

UNDT/2022/043, Banaj

UNAT Held or UNDT Pronouncements

The administrative decision to close a staff member's complaint with no disciplinary action produces direct legal consequences affecting his/her terms and conditions of appointment. Moreover, when the claim concerns issues covered by ST/SGB/2008/5, 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. Accordingly, the application is receivable in its entirety.

The Panel did not comply with its duty to take the necessary steps to obtain the testimony of one witness that the Tribunal considered as relevant in terms of sec. 5.16 of ST/SGB/2008/5.

The Tribunal examined and dismissed the Applicant's allegations of shortcomings during the investigation and found that the Panel properly conducted the investigation except for its failure to interview one witness.

The Administration did not commit any errors in making the contested decision itself. Apart from a general assertion, the Applicant did not i) provide any evidence showing that she was subject to further abuse of authority during the investigation and ii) discharge her onus to prove retaliation. Accordingly, the Organization did not breach its obligation to protect the Applicant from retaliation.

The part of the contested decision closing the complaint with no further action was tainted by the Panel's failure to interview one witness. The Tribunal rescinded it and remanded the matter to the Administration. The Tribunal rejected the Applicant's request for compensation for harm.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to close her complaint of prohibited conduct under ST/SGB/2008/5 with managerial action with respect to one staff member, and with no further action with respect to another staff member.

Legal Principle(s)

In determining the lawfulness of an administration decision concerning an investigation of a complaint, the Tribunal may “enter into an examination of the propriety of the procedural steps that preceded and informed the decision eventually made, inasmuch as they may have impacted the final outcome”.

In cases of harassment and abuse of authority, the Tribunal is not vested with the authority to conduct a fresh investigation into the initial complaint. It is not the Tribunal’s role to substitute its own decision for that of the Administration.

However, the Tribunal may “consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”. If the Administration acts irrationally or unreasonably in reaching its decision, the Tribunal is obliged to strike it down.

The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member’s terms and conditions of appointment; and the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member.

An investigation panel has a wide discretion in selecting witnesses. However, this discretion is not unfettered, and the panel is directed to interview any individual who may have relevant information pursuant to sec. 5.16 of ST/SGB/2008/5.

The applicable criteria for determining if a potential witness should be heard is the relevance of the information he or she may provide.

Procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of unlawfulness of the contested decision. The determination of whether a staff member was denied due process or procedural fairness must rest upon the nature of any procedural irregularity and its impact.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Banaj

Entity

UNODC

Case Number(s)

UNDT/GVA/2021/2

Tribunal

UNDT

Registry

Geneva

Date of Judgement

13 May 2022

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process
Fact-finding investigation
Scope of investigation
Investigation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2017/2/Rev.1

UNDT Statute

- Article 10.5
- Article 8.1(a)

UNAT Statute

- Article 2.1(a)

Other UN issuances (guidelines, policies etc.)

- The UNDP's Policy for Protection against Retaliation

Related Judgments and Orders

UNDT/2016/009

UNDT/2021/077

2011-UNAT-123

2010-UNAT-084

2018-UNAT-873

2014-UNAT-481

2010-UNAT-099

2015-UNAT-505

UNDT/2018/039

2010-UNAT-100

2015-UNAT-518

2016-UNAT-699

2015-UNAT-521

2017-UNAT-757

2017-UNAT-742