

UNDT/2022/063, Rabbat

UNAT Held or UNDT Pronouncements

Scope of judicial review and the contested decision The Applicant described the contested decision as a failure to implement “measures to promote a harmonious work environment and protect personnel from prohibited conduct through preventive measures”. As remedies, the Applicant sought damages for moral harm and emotional distress resulting from the Administration’s breach of its duty to ensure a harmonious work environment. Accordingly, the Applicant seeks to contest the Administration’s failure to take appropriate measures to promote a harmonious work environment and protect him from prohibited conduct. As such, the Applicant has met his obligation to identify the contested decision. Whether the application is receivable Under sec. 2.2 of ST/SGB/2008/5 and sec. 3.2 (a) of ST/SGB/2019/8, the Organization has an obligation to take appropriate measures to promote a harmonious work environment and protect personnel from prohibited conduct. There is no doubt that provisions of ST/SGB/2008/5 and ST/SGB/2019/8 fall within the scope of the “terms of appointment” under art. 2.1(a) of the Tribunal’s Statute. Thus, the Administration’s failure to take appropriate measures to promote a harmonious work environment and protect the Applicant from prohibited conduct indeed produces direct legal consequences affecting his terms and conditions of appointment. Accordingly, the application is receivable. Whether the Administration failed to take appropriate measures to promote a harmonious work environment and protect the Applicant from prohibited conduct The “duty of care has a multidimensional nature and can have different meanings depending on the context in which it is applied” (Campeau UNDT/2017/091, para. 38). The Organization’s duty of care towards its staff members implies, first and foremost, that it has to provide a harmonious work environment that protects the physical and psychological integrity of its staff members (see, e.g., Edwards UNDT/2011/022 Corr.1, para. 63; Corbett UNDT/2011/195, para. 71). In the case at hand, it can be understood as the Organization’s obligation to take appropriate measures to promote a harmonious work environment and protect its staff members from prohibited conduct. The alleged insufficiency of the interim measures Under sec. 6.10 of ST/SGB/2019/8, it is

up to the head of entity to consider whether interim measures should be taken with a view to protect the integrity of any investigation, prevent the occurrence or repetition of possible prohibited conduct, and/or address risks of possible retaliation or whether such measures would otherwise be in the interests of the Organization or work unit. The Organization is best placed to assess whether the measures taken would be in its interests and ultimately determine which measures are appropriate. Moreover, pursuant to sec. 6.10 (b) of ST/SGB/2019/8, reassignment of the alleged offender is subject to his or her consent. As such, sec. 6.10 of ST/SGB/2019/8 does not create a right or an entitlement for a complainant to be permanently transferred or to have the alleged offender permanently transferred. Accordingly, the Organization did not have an obligation to permanently reassign the Applicant or Mr. M. while the investigation had not been completed at the time this application was lodged. Moreover, the evidence on record shows that pending the investigation, Mr. M. was reassigned to another section and the reporting line between Mr. M. and the Applicant was discontinued as of 17 July 2019 and Mr. M's reassignment was extended beyond the closure of the case. Also, effective 1 April 2022, Mr. M. was permanently moved, with his position, outside of the Applicant's supervision. The fact that on three separate occasions in 2020, Mr. M. was due to imminently return under the Applicant's supervision does not render the interim measures invalid or insufficient. Indeed, in practice, Mr. M.'s temporary assignment was extended, and he had never returned to the Applicant's supervision while the investigation was pending. Accordingly, the Organization took appropriate interim measures to prevent the occurrence or repetition of possible prohibited conduct. Indeed, the Applicant did not present any evidence of renewed or repeated instances of inappropriate interaction between Mr. M. and him since the arrangement was put into place. The alleged unjustifiable delay The Applicant submits that the Administration took 18 months from his report of prohibited conduct to issue a written reprimand to Mr. M. The evidence on record shows that the investigation panel established two contradictory accounts of this incident between Mr. M. and the Applicant, one from each of them. However, since there were no witnesses present during the incident, there was no evidence to confirm either version in finality. Moreover, while the Applicant does not point to any statutory deadline in relation to the treatment of his report of prohibited conduct and the alleged defamatory allegations, the Tribunal notes that two factors delayed the process in question. First, the Applicant did not provide his comments on Mr. M.'s allegation within a reasonable period of time. Indeed, it took almost four months for him to provide his comments as requested. Second, there was a justified delay by Mr. M. Indeed, the

evidence on record shows that he was on authorized sick leave between October 2018 and February 2019 which delayed his submission of further comments. Accordingly, the Applicant failed to establish that the Administration unjustifiably delayed the processes at issue. The alleged defamatory allegations of age and national origin discrimination First, the evidence on record shows that the investigation panel could not establish the Applicant's allegation that Mr. M. had made unfounded, malicious, or knowingly false allegations of a prejudicial nature against him. Also, the Applicant did not request management evaluation of the relevant decision within the prescribed deadlines. Second, the allegations of age and national origin discrimination were not made in a public setting, but in response and defence to a process of obtaining Mr. M's comments for a potential reprimand. Therefore, it could not be established that such allegations were defamatory. Moreover, the Administration provided the Applicant an opportunity to comment on Mr. M.'s allegations and did not take an adverse decision against him. Also, the evidence on record shows that the Applicant withdrew his unsubstantiated allegations to move the performance document forward. Accordingly, the Applicant fails to demonstrate that the Administration did not take appropriate measures in relation to the allegations of age and national origin discrimination. The alleged demonstrated history of prohibited conduct towards the Applicant Contrary to the Applicant's contention, there is no evidence to show that Mr. M. has a "demonstrated history of prohibited conduct towards the Applicant". Indeed, having investigated the Applicant's complaints against Mr. M., the investigation panel finds no prohibited conduct such as harassment or discrimination towards the Applicant. Instead, in the fact-finding process, the investigation panel obtained many statements and documentation establishing a longstanding, well-documented history of professional and personal conflict between the Applicant and Mr. M. In this respect, the Tribunal notes that the Administration proposed additional measures such as training and coaching to the Applicant, as Mr. M.'s supervisor, to enable him to address some of the performance-related or miscommunication issues he may have had with Mr. M. Accordingly, the Tribunal finds no merit in the Applicant's submissions regarding Mr. M.'s "demonstrated history of prohibited conduct towards the Applicant". In light of the above, the Applicant fails to demonstrate that the Administration did not take appropriate measures to promote a harmonious work environment.

Decision Contested or Judgment/Order Appealed

The alleged Administration's failure to take appropriate measures to promote a harmonious work environment and protect the Applicant from prohibited conduct.

Legal Principle(s)

It is trite law that the applicant must “identify an administrative decision capable of being reviewed” (see, e.g., Haydar 2018-UNAT-821, para. 13; Farzin 2019-UNAT-917, para. 36). Moreover, the Tribunal has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”, and “may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed” (see Fasanella 2017-UNAT-765, para. 20; Cardwell 2018-UNAT-876, para. 23). 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” (see, e.g., Lee 2014-UNAT-481, para. 49).

Outcome

Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Rabbat

Entity

UNODC

Case Number(s)

UNDT/GVA/2021/30

Tribunal

UNDT

Registry

Geneva

Date of Judgement

30 Jun 2022

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Investigation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2019/8

Staff Regulations

- Regulation 1.2(c)

UNDT RoP

- Article 18.1
- Article 18.4

UNAT Statute

- Article 2.1(a)

UNDT Statute

- Article 8.1(a)

Related Judgments and Orders

2018-UNAT-821

2019-UNAT-917

2017-UNAT-765

2018-UNAT-876

2014-UNAT-481

2010-UNAT-099

UNDT/2017/091

UNDT/2011/195