentially episodic, was not threatening the victims or persistently annoying them, without specific consequences. Mr. Conteh immediately gave up the harassment when he understood that his “rude advances” were disturbing the complainants. Having considered that the alleged facts did not interfere with the work or created an intimidating, hostile or offensive environment; the conditions themselves of the harassment (perpetrated in non-working occasions and in private locations, in an atmosphere of conviviality), without any ill intent by Mr. Conteh; and the fact that the Mr. Conteh’s professional interactions with the complainants were rare, the UNDT concluded that the established facts had no (or at least a very limited) impact on the work environment. The UNDT also found that it had not been established that Mr. Conteh may have negatively impacted the image and reputation of UNHCR. In the sanction letter, the Administration identified aggravating and mitigating circumstances. As aggravating factors, the Administration considered Mr. Conteh’s supervisory responsibility over the harassed women and the alleged negative impact of misconduct on UNHCR’s image and reputation. As mitigating factors, the Administration considered that Mr. Conteh had expressed remorse and that he had a long and satisfactory service record as a UNHCR staff member, including service in numerous hardship duty stations. In addition to the mitigating circumstances identified by the Administration, the UNDT considered that the fact that Mr. Conteh expressed his intention to contact the complainants to apologize for his behaviour, should also be pondered as mitigating circumstances. Noting that the fact that Mr. Conteh was inebriated when two of the incidents occurred was not a mitigating factor per se, the UNDT found it was relevant as it made unlikely that such kind of incidents might occur again, particularly during working hours. Noting that Mr. Conteh was a long-serving UNHCR staff member with a positive performance record and no previous disciplinary problems, that “ordinarily, separation from service or dismissal is not an appropriate sanction for a first offence”<sup>2</sup> and having considered previous practice of the High Commissioner and the Secretary-General in disciplinary cases, the UNDT concluded that the disciplinary sanction imposed on Mr. Conteh was unfair and disproportionate to the established misconduct. The UNDT therefore ordered that the imposed disciplinary measure be rescinded and replaced with the disciplinary measure of suspension without pay for a period of twelve months effective the date of Mr. Conteh’s separation from service; and that Mr. Conteh be subsequently placed on special leave with full pay and receive retroactive payment of his salary and related benefits. As an alternative to the rescission, the UNDT set a sum equivalent to two years’ net base salary.

## Legal Principle(s)

The Administration has a broad discretion in determining the disciplinary measure imposed on staff members as a consequence of wrongdoing. It is best suited to select an adequate sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. Thus, in determining the proportionality of a sanction, the UNDT should observe a measure of deference, but more importantly, it must not be swayed by irrelevant factors or ignore relevant considerations.

## Outcome

Appeal granted  
Outcome Extra Text

The appeal is upheld and Judgment No. UNDT/2020/189 is vacated.

Full judgment

[Full judgment](#)

Applicants/Appellants

null Secretary-General

Entity

UNHCR

Case Number(s)

2021-1505

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Proportionality of sanction

Applicable Law

Staff Regulations

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

Staff Rules

- Rule 10.2
- Rule 1.2(c)

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

Related Judgments and Orders

2020-UNAT-1070