

2022-UNAT-1310, Gudrun Fosse

UNAT Held or UNDT Pronouncements

UNAT found that the UNDT correctly concluded that the contested decision not to initiate an investigation due to the resignation of her SRO was lawful as part of a reasonable exercise of discretion. Though the term “preliminary assessment” in ST/SGB/2019/8 was not specifically used in the contested decision, it was clear that Ms. Fosse’s complaint was preliminarily assessed before the decision was made that no investigation would be undertaken. While the previous Bulletin (ST/SGB/2008/5) may have been in force when she lodged her complaint and when it was the subject of a preliminary assessment, by the time it came to consider whether there would be an investigation, the substitute Bulletin (ST/SGB/2019/8) had come into force pursuant to its transitional provisions. It was then applicable to the decision whether to investigate or to recommend informal resolution. The decision to discontinue the investigation of Ms. Fosse’s complaints was one taken for the reason given, and did not affect legally and adversely Ms. Fosse’s terms of appointment or her contract of employment. UNAT dismissed Ms. Fosse’s claim that the investigative and decision-making process was delayed by inaction so that Ms. Fosse was thereby unjustifiably disadvantaged. Even if Ms. Fosse was correct that the earlier Bulletin was in place and required the Organisation to respond to her complaint “promptly”, there was no “inaction” on the part of the Organisation which would give her grounds to establish that this imperative was breached, or that the UNDT was wrong to have found against this. UNAT dismissed Ms. Fosse’s request for compensation.

Decision Contested or Judgment/Order Appealed

By Judgment No. UNDT/2021/049, the UNDT dismissed Ms. Fosse’s application challenging the decision not to pursue her harassment complaint against her Second Reporting Officer or to address the effects of harassment and retaliation. The UNDT considered that the applicable law was ST/SGB/2019/8, and not ST/SGB/2008/5, as Ms. Fosse insisted. In this regard, the UNDT noted that Ms. Fosse filed a complaint of prohibited conduct on 18 June 2019 to the ASG/OHR with a copy to the Director of ID/OIOS, and that on 19 October 2019, “after initial assessment”, the Director of ID/OIOS referred that complaint to the ASG/OHR, who was tasked with making the decision to initiate or not to initiate an investigation. The Dispute Tribunal found that the ASG/OHR’s decision not to investigate the complaint and to close the matter in preference of an informal resolution was a reasonable exercise of discretion, in light of the alleged harasser’s resignation. The UNDT also found that Ms. Fosse was not entitled to monetary or other types of compensation because there was no finding of misconduct or any illegality. Ms. Fosse appealed.

Legal Principle(s)

All United Nations staff are entitled to expect to work in a safe environment. This is not simply safety from physical harms but includes psychological and moral safety. In particular, that expectation of safety includes an environment that is free of harassment and abuse of authority including on racial, ethnic or national origin grounds. That expectation also includes freedom from a generally hostile working environment. And the corollary of these uncontroversial expectations is that there is an effective complaint, investigative and enforcement mechanism that, among other things, protects complainants against retaliatory acts. It is not permissible to introduce new issues on appeal.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gudrun Fosse

Entity

UN Secretariat

Case Number(s)

2021-1573

Tribunal

UNAT

Registry

New York

Date of Judgement

5 Jan 2023

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation (see category: Investigation)

Administrative decision

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2017/2/Rev.1
- ST/SGB/2019/8

Staff Rules

- Rule 1.2(f)