

2023-UNAT-1329, Claude Cahn

UNAT Held or UNDT Pronouncements

The UNAT found that the UNDT did not err in law or fact or exceed its jurisdiction and it dismissed the Secretary-General's appeal. The UNAT found that the Administration had been made aware of the disharmonious working conditions within the Regional Office for Europe and had failed to take timely action. By exposing Mr. Cahn to harmful working conditions for a considerable amount of time (several months), the Administration failed in its duty of care vis-à-vis Mr. Cahn to timely implement preventive or interim measures and thus prevent any possible harm to his health, irrespective of whether the actions of his FRO rose to the level of prohibited conduct. By failing to take action earlier to address the worsening and disharmonious work environment at ROE and thus exposing Mr. Cahn to harmful working conditions for a considerable amount of time, the UNAT concluded that compensation should be awarded to alleviate the harm suffered, provided that certain criteria in law were met and the harm was supported by evidence. The UNAT was satisfied with the detailed analysis of the whole evidence by the Dispute Tribunal. The UNAT found that the UNDT Judge did not err in exercising his remedial discretion in awarding compensation for non-pecuniary damages (moral damages) equivalent to seven months of net base salary for the harm suffered; harm directly caused by the Administration's failure to take protective action at an early stage.

Decision Contested or Judgment/Order Appealed

By Judgment No. UNDT/2022/008, the UNDT dismissed Mr. Cahn's claim that OHCHR should have taken disciplinary action against the Resident Representative (RR) (who was also his First Reporting Officer (FRO)) following the investigation of his complaint against her. The UNDT held that OHCHR had properly handled Mr. Cahn's complaint against the RR, and that the case record fully supported the reasonableness of the decision not to initiate disciplinary proceedings against the RR. The UNDT separately found that OHCHR had an independent, so-called duty of care that required it to take immediate protective action upon receiving Mr. Cahn's complaint, that OHCHR took no action to protect him and that it had therefore violated this duty. On this basis, the UNDT awarded Mr. Cahn seven months' net base salary for harm suffered from OHCHR's failure to timely protect him from a toxic work environment. The Secretary-General appealed.

Legal Principle(s)

There is a commitment that all international organizations must have "zero tolerance" for harassment in the workplace and will not tolerate conduct that can be construed as harassment, sexual harassment or abuse of authority. This is especially true for the United Nations, as such behaviour or conduct is contrary to the spirit of the United Nations Charter, its Staff Regulations and Rules and to the Standards of Conduct for the International Civil Service. The "zero tolerance" policy is aimed at providing a safe environment for all United Nations employees, free from discrimination on any grounds and from harassment at work, including sexual harassment. As a general rule, this policy aims to tackle the issue of harassment in the workplace mainly by means of two methods. The first and more immediate one has the corrective purpose of addressing any possible inappropriate behaviour and applying the necessary measures according to the situation. The second and broader one has the preventative aim of promoting a positive work environment and preventing inappropriate behaviour in the workplace. It is well-settled in the Appeals Tribunal's jurisprudence that, under the above provisions, the Administration of the Organization has a duty of care to ensure a harmonious work environment and protect staff members from harm by way of, inter alia, taking appropriate preventive and remedial measures in each specific case. This duty is an inherent part of the employment relationship and a fundamental condition of service and must be fulfilled by the Administration with due diligence and without delay. The Dispute Tribunal has broad

discretion under Article 18(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before it. There exists, in general, an employer's duty to protect the health, safety and welfare of their employees and other people who might be affected by their business. The employer must do whatever is reasonably practicable to achieve this by making sure that workers and others are protected from anything that may cause harm, effectively controlling any risks to injury or health that could arise in the workplace. An entitlement to moral damages may arise where there is evidence produced to the Tribunal by way of a medical, psychological report or otherwise of harm, stress or anxiety caused to the employee, which can be directly linked, or reasonably attributed, to a breach of his or her substantive or procedural rights and where the Tribunal is satisfied that the stress, harm or anxiety is such as to merit a compensatory award. Compensation must be set by the UNDT following a principled approach and on a case-by-case basis. The Appeals Tribunal will not interfere lightly as the Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case.

Outcome

Appeal dismissed on merits

Outcome Extra Text

The appeal is dismissed by majority, Judge Knierim dissenting, and Judgment No. UNDT/2022/008 is hereby upheld.

Full judgment

[Full judgment](#)

Applicants/Appellants

Claude Cahn

Entity

OHCHR

Case Number(s)

2022-1681

Tribunal

UNAT

Registry

New York

Date of Judgement

20 Apr 2023

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-pecuniary (moral) damages

Compensation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNAT Statute

- Article 2.1
- Article 2.1(e)

UNDT RoP

- Article 10.1

UNAT RoP

- Article 18.1

Related Judgments and Orders

2021-UNAT-1171

2020-UNAT-1069

2019-UNAT-939

2021-UNAT-1167

2019-UNAT-922

2015-UNAT-582

2015-UNAT-546

2011-UNAT-123

2013-UNAT-309

2017-UNAT-791

2017-UNAT-724

2016-UNAT-691