

2022-UNAT-1281, Hoyce Temu

UNAT Held or UNDT Pronouncements

The Secretary-General's appeal challenged the UNDT order referring the maternity leave decision for accountability. UNAT found that the UNDT erred by adjudicating the issue as it had already been adjudicated in an earlier judgment. In adjudicating the same issue a second time, the UNDT exceeded its competence since the maternity leave decision had not been challenged before the UNDT in the instant case; and the earlier judgment, which was affirmed on appeal (rendering it res judicata), held that the application in relation to the maternity leave decision was not receivable *ratione temporis* and hence the UNDT lacked jurisdiction to determine the dispute. Moreover, the UNDT erred in applying the ILO Convention on grounds that the ILO Convention was not a part of the applicable legal framework, and even if it were, the maternity leave decision would nonetheless be lawful. UNAT granted the Secretary-General's appeal and set aside the referral for accountability. UNAT further held that in light of the above, there was no basis in Ms. Temu's appeal to award her moral damages for any harm allegedly caused by the maternity leave decision. Further considering Ms. Temu's appeal, UNAT found that the UNDT properly exercised its discretion holding that the disciplinary measure was proportional to her misconduct. UNAT was satisfied that the disciplinary measure imposed correctly reflected the severity of Ms. Temu's impropriety and that mitigating and aggravating factors had been properly considered. Accordingly, UNAT dismissed Ms. Temu's appeal.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Ms. Temu challenged the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity. By Judgment No. UNDT/2021/090, the UNDT dismissed the application and affirmed the disciplinary decision. It, however, found unlawful the decision that in light of Ms. Temu's separation from service, she was no longer eligible for maternity leave, and referred the matter to the Secretary-General for action on accountability pursuant to

Article 10(8) of the Statute of the UNDT. Both parties appealed.

Legal Principle(s)

The Member States in the General Assembly of the United Nations, in establishing regulations governing the appointment and conduct of staff members of the United Nations, pursuant to Article 101(1) of the Charter of the United Nations, have not resolved to adopt the standards codified in the various conventions of the International Labor Organization. Consequently, the standards set forth in the various ILO conventions do not create legal obligations directly binding the Administration of the United Nations. The mere fact that a staff member has adhered to her obligations in the past does not lessen the gravity of her misconduct in a specific case. A clean record can be mitigating in some instances, but certain acts of impropriety are so damaging to the trust relationship that the continuation of employment may become untenable, even intolerable, by one act. Seniority, and the concomitant trust that comes with it, invariably should be regarded as an aggravating factor where there has been impropriety and a breach of trust. Staff Regulation 1.2(i) provides that staff members “shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties”. Vendors who participate in procurement exercises, as set forth in the United Nations Procurement Manual, expect that their commercial bids will be kept confidential to maintain their ability to effectively compete in future solicitations. Competitive bids submitted by vendors in the context of a procurement exercise are considered confidential information in terms of ST/SGB/2007/6 (Information sensitivity, classification and handling), which provides in Article 1.2(f) that information deemed sensitive includes documents containing commercial information, if disclosure would harm either the financial interests of the United Nations or of other parties involved.

Outcome

Appeal dismissed on merits; Appeal granted

Outcome Extra Text

The appeal of the Secretary-General (2021-1611) is granted and the appeal of Ms. Temu (2021-1614) is dismissed. Judgment No. UNDT/2021/090 is modified to set aside the referral of the matter to the Secretary-General for action on accountability and is otherwise affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Hoyce Temu

Entity

UNDP

Case Number(s)

2021-1611

2021-1614

Tribunal

UNAT

Registry

New York

Date of Judgement

7 Dec 2022

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Maternity/paternity leave

Disciplinary measure or sanction

Proportionality of sanction

Termination of appointment (see also, Termination of appointment)

Disciplinary sanction

Referral for accountability

TEST -Rename- Benefits and entitlements-45

Disciplinary matters / misconduct

Separation from service

Termination (of appointment)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2007/6

Staff Regulations

- Regulation 1.2(f)
- Regulation 1.2(i)
- Regulation 1.2(m)
- Regulation 1.2(o)

UN Charter

- Article 101.1

UNRWA DT Statute

- Article 10.8

UNDT Statute

Related Judgments and Orders

2010-UNAT-048