

UNDT/2022/005, Yameogo

UNAT Held or UNDT Pronouncements

The Applicant did not request the complainant's testimony and therefore waived his right to cross-examine her despite being allowed the opportunity to make such request in due course during these proceedings. The complainant's account remained detailed, coherent and consistent in her complaint and in the interview with the investigators. It was also largely corroborated by the statement of the colleague to whom she promptly reported the incident. The Tribunal also notes the absence of any evidence suggesting ill-motive on the side of the complainant. This evidence meets the standards laid out by the Appeals Tribunal and are therefore amount to clear and convincing evidence. The established facts: forceful attempt to kiss the complainant, amount to sexual harassment within the meaning of sec. 1.1(c) of CF/EXD/2012-007, Amend.1 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority) and constitute a violation of staff rule 1.2(f). The sanction of dismissal is proportionate. The Applicant's due-process rights were respected.

Decision Contested or Judgment/Order Appealed

Disciplinary sanction of dismissal for sexual harassment.

Legal Principle(s)

The general standard of judicial review in disciplinary cases requires the Dispute Tribunal to ascertain: (a) whether the facts on which the disciplinary measure was based have been established; (b) whether the established facts legally amount to misconduct; and (c) whether the disciplinary measure applied was proportionate to the offence. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. In cases of sexual harassment, the alleged

conduct often takes place in private, without direct evidence other than from the complainant. The Dispute Tribunal can find the complainant's testimony of high probative weight when it is detailed, coherent and consistent and where there is no evidence that the complainant had an ulterior motive to wrongly accuse the applicant. Evidence from persons to whom the complainant reported the incident promptly can be considered as indirectly corroborative of the complainant's statement.

Outcome

Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Yameogo

Entity

UNICEF

Case Number(s)

UNDT/NY/2021/045/T

Tribunal

UNDT

Registry

New York

Date of Judgement

18 Jan 2022

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Sexual harassment

Applicable Law

Staff Rules

- Rule 1.2(f)
- Rule 1.1(c)

Laws of other entities (rules, regulations etc.)

Related Judgments and Orders

2010-UNAT-022

2010-UNAT-024

2015-UNAT-523

2015-UNAT-537

2019-UNAT-955

2019-UNAT-956

2020-UNAT-1024

2011-UNAT-164

2017-UNAT-776
2021-UNAT-1076