

UNDT/2022/074, Duparc

UNAT Held or UNDT Pronouncements

There are incidents on which the Applicant had no direct knowledge. Consequently, he has no standing in filing a complaint of prohibited conduct in relation to them.

It was inappropriate for the Director, DA, UNOG, to play an instrumental role in the constitution of the investigation panel considering that he was the decision-maker in relation to one alleged incident, was a material witness in the investigation and was highly likely to be interviewed by the investigation panel. Several factors cumulatively gave rise to a reasonable perception of a conflict of interest on the part of a panel member. Consequently, the investigation panel was neither properly constituted nor properly composed.

The alleged potential conflict of interest of Respondent's Counsel is unsubstantiated.

The investigation panel exceeded its mandate by drawing legal conclusions and failed to: interview relevant witnesses as well as any individual who may have relevant information about the conduct alleged pursuant to sec. 5.16 of ST/SGB/2008/5; properly investigate several allegations. The investigation panel also failed to properly investigate and establish the facts in relation to several aspects of the Applicant's complaint and thus failed to give proper effect to the purpose and prescripts of ST/SGB/2008/5.

These deficiencies bring into question the necessary appearance of impartiality and integrity of the investigation and are sufficient to make the resulting report unreliable for the purpose of making a final decision based on it.

The contested decision to close the Applicant's complaint of prohibited conduct with managerial action pursuant to sec. 5.18(b) of ST/SGB/2008/5 is unlawful. The Tribunal instructs the Administration to establish a new fact-finding panel in accordance with ST/SGB/2008/5. The members of the investigation panel (who previously handled the complaint) shall be recused from dealing with the remanded complaint.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision of the then Director-General, UNOG, to close his complaint of prohibited conduct under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against the Chief, SSS, UNOG, with managerial action pursuant to sec. 5.18(b) of ST/SGB/2008/5.

Legal Principle(s)

The instigation of disciplinary charges against a staff member is the privilege of the Organization, and it is not legally possible to compel it to take disciplinary action.

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 assessing the legality of the decision to close a complaint with managerial action, the Tribunal “must focus on whether the Administration breached its obligations pertaining to the review of the complaint and the investigation process further to it, as set out primarily in ST/SGB/2008/5”.

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. As for any discretionary decision of the Organization, it is not the Tribunal’s role to substitute its own judgment for that of the Secretary-General.

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. “When it does that, it does not illegitimately substitute its decision for the decision of the Administration; it merely pronounces on the rationality of the contested decision”.

The test for determining whether a person is biased or not is whether a fair-minded and informed observer, having considered the facts, would conclude that there is a real possibility that said person is biased.

The investigation panel is obliged to seek to interview any individuals who may have relevant information about the alleged prohibited conduct and gather any relevant documents or records.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Duparc

Entity

UNOG

Case Number(s)

UNDT/GVA/2019/46

Tribunal

UNDT

Registry

Geneva

Date of Judgement

17 Aug 2022

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process

Fact-finding investigation

Scope of investigation

Investigation

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Agreements, conventions, treaties (etc.)

- Universal Declaration on Human Rights

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(m)

UNDT RoP

- Article 27

UNAT Statute

- Article 2.1(a)

UNDT Statute

Related Judgments and Orders

2010-UNAT-100

2015-UNAT-505

UNDT/2016/009

2011-UNAT-123

2010-UNAT-084

2018-UNAT-873

2019-UNAT-961

2016-UNAT-626

UNDT/2010/116

UNDT/2021/093

UNDT/2019/094

2012-UNAT-227

2014-UNAT-454