

UNDT/2022/115, Nkoyock

UNAT Held or UNDT Pronouncements

There is no evidence of collusion or bias against the Applicant. On the contrary, several congruent testimonies corroborated the complainants' statements and confirmed the allegations of bullying and harassment against the Applicant. The Applicant failed to substantiate his arguments against the complaint and the complainants. The facts are established by a preponderance of evidence and constitute misconduct.

Bearing in mind the nature of the facts attributed to the Applicant, it is not unreasonable that he be obliged to attend mandatory training to improve his managerial and communication's style in addition to the imposition of a disciplinary sanction. There is no legal obstacle to the cumulative application of disciplinary sanctions and managerial action.

In cases touching upon allegations of harassment/work environment, the whole professional background of the employee, including past administrative or disciplinary sanctions, are relevant considerations. Entertaining past behaviour (prior conduct evidence) is limited, however, to conduct and/or instances that have been properly and sufficiently investigated.

The Administration properly exercised its managerial discretion by considering the Applicant's record in applying two cumulative sanctions, particularly in considering a previous written reprimand as an aggravating factor.

The Organization did not demonstrate that it was impossible to select panel members from the department, office or mission concerned, before choosing individuals trained in investigating allegations of prohibited conduct registered in the roster. The Applicant did not meet the burden of proof that such a procedural error negatively impacted the outcome of the investigation or his defence rights.

Accordingly, the procedural irregularity that the Applicant raised does not by itself invalidate or nullify the entire investigation and disciplinary process.

The investigation panel did not exceed its mandate. The investigation panel, as mandated, issued conclusions on whether the investigated facts had been established. The Applicant's due process rights were fully respected throughout the

investigation stage and the disciplinary process.

Decision Contested or Judgment/Order Appealed

The Applicant contests the disciplinary sanction of loss of three steps in grade and deferment for three years of eligibility for consideration for promotion, together with a requirement to attend on-site or online interactive training on workplace civility and communication, for creating a hostile, offensive and humiliating work environment between 2015 and 2018 when he was Officer-In-Charge (“OiC”).

Legal Principle(s)

The standard of proof applicable to a case where the disciplinary measures do not include separation or dismissal is that of preponderance of evidence. Pursuant to sec. 9.1(b) of ST/AI/2017/1, this means that the Administration must prove more likely than not, that the facts and circumstances underlying the misconduct exist or have occurred. In the case at hand, dismissal is not at stake.

The Organization has the burden of proof to demonstrate the alleged misconduct. An applicant must provide evidence substantiating his arguments to successfully challenge the facts that an investigation established.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Nkoyock

Entity

UNOV/UNODC

Case Number(s)

UNDT/GVA/2020/60

Tribunal

UNDT

Registry

Geneva

Date of Judgement

20 Oct 2022

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Facts (establishment of) / evidence

Harassment (non-sexual)

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(m)

Staff Rules

- Rule 1.2(f)
- Rule 10.1(a)
- Rule 10.2(a)
- Rule 10.3(b)

Related Judgments and Orders

UNDT/2022/074

UNDT/2022/071

UNDT/2019/109

2013-UNAT-302

2010-UNAT-024

2015-UNAT-537

2019-UNAT-956

2020-UNAT-1024

2020-UNAT-1006

2019-UNAT-918

2010-UNAT-084

2017-UNAT-781

2021-UNAT-1184

2020-UNAT-1033

2013-UNAT-336

2013-UNAT-295

2022-UNAT-1245

2017-UNAT-761

2012-UNAT-254

2010-UNAT-095

2010-UNAT-094