

2022-UNAT-1256, Gonzalo Ramos

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr. Ramos. UNAT held that in order for conduct to constitute sexual harassment, apart from an “unwelcome sexual advance”, it is required that the behavior in question “might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, [...] or creates an intimidating, hostile or offensive work environment” and that “[w]hile typically involving a pattern of behaviour, it can take the form of a single incident”. UNAT was satisfied that there was clear and convincing evidence that the Mr. Ramos’ conduct as established did constitute sexual harassment. UNAT held that UNDT was in a position to assess the candor and demeanor of the witnesses, the contradictions in Mr. Ramos’ oral evidence, the consistency of each witness statement when compared to other witnesses testifying in relation to the same incident, and the integrity of the witnesses’ recall of the events. UNAT held it would not interfere with UNDT’s findings because UNDT had a proper opportunity to make an analysis and evaluation of the probability or improbability of the different versions on each of the disputed issues and its conclusion was reasonable. UNAT agreed with UNDT that Mr. Ramos’ submissions regarding the facts had not been established and that the facts set out in the sanction letter were substantiated to the relevant standard of evidence. UNAT held that UNDT did not err when it found that Mr. Ramos’ comments and proposals to the woman could reasonably be categorized as a pattern of behavior having caused offence and humiliation, and created an intimidating, hostile or offensive work environment, as defined by Section 1(1.3) of ST/SGB/2008/5.28. UNAT noted that unwelcome verbal conduct can amount to sexual harassment, and UNAT was persuaded that UNDT correctly assessed that this was what occurred in this case. UNAT held that it had no reason to disagree with the UNDT’s determination that there were inconsistencies in Mr. Ramos’ account of events. This, coupled with the other circumstances of the case, particularly the fact that Mr. Ramos abused his authority while performing his duties in a protective capacity, led to the conclusion that the sanction of separation from service was indeed proportionate to the offence. UNAT dismissed the appeal in its entirety.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Ramos contested the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice, and with termination indemnity. Mr. Ramos was found to have committed misconduct by sexually harassing a female staff member of an international organization based in Kingston, Jamaica, during a residential security inspection of her apartment there. UNDT, by Judgment No. UNDT/2021/08 had dismissed his application.

Legal Principle(s)

The UNDT may only reach a finding of sexual harassment on the basis of sufficient, cogent, relevant and admissible evidence permitting appropriate factual inferences and a legal conclusion that all the elements of sexual harassment have been established in accordance with the standard of clear and convincing evidence. In other words, the sexual harassment must be shown by the evidence to have been highly probable. Before concluding that there has been sexual harassment, there has to be sufficient, credible and reliable evidence proving a high probability that the perpetrator: i) made a sexual advance; ii) made a request for a sexual favor; iii) verbally or physically engaged in conduct or behavior of a sexual nature; or iv) made a gesture of a sexual nature. In addition, the advance, request, conduct or gesture must be shown to have been unwelcome; might reasonably have been expected or perceived to cause offense or humiliation to another; or have caused an intimidating, hostile or offensive work environment. Sexual harassment can encompass numerous types of conduct, some overtly sexual in nature and others more subtle. There is a wide spectrum of conduct that can be defined as sexual harassment and its determination is entirely context specific. Whether a particular type of conduct constitutes sexual harassment will depend on a number of factors and the circumstances of each case. Importantly, a determination of whether a particular type of conduct is sexual in nature does not turn on the intentions of the perpetrator but on the circumstances surrounding the conduct, the type of conduct complained of, the relational dynamics between the complainant and the perpetrator, the institutional or workplace environment or culture that is generally accepted in the circumstances, and the complainant's perception of the conduct.

The conduct does not have to be intentional to be of a sexual nature. Sexual harassment does not require that the alleged harasser was aware of the offending character of his or her behavior and was put on notice, which would otherwise preclude a single incident from constituting sexual harassment.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gonzalo Ramos

Entity

DSS

Case Number(s)

2021-1604

Tribunal

UNAT

Registry

New York

Date of Judgement

12 Aug 2022

President Judge

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Sexual harassment

Disciplinary cases

Disciplinary matters / misconduct

Standard of proof

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 1.2

Related Judgments and Orders

2022-UNAT-1210

2021-UNAT-1137

2018-UNAT-819