

UNDT/2022/034, Kiriella

UNAT Held or UNDT Pronouncements

Receivability *ratione materiae*. The Applicant's management evaluation request was not clear on whether he was making allegations of misconduct against his Supervisor, which would need to be dutifully investigated, or citing performance or management issues to be addressed by management. Similarly, the Applicant did not provide any evidence that the matter of lawfulness of the decision to place him on ALWP was ever formally contested by him. Hence, any determination against the decision not to further investigate the Applicant's complaints of harassment against his supervisor or against his placement on ALWP must be subjected to its own mandatory process leading to judicial review which is not the case here. Accordingly, the Tribunal found that these claims were not subject to review in the instant case and, as a result, were not receivable *ratione materiae*. Merits. The facts of this case arise from two separate investigations conducted by OAI in relation to two distinct incidents that occurred between August and September 2017 ("first incident"), and on 4 October 2018 ("second incident"). Substantial evidence on the record shows that the first investigation successfully established that the Applicant demanded, and temporarily succeeded on the removal of the LSO from her post at the UNDP compound due to personal reasons. Regarding the second incident, it is clear from the established facts that the Applicant yelled and engaged in threatening behaviour. Such conduct of harassment and threatening behaviour is inexcusable in the workplace, especially when one is engaged in the area of security and is expected to remain calm, collected, and professional under stressful or threatening situations. By shouting at colleagues in the presence of others, the Applicant engaged in improper conduct that might reasonably be perceived as hostile or threatening. Even if troubled by what he perceived to be a frustrating work environment, such context does not justify the type of behaviour that he exhibited. The Tribunal is satisfied with the findings of the second investigation report, which fully established the facts reported by the Complainants as well as the Applicant's propensity for aggressive and hostile behaviour. As a result, the Tribunal is convinced that the second incident is established by clear and convincing evidence.

The Tribunal is well convinced that the abuse of authority and harassment demonstrated by the Applicant qualify as serious misconduct. The disciplinary measure is both proportionate and lawful. The imposed disciplinary measure of demotion with deferral of eligibility for consideration for promotion for two years, under staff rule 10.2(a)(vii), is in line with past practices by the Secretary-General and it is not the most severe of the disciplinary measures that may have been imposed for the misconduct in question. The Applicant's due process rights were respected during the investigation and disciplinary processes.

Decision Contested or Judgment/Order Appealed

The Applicant contests the disciplinary measure of demotion imposed on him following two incidents of misconduct established by an investigation by the OAI, UNDP.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kiriella

Entity

UNDP

Case Number(s)

UNDT/GVA/2020/55

Tribunal

UNDT

Registry

Geneva

Date of Judgement

1 Apr 2022

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Disciplinary measure or sanction

Harassment (non-sexual)

Retaliation

Applicable Law

Laws of other entities (rules, regulations etc.)

- ILO Equal Remuneration Convention
- UNDP Human Resources User Guide on Workplace Harassment and Abuse of Authority (May 2018)

Other UN issuances (guidelines, policies etc.)

- Practice of the Secretary-General in disciplinary matters and cases of criminal (Compendium 1 July 2009 to 31 December 2020)

- Standards of Conduct for the International Civil Service

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(h)

Staff Rules

- Rule 1.2(f)
- Rule 10.1(a)
- Rule 10.2(a)(vii)