

2022-UNAT-1245, DUPARC et al.

UNAT Held or UNDT Pronouncements

UNAT held that UNDT correctly found that, in light of the circumstances of the case, the Panel [appointed to undertake a fact-finding investigation into Duparc et al.'s complaint], had failed to consider whether the limits of the managerial discretion were respected. UNAT rejected the Secretary-General's argument that UNDT conducted an investigation de novo and thus exceeded its authority and usurped the Secretary-General's sole and exclusive authority in disciplinary matters. UNAT observed that when UNDT rescinded the decision based on the investigatory Panel's report, it did not draw any conclusions, but rather ordered specific performance as authorized under Article 10.5(a) of the UNDT's Statute. The UNDT made no finding as to whether bias, discrimination or favoritism occurred. UNAT held that it was within UNDT's authority to analyze the conduct of the investigation by the Panel, and to have found that the Panel had unreasonably failed to investigate and determine relevant issues. UNAT held that UNDT had appropriately limited its analysis to findings that the procedure followed by the Panel had been improper. UNAT held that UNDT correctly found that the Panel had failed to assess the fundamental issues directly related to the complaint of discrimination against the Chief, SSS/UNOG under ST/SGB/2008/5. UNDT had further correctly applied the law to the case at hand when it had made the determination that the investigation had failed for not having assessed the entire situation considering the particular circumstances of the case. Therefore, the procedure followed in respect of the allegations of prohibited conduct was improper and the contested decision should indeed have been rescinded since it was based on an unreliable report. The appeal was dismissed and Judgment No. UNDT/2021/077 was affirmed.

Decision Contested or Judgment/Order Appealed

UNDT Judgment: Duparc et al. contested the decision of United Nations Office at Geneva (UNOG) to take no further action on their joint complaint under the Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination,

harassment, including sexual harassment, and abuse of authority). UNDT, by Judgment No. UNDT/2021/077, rescinded the administrative decision, finding that the contested decision was marred by a number of fundamental flaws, including unacceptable delays in processing the complaint without explanation. UNDT also reviewed the conduct of the fact-finding investigation panel and concluded that it failed to consider relevant information while considering irrelevant factors, and unreasonably failed to investigate relevant issues. UNDT determined that these serious deficiencies raised questions about the impartiality of the investigation. UNDT remanded Duparc et al.'s complaint to the Director-General, UNOG, for proper consideration by a new fact-finding panel.

Legal Principle(s)

When claims regard issues covered by ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) the staff member is entitled to certain administrative procedures. If he or she is dissatisfied with their outcome, he or she may request judicial review of the administrative decisions taken. The UNDT has jurisdiction to examine the administrative activity (act or omission) undertaken by the Administration after a request for investigation, and to decide if this activity was taken in accordance with applicable law. The UNDT can also determine the legality of the conduct of the investigation. The UNDT is thus competent under its jurisdiction to determine if there was a proper investigation in terms of ST/SGB/2008/5 and to review whether any administrative decision arising from the process complied with the aggrieved individual's terms of appointment. The discretion bestowed upon the Administration is indeed not unfettered. This is because, in any administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members. Flexibility in management is necessary for the dynamic nature of the work environment since it would be impossible to lay down a guideline for every imaginable eventuality. However, this power must be exercised with moderation. The assessment of the lawful exercise of discretion is among the competences of the tribunals in the internal justice system.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

DUPARC et al.

Entity

UNOG

Case Number(s)

2021-1600

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2022

President Judge

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process
Disciplinary cases
Specific performance
Investigation
Standard of review (judicial)
Remedies

Applicable Law

Administrative Instructions

- ST/AI/371

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 4.3

Related Judgments and Orders

2019-UNAT-969
2010-UNAT-099
2019-UNAT-902