

2021-UNAT-1178, Khamis Ali Khamis

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General of the United Nations. UNAT held that Mr. Khamis' proven conduct did not itself amount to misconduct: he did not engage in transactional sexual relations with local persons and his sexual relations with two local women were more in the nature of domestic, albeit polygamous and 'open', relationships. UNAT held that it was not established that payments made to both women were commercial transactions in return for sexual favours. UNAT held that there was not such an imbalance of power between Mr. Khamis and the two women that they could be termed abusive or manipulative relationships. UNAT noted that neither woman was connected with the UN programme in which Mr. Khamis was engaged, so they could not have been preferentially treated by the exercise of his power over that programme. UNAT held that Mr. Khamis did not conduct himself in a manner not befitting his status as an international civil servant and his proven impugned activities were not incompatible with the proper discharge of his duties with the Organisation. UNAT held that Mr. Khamis' activities (as proven) were not the subject of public pronouncement by him and otherwise did not reflect adversely on his status, integrity, independence or impartiality required by that status. UNAT held that Mr. Khamis' relevant proven conduct was his own concern, rather than that of the Organisation, and did not reflect upon the Organisation in a way that upset the necessary balance between his private life and the Organisation's reputation, and thus there was no breach of the ICSC Standards (para. 42, read and applied in the context of para. 40). UNAT held that Mr. Khamis' beliefs and views did not affect adversely his official duties or the interests of the Organisation or breach the Staff Regulations or Rules, in particular Staff Regulations 1.2(e) and 1.2(f). UNAT held that Mr. Khamis did not breach Staff Rule 1.2(e) which prohibits sexual exploitation and abuse. UNAT held that Mr. Khamis did not commit misconduct as defined in Staff Rule 10.1. UNAT held that Mr. Khamis did not establish that the UNDT erred in any respect in its Judgment. UNAT refused Mr. Khamis' application for costs. UNAT denied the appeal and upheld the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

Mr. Khamis contested the imposition of the disciplinary sanction of separation from service with compensation in lieu of notice and without termination indemnity for misconduct in the form of failing to conduct himself in a manner befitting his status as an international civil servant when he cohabitated and maintained a sexual relationship with a 23-year-old local girl. UNDT granted Mr. Khamis' application, rescinded the Administration's decision and awarded compensation (23 months) in lieu of rescission.

Legal Principle(s)

While some activities are clearly prohibited and will amount to misconduct, other conduct more general described, for example conduct bringing the Organisation into disrepute, will need to be assessed in a more nuanced and discretionary way by weighing and balancing the rights and obligations of several stakeholders including the Organisation, the staff member, the community in which the staff member works and lives, and relevant international norms and standards. In disciplinary cases, UNDT is entitled to examine whether the relevant standard of proof has been met in relation to the facts on which the disciplinary outcome was based; whether those established facts amount to misconduct; whether the sanction imposed is proportionate to the misconduct; and whether the staff member's rights to due process were observed.

Outcome

Appeal dismissed on merits

Outcome Extra Text

N/A

Full judgment

[Full judgment](#)

Applicants/Appellants

Khamis Ali Khamis

Entity

UNHCR

Case Number(s)

2020-1478

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary

Disciplinary matters / misconduct

Dismissal/separation
Sexual exploitation and abuse
Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

Secretary-General's bulletins

- ST/SGB/2018/1

Staff Regulations

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

Staff Rules

- Rule 10.1(a)
- Rule 10.2

Related Judgments and Orders

2010-UNAT-084

2019-UNAT-918

2020-UNAT-1033