

2022-UNAT-1226, null Secretary-General

UNAT Held or UNDT Pronouncements

The Secretary-General appealed. UNAT found "questionable" the UNDT's finding that the investigation reports were not thorough or procedurally fair. UNAT was satisfied that the manner in which the inquiry was conducted was adequate for the purposes of a preliminary assessment. UNAT found that in view of the fact that Ms. Rehman was not given or entitled to the reports, the impugned order of the UNDT essentially required the OIAI to provide a written, reasoned decision setting out the findings and reasons for its assessment that the complaints should not be referred to an investigation. The Administration failed to address any communication of clear, comprehensive reasons to Ms. Rehman explaining why after the preliminary assessment, OIAI decided not to refer the complaints to an investigation. UNAT found that in the premises, the UNDT did not err in concluding that the Administration had not complied with the order in Judgment No.

UNDT/2018/039/Corr.1 by failing to provide a reasoned decision. UNAT however found that its order directing the complaints to be remanded for a further proper investigation and to provide Ms. Rehman with her interview transcript and a summary of it was too broad and that at this point, justice required only a reasoned decision to be made and for Ms. Rehman to be furnished with full and proper written reasons for the decision not to refer her complaints to an investigation under Sections 5.18-5.22 of CF/EXD/2012-007. UNAT upheld the appeal for the limited purpose of modifying the order of the UNDT accordingly.

Decision Contested or Judgment/Order Appealed

Ms. Rehman, a former UNICEF staff member at the Pakistan Country Office, contested before the UNDT a decision of the Office of Internal Audit and Investigations (OIAI), taken as part of a preliminary assessment, that her complaints of harassment, discrimination and abuse of authority were unfounded and not to

refer them to an investigation. These decisions were rescinded and remanded to OIAI by the UNDT in Judgment No. UNDT/2018/039/Corr.1. By letter, dated 13 August 2018, Ms. Rehman was informed that her allegations had either not been substantiated or did not amount to misconduct and that the assessment of her complaints had been closed. Ms. Rehman then proceeded to file an application before the UNDT challenging these decisions and the UNDT disposed of that application by Judgment No. UNDT/2021/023 on 12 March 2021. The UNDT held that the preliminary assessment was not thorough because it had failed to properly interview Ms. Rehman and did not consider her belatedly submitted amendments to the verbatim transcript of the interview. It found it was procedurally unfair (improper) and not comprehensive for the same reason. The UNDT held that the reasons provided to Ms. Rehman in the decision letter of 13 August 2018 were inadequate in that the reasons given failed to provide an adequate indication as to how the decision not to proceed to a full investigation was reached; nor was it evident that the complaints were fully and properly assessed. The UNDT further held that the reasons provided in the decision letter also failed to give any indication as to why in assessing the complaints against Ms. Rehman's line manager all, except one, were found to be unsubstantiated allegations and why the proven allegation of misconduct was dismissed without further action. The UNDT remanded the complaints "for a proper investigation" and directed the Administration to provide Ms. Rehman with a copy of her interview transcript and the summary (if any) that was utilized in their prior investigation.

Legal Principle(s)

An administrative decision, which adversely impacts on a staff member's status, must be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals, which otherwise would be compromised. In this respect, the harmful administrative decision must be fully and adequately motivated. The reasoning must be sufficiently clear, precise, and intelligible. A generic reasoning befitting every case is not enough and renders the decision unlawful. The giving of reasons is commonly regarded as one of the more fundamental requirements of administrative justice and an important component of procedural justice. Reasons are not really reasons unless they are properly informative. They must explain why action was taken or not taken - otherwise they will be no more than findings or information.

Reasons ought to enable an aggrieved person to understand why the decision went against her and thereby place her in the position to decide whether the decision was unreasonable, erroneous, unfair or unlawful, and perhaps one worth challenging. The decision whether or how to challenge an unfavourable administrative decision is far more sensibly made once reasons have been given for it. Reasons give the aggrieved person something to work with, for example in deciding whether an administrator had an ulterior motive or ignored relevant considerations etc. Inadequate, illogical or flawed reasons commonly will form the basis of a challenge to an administrative decision on the grounds of unreasonableness or irrationality.

Outcome

Appeal granted in part

Outcome Extra Text

The appeal is upheld to the limited extent necessary to modify the order of the UNDT. The order of the UNDT in Judgment No. UNDT/2021/023 is modified and substituted as follows: a. The decision of 13 August 2018 is rescinded. b. The Secretary-General is ordered to provide Ms. Rehman with a new written reasoned decision in terms of Section 5.16 of CF/EXD/2012-007 setting out full and proper reasons for the decision that her complaints are unfounded. c. Ms. Rehman's request for compensation for moral harm is rejected.

Full judgment

[Full judgment](#)

Applicants/Appellants

null Secretary-General

Entity

UN Secretariat

Case Number(s)

2021-1556

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Applicable Law

UNICEF Executive Directives

- CF/EXD/2012-005
- CF/EXD/2012-007

Related Judgments and Orders

2019-UNAT-927