

2021-UNAT-1183, Iyad Youssef Zaqout

UNAT Held or UNDT Pronouncements

UNAT agreed with the UNRWA DT that the contested decision was a lawful exercise of discretion. Regarding the Appellant's claim that the process was tainted because of the lapse of time since the complained of behavior occurred (ten years) and because of the hearsay nature of the evidence, UNAT explained that these same arguments were made both to the DT and to the Administration during the investigation phase. The Tribunal agreed with the UNRWA DT that there was sufficient corroborating evidence to back the allegations. The Tribunal also noted that it is within the UNRWA DT's role to review and assign weight to the evidence before it. Additionally, UNAT also agreed that the behavior of the Appellant, as established by the facts, constituted misconduct under the applicable law and that the sanction was proportionate to the offense. Finally, regarding the Appellant's claim that not all his witnesses were interviewed, the Tribunal reiterated that there is no requirement to interview all proposed witnesses. The remaining claims of the Appellant were dismissed, and the Tribunal found no violation of his due process rights. The appeal was dismissed and the Judgment of the UNRWA DT was upheld.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision of the Administration to impose on him disciplinary measures following a complaint of harassment and abuse of power. The sanction included a written censure and a loss of one grade, which effectively demoted him. The UNRWA DT dismissed the application finding that: (i) the facts on which the disciplinary measures were based have been established; (ii) the facts legally support the conclusion of misconduct; (iii) the disciplinary measures were proportionate to the offense, and (iv) the Agency's discretionary authority was not tainted by evidence of procedural irregularity or other errors.

Legal Principle(s)

In disciplinary cases, the Tribunal will examine: (i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offense; and (iv) whether the staff member's due process rights were respected.

Outcome

Appeal dismissed on merits

Outcome Extra Text

The appeal was dismissed, and the UNRWA DT Judgment was upheld.

Full judgment

[Full judgment](#)

Applicants/Appellants

Iyad Youssef Zaqout

Entity

UNRWA

Case Number(s)

2020-1489

Tribunal

UNAT
Registry
New York
Date of Judgement
29 Oct 2021
President Judge
Judge Sandhu
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Burden of proof
Disciplinary
Disciplinary matters / misconduct
Abuse of authority
Disciplinary measure or sanction
Facts (establishment of) / evidence
Harassment (non-sexual)
Inappropriate or disruptive behaviour
Investigation (see category: Investigation)
Investigation
Due process
Standard of proof
Disciplinary cases
Standard of review (judicial)
Disciplinary cases
Applicable Law
UNRWA Area Staff Circulars
UNRWA Area Staff Regulations

- Regulation 10.2

UNRWA Area Staff Rules

- Rule 110.1