

# **2022-UNAT-1231, Sergio Arvizu**

## **Trevino**

### **UNAT Held or UNDT Pronouncements**

UNAT held that the Appellant had no standing to seek consideration by a full bench. UNAT held that to the extent UNDT engaged in a fact-finding exercise of its own, this was not a legitimate exercise of its competence. UNAT held that the Administration's failure to provide adequate reasons for the contested decision resulted in the contested decision being unlawful. UNAT held that the Administration's failure to exercise its discretion with regard to carrying out an investigation also rendered the contested decision unlawful. UNAT allowed the appeal in part. UNAT vacated the UNDT Judgment by rescinding the decision not to convene an investigation panel to investigate the Appellant's harassment complaint and directed the Administration to lawfully exercise its discretion in this regard.

### **Decision Contested or Judgment/OrderAppealed**

The Appellant contested the decision not to convene an investigation panel to investigate his harassment complaint. UNDT dismissed his application.

### **Legal Principle(s)**

A decision to refer a matter for consideration by a full bench is a matter for the panel or the President of UNAT; the Appellant has no standing to seek consideration by a full bench. The instigation of disciplinary charges against a staff member is the privilege of the Organisation itself, and it is not legally possible to compel the Administration to take disciplinary action. The administration has a degree of discretion as to how to conduct a review and assessment of a complaint and whether to undertake an investigation regarding all or some of the allegations. There are situations where the only possible and lawful decision of the

Administration is to deny a staff member's request to undertake a fact-finding investigation against another staff member. The Administration has not validly exercised its discretion if it has addressed a particular administrative matter in the same way it always has without any additional considerations or has operated under the erroneous belief that it was fettered to make a specific choice, to the exclusion of all other choices amongst the various courses of action open to it; in these situations the Administration has, illegally, not engaged in a balancing exercise of the competing interests by considering all aspects relevant for the exercise of its discretion, in order to select the proper course of action. The right of employees to form and join organisations of their own choosing is an integral part of a free and open society. The principle of freedom of association is one of the principles of law that must be observed by the organisations of the United Nations Common System. 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. A harmful administrative decision must be fully and adequately motivated; the reasoning must be sufficiently clear, precise, and intelligible; and a generic reasoning befitting every case is not enough and renders the decision unlawful. A staff association enjoys broad freedom of speech and the right to take to task the administration of the organisation whose employees it represents. Freedom of speech must be protected, particularly for officers of a staff association, so that they are not hampered in their task of representing the membership when in dispute with the Administration. The freedom of discussion and debate is not absolute and has its bounds; a staff representative's public statements must not impair the dignity of the international civil service. There is a fine balance to be struck between the individual and collective rights and freedoms enjoyed by United Nations staff members and their staff associations and staff representatives, and the need for them to conduct themselves publicly (both at and outside work) in accordance with the standards and aspirations of the United Nations and not to abuse their rights and freedoms. UNDT is not clothed with jurisdiction to investigate harassment complaints under Article 2 of the UNDT Statute.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Sergio Arvizu Trevino

## Entity

UNJSPF

## Case Number(s)

2021-1520

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

18 Mar 2022

## President Judge

Judge Raikos

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Harassment (non-sexual)

Fact-finding investigation

Disciplinary matters / misconduct

Investigation

## Applicable Law

Agreements, conventions, treaties (etc.)

- European Convention on Human Rights
- International Covenant on Civil and Political Rights
- ILO Declaration on Fundamental Principles and Rights at Work

Secretary-General's bulletins

- ST/SGB/2008/5

UNAT Statute

- Article 2
- Article 2.1(a)
- Article 9

Universal Declaration of Human Rights

- Article 23

UNDT Statute

## Related Judgments and Orders

2019-UNAT-926

2020-UNAT-1069

2012-UNAT-272

2021-UNAT-1171

2019-UNAT-927

2019-UNAT-915

2018-UNAT-849

2018-UNAT-814

2017-UNAT-787

2015-UNAT-505

2015-UNAT-518

2010-UNAT-100

2010-UNAT-099  
2017-UNAT-733  
2018-UNAT-892  
2012-UNAT-201  
2018-UNAT-825  
2012-UNAT-239  
2016-UNAT-612  
2014-UNAT-483  
2012-UNAT-220  
2017-UNAT-798  
2014-UNAT-399  
2013-UNAT-372  
2013-UNAT-303  
2018-UNAT-891  
2021-UNAT-1118  
2018-UNAT-874  
2018-UNAT-860  
2019-UNAT-899  
2017-UNAT-791  
2017-UNAT-724