

2022-UNAT-1216, Mujahid Zahoor

UNAT Held or UNDT Pronouncements

The staff member's main claim pertains to the proportionality of the disciplinary measure meted out to him, that is of summary dismissal. The Appeals Tribunal found no fault in the UNDT conclusion that the staff member's behavior toward the Complainant amounted to serious misconduct. The Tribunal noted (paras. 53 - 56): "... By sexually harassing her, the Appellant violated the applicable Regulations and Rules. He did not conduct himself in a manner befitting his status as an international civil servant. His actions not only violated the Complainant's personal dignity but also adversely affected the interests of the United Nations. His conduct violated the core values of the Organization and the measure of summary dismissal from service was not a disproportionate sanction, given that remaining in service would be irreconcilable with the core values professed by the United Nations and the gravity of the conduct. ... Consequently, given the seriousness and degree of the Appellant's misconduct, the sanction of summary dismissal from service was not unreasonable, absurd, or disproportionate. The Appeals Tribunal finds that it was a reasonable exercise of the Secretary-General's discretion to determine that engaging in acts of sexual harassment of a junior colleague is in violation of the standards that have been consistently reiterated by the Organization since at least 1992. This rendered the Appellant unfit for further service with the Organization, and therefore, this Tribunal is satisfied that summary dismissal from service was neither unfair nor disproportionate to the seriousness of the offense. ... Arguably, the Appellant violated the relationship of trust that existed between him and the Organization. His conduct was particularly egregious in light of the position he occupied, that of Chief of Field Office in Kadugli, Sudan, at the P-4 level while the Complainant was a United Nations Volunteer. As such, the Appeals Tribunal finds that, in these circumstances, imposing the disciplinary sanction at the strictest end of the spectrum was not disproportionate and manifestly abusive but a reasonable exercise of the Administration's broad discretion in disciplinary matters - a discretion with which this Tribunal will not lightly interfere. Accordingly, the UNDT also did not err in finding the sanction proportionate to the offense." Regarding the claim about the

placement of the staff member's information on the Screen Database, the Tribunal noted that that was a final administrative decision in and of itself, and as such, it should have first been submitted for management evaluation. The appeal was thus dismissed, and the UNDT Judgment affirmed.

Decision Contested or Judgment/Order Appealed

An investigation into allegations of misconduct revealed that a staff member engaged in acts of sexual harassment. He made unwelcome sexual advances toward a Complainant. He also inappropriately touched the Complainant's breast, and even though she told him that she was not interested, he persisted in his advances toward her. After he was formally charged with misconduct, the staff member responded to the Charge Letter. Thereafter, the Administration found there was clear and convincing evidence that the staff member had engaged in sexual harassment. As this was a serious misconduct, the Administration determined that summary dismissal would be the appropriate sanction. Subsequently, the staff member was also informed that as a result of his dismissal, his details will be included in an electronic database (Screening Database) that is accessible by other entities participating in the United Nations System. The staff member filed an application with the UNDT challenging both the summary dismissal decision and the decision to include his information on the Screening Database. The UNDT dismissed the application, finding that the disciplinary action was justified.

Legal Principle(s)

Persistent acts of sexual harassment may warrant summary dismissal – the strictest disciplinary measure.

Outcome

Dismissed on merits

Outcome Extra Text

The appeal is dismissed, and the UNDT Judgment is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mujahid Zahoor

Entity

UNICEF

Case Number(s)

2021-1530

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction
Proportionality of sanction
Sexual harassment
Disciplinary sanction
Disciplinary matters / misconduct
Termination (of appointment)

Applicable Law

Staff Regulations

- Regulation 1.2(a)

Staff Rules

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

Related Judgments and Orders

2020-UNAT-1024
2019-UNAT-976
2019-UNAT-956
2018-UNAT-859
2017-UNAT-781
2018-UNAT-819
2021-UNAT-1167
2018-UNAT-829
2016-UNAT-669