UNDT/2022/133, Applicant

UNAT Held or UNDT Pronouncements

On anonymization Article 11.6 of the Tribunal's Statute provides in its relevant part that its judgments shall be published while protecting personal data. A similar provision is contained in art. 26.2 of the Tribunal's Rules of Procedure. Given that the present case relies on medical evidence to support a claim for moral harm, the Tribunal finds that it is reasonable to redact the Applicant's name from this judgment. On the merits Based on the evidence on record, the Tribunal concluded the following. First, the Tribunal found that the two charges against the Applicant were established as per the applicable standard, namely that of preponderance of evidence. Second, the Tribunal found that the established facts amounted to the alleged conduct and violated ST/SGB/2008/5, as well as staff regulation 1.2(m) and staff rule 1.2(q). Third, the Tribunal found that the measure applied, which was not disciplinary in nature, was proportionate to the offence. Finally, the Tribunal found that the Applicant's due process rights were respected as per staff rule 10.2(c). Concerning the Applicant's request for compensation, the Tribunal noted that i) the investigation into the allegations against the Applicant took 14 months to be completed instead of the statutory 3 months, and ii) the disciplinary process was unjustifiably only completed almost 2 years and a half after the conclusion of the investigation report. Thus, the Tribunal also found that there was a causal link between the undue delay in completing the disciplinary process and the deterioration of the Applicant's mental health and well-being as supported by medical evidence. Consequently, the Tribunal awarded compensation for moral harm in the amount of USD5,000 and granted partially the application.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to issue him a written reprimand and to place it in his Official Status File ("OSF").

Legal Principle(s)

The Administration has the duty to act fairly, justly, and transparently in dealing with staff members, and the validity of the exercise of discretionary authority is judged under the legal principles set forth in Sanwidi 2010 UNAT 084. Judicial review is focused on how the decision-maker reached the impugned decision, and not on the merits of the decision-maker's decision. In reviewing decisions imposing a sanction, be it disciplinary or administrative, the Tribunal's scope of review is limited to determining whether: an applicant's due process rights were respected, the facts underlying disciplinary or administrative measures were established, the established facts amount to the alleged conduct, and the sanction was proportionate to the offence. It is the responsibility of the Organization to conduct disciplinary matters in a timely manner to avoid a breach of the staff member's due process rights, as well as to avoid keeping a staff member in "limbo" concerning the outcome of a disciplinary process.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

Full judgment

Applicants/Appellants

Applicant

Entity

UNSSS(UNDSS)

Case Number(s)

UNDT/GVA/2021/41

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Dec 2022

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of authority
Retaliation
Disciplinary matters / misconduct

Applicable Law

GA Resolutions

- A/RES/69/203

Secretary-General's bulletins

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

- SGB/2008/5

Staff Regulations

- Regulation 1.2(m)
- Regulation 1.2(q)

Staff Rules

- Rule 10.2

UNDT RoP

- Article 26.2

UNDT Statute

- Article 10.5(b)
- Article 11.6

Related Judgments and Orders

UNDT/2021/076
2018-UNAT-874
2015-UNAT-592
2010-UNAT-084
2014-UNAT-415
2019-UNAT-915
2012-UNAT-209