

2023-UNAT-1330, Ray Steven Millan

UNAT Held or UNDT Pronouncements

The UNAT held that there was a preponderance of evidence that the staff member was a passenger in a clearly-marked UN vehicle in which acts of a sexual nature took place as it circulated in a heavily-trafficked area of the city. His conduct constituted an exceptional circumstance in terms of Section 11.4(b) of ST/AI/2017/1, especially considering the serious and grave nature of the conduct in which he was involved, captured on the video clip which was circulated widely, causing significant harm to the reputation and credibility of the Organization. His placement on ALWOP was a reasonable exercise of the Administration's discretion and it was not excessive or arbitrary. His act of misconduct was grave enough for the Administration to contemplate separation or dismissal, as it was irremediably damaging the trust relationship between the staff member and the Organization. The UNAT noted that the staff member has failed to specifically identify any errors allegedly committed by the UNDT in respect of the seizure of his personal smartphone and therefore, that part of his appeal is defective for that reason alone. The immaterial matters that he submits in his appeal pertain to the merits of his case and not to the receivability or mootness of this part of his application to the UNDT. The UNAT found that the staff member failed to demonstrate in what way the alleged violations of his due process rights prejudiced him within the context of the present case and impacted the outcome of his case. The key elements of his right to due process were met and the interests of justice were served in this case. The mere fact that Mr. R. knew the staff member before the investigation by virtue of serving in the same mission did not pose a conflict of interest on his part, as the UNDT correctly concluded. The UNAT was of the view that since no illegality was found, there was no justification for the award of any compensation. The UNAT held that there is no justifiable basis to refer the case for accountability. The UNAT agreed with the UNDT's holding that the extension of staff member's placement on ALWP was not excessive or abusive and it was reasonable for the Administration to conclude that having him assume the exercise of his functions could potentially further damage the Organization's reputation. The staff member's appeal

impermissibly repeats arguments already thoroughly considered and rejected by the UNDT. The UNAT dismissed the appeals and affirmed Judgment No. UNDT/2021/152 and Judgment No. UNDT/2021/145.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision to seize his personal smartphone for the purposes of the investigation, to place him on Administrative Leave Without Pay (ALWOP), and to extend his placement on administrative leave with pay (ALWP) for an additional three months or pending completion of an investigation and any disciplinary process. In Judgment No. UNDT/2021/152, the UNDT dismissed the staff member's application contesting the phone seizure and the ALWOP decisions. In Judgment No. UNDT/2021/145, the UNDT dismissed his application contesting the ALWP extension decision. The staff member appealed.

Legal Principle(s)

The UNDT has broad discretion under its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases to enable cases to be judged fairly and expeditiously and for dispensation of justice. The Appeals Tribunal will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence. A party, in order to be successful on appeal, not only has to assert and show that the Dispute Tribunal committed an error in procedure but also that this error affected the decision in the case. Due process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against her/him. Compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair. The exercise of the power of referral for accountability must be exercised sparingly and only where the breach or conduct in question exhibits serious flaws. The appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law

warranting intervention by the Appeals Tribunal. The discretionary power of the Administration is not unfettered. The Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith. In cases of misconduct the Secretary-General is not at complete liberty to place a staff member on Administrative Leave Without Pay, as his discretion to do so is conditioned upon the existence of exceptional circumstances.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Ray Steven Millan

Entity

UNTSO

Case Number(s)

2022-1659

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Apr 2023

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Definition

Due process

Inappropriate or disruptive behaviour

Appeal

Subject matter (ratione materiae)

Admissibility of evidence

Case management

Compensation

Discretionary authority

Administrative decision

Investigation

Disciplinary matters / misconduct

Jurisdiction / receivability (UNAT)

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/8

Staff Regulations

- Regulation 1.2
- Regulation 1.2(f)

Staff Rules

- Rule 10.4

UNAT Statute

- Article 2.1
- Article 2.1(d)
- Article 2.1(e)
- Article 9.5

Related Judgments and Orders

UNDT/2021/152

UNDT/2021/145

2018-UNAT-869

2019-UNAT-973

2019-UNAT-960

2017-UNAT-762

2012-UNAT-265

2016-UNAT-675

2015-UNAT-597

2018-UNAT-849

2016-UNAT-669

2015-UNAT-537

2015-UNAT-508

2014-UNAT-420

2010-UNAT-095

2017-UNAT-805

2017-UNAT-716

2019-UNAT-974

2019-UNAT-915
2018-UNAT-814
2017-UNAT-798