

UNDT/2022/128, Piezas

UNAT Held or UNDT Pronouncements

The Tribunal found that there were severe failures in affording the Applicant due process during the investigation. After first interviewing her as a non-subject, SIU later decided that she would be a subject of the investigation but did not then afford her the due process entitlements under section 10 of ST/AI/2017/1. While there was procedural unfairness to the Applicant, inefficiency and a lack of reporting transparency; there was no due process failing on the part of the decision-maker since her decision expressly considered not only the SIU investigation report but also the Applicant's responses to the letter requesting comments. The Applicant was well aware of her obligation to report cases of SEA, per staff rules 1.2(c) and (e) and section 3.2 of ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse), and was trying to persuade the person who told her about it to do so. The Applicant was aware of her duties and obligations but did not have the required information per section 4.5 of ST/AI/2017/1. She needed to have that information to comply with section 3.2(e) of ST/SGB/2003/13. The Respondent failed to consider that alternate courses of action, after receiving the information, may have put the Applicant at risk of disciplinary investigation for misconduct. If the Applicant did nothing and kept the information about the alleged SEA to herself, she could face investigations leading to dismissal for failing to report SEA. If she reported the matter without any evidence she could be investigated and sanctioned for "making a report or providing information that is intentionally false or misleading."

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's decision to impose a written reprimand on her for "disseminating an unsubstantiated rumour of sexual exploitation involving a senior official."

Legal Principle(s)

The existing regulatory framework does not list every type of activity that may amount to a failure to “observe the standards of conduct expected of an international civil servant.” Section 3.5 of ST/AI/2017/1 lists certain types of misconduct but underscores that authority to impose disciplinary measures is not limited to the listed types of misconduct. It is squarely within the Respondent’s discretion to determine whether the act of spreading an unsubstantiated rumour with significant potential for harm to the reputation of colleagues and the Organization is unbecoming within the meaning of staff rule 10.1(a). In an era when false information can be instantly and widely disseminated electronically, the harmful potential impact of rumour mongering is a scourge to be protected against in the best interests of the Organization and its staff members.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The administrative measure of a reprimand issued against the Applicant was rescinded. The Respondent was directed to remove the reprimand from the Applicant’s Official Status file. The Respondent was ordered to pay moral damages to the Applicant in the amount of USD1,000.

Full judgment

[Full judgment](#)

Applicants/Appellants

Piezas

Entity

UNSOS

Case Number(s)

UNDT/NBI/2022/009

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

7 Dec 2022

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Conduct

Failure to report misconduct

Sexual exploitation and abuse

Fact-finding investigation

Standard of review (judicial)

Disciplinary matters / misconduct

Investigation

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2017/2

Staff Rules

- Rule 10.1(a)
- Rule 10.2

Related Judgments and Orders

UNDT/2022/081

2019-UNAT-915