

UNDT/2022/026, Szvetko

UNAT Held or UNDT Pronouncements

The Tribunal found that the Administration properly qualified the Applicant's conduct towards the Complainants as sexual harassment, but found the sanction disproportionate to the offence. The Tribunal is of the view that, while in the assessment of accusations of harassment the test focuses on the conduct itself - and requires an objective examination as to whether it could be expected or perceived to cause offence or humiliation to a reasonable person, being not necessary instead to establish that the alleged offender was ill-intended (see Belkahbbaz UNAT-2018-873, para. 76) -, the lack of ill-will by the offender could be relevant instead in the assessment of the proportionality of the sanction. In the case at hand, the facts under scrutiny cannot be considered severe, as they were made in jest and without the aim of harming or harassing anyone.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's finding of misconduct, following which he was separated from service of the Organisation with compensation in lieu of notice and without termination indemnity pursuant to staff rule 10.2(a)(viii).

Legal Principle(s)

The Administration has discretion to impose the disciplinary measure that it considers adequate to the circumstances of a case and to the actions and behaviour of the staff member involved. The Tribunal is not to interfere with administrative discretion unless "the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity".

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Szvetko

Entity

UNHCR

Case Number(s)

UNDT/NBI/2021/22

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

18 Mar 2022

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual harassment

Separation from service

Applicable Law

Staff Regulations

- Regulation 1.2(a)

Staff Rules

- Rule 1.2(b)
- Rule 1.2(f)
- Rule 10.1
- Rule 10.2(a)
- Rule 10.3(a)