

2023-UNAT-1333, Hasmik Egian

UNAT Held or UNDT Pronouncements

The UNAT upheld the UNDT's conclusions that (1) four of the six incidents underlying the hostile work environment charge against the appellant were not established, but that two incidents were; and (2) appellant had unlawfully interfered with a recruitment exercise which also created a hostile work environment. The UNAT rejected appellant's contention that because the UNDT considered that certain actions were not harassment, that they could not constitute misconduct. Whereas certain comments by the appellant about the gender composition of the senior management team, or a failure by appellant to consult in the placement of staff on a subordinate manager's team, were not harassment, they nonetheless could contribute to a hostile work environment. The UNAT also disagreed with appellant's contention that because the UNDT rejected certain of the Administration's findings on harassment, that accordingly, the disciplinary measure should have been adjusted. The UNAT held that even though appellant's actions did not constitute harassment, and out of the seven charged incidents, only three were established, the nature and gravity of abuse of authority alone was enough to warrant the imposed sanction. The UNAT also found that imposing the sanction of written censure and loss of two steps in grade was a reasonable exercise of the Administration's discretion, with which it would not interfere. The UNAT agreed with the UNDT that it was a procedural flaw for a manager who knew the complainant in the case to be the officer who established the fact-finding panel, but this irregularity did not render the disciplinary process or measure unlawful. The UNAT was satisfied that appellant's due process rights were met, in that she was fully informed of the charges against her and was given the opportunity to contest them and to seek advice of counsel. Because the UNAT did not find any illegality in the decision of the UNDT, the UNAT rejected appellant's request for moral damages.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/015, the Dispute Tribunal dismissed Ms. Egian's application that challenged the imposition of disciplinary measures for established misconduct. The UNDT concluded that there was a preponderance of evidence to support that Ms. Egian had created a hostile work environment and unlawfully interfered with a recruitment process. The UNDT further found that Ms. Egian's due process rights had been respected, and that the Administration had acted within the bounds of its discretion in imposing the sanction of written censure and loss of two steps in grade for this misconduct. Ms. Egian appealed.

Legal Principle(s)

Misconduct is a broader concept than harassment, wherein the former includes any failure of the staff to comply with their obligations under the United Nations legal framework for the conduct of international civil servants. Actions that are not harassment may still be misconduct. The four specific acts listed in Section 1.4 of ST/SGB/2008/5 are only examples of the types of conduct that may create a hostile work environment. It is not an exclusive list. Even if all of the allegations of misconduct are not proven, the imposed sanction may still be upheld. The reduction of the number of established incidents of misconduct will not necessarily entail an adjustment to the imposed sanction. Due process requires that a staff member who is subject to an investigation be informed of the misconduct charges and be provided with the opportunity to contest the allegations against him or her.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Hasmik Egian

Entity

UNS-DPPA

Case Number(s)

2022-1683

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Apr 2023

President Judge

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Harassment (non-sexual)

Proportionality of sanction

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(a)

Staff Rules

- Rule 10.1(a)

Related Judgments and Orders

2021-UNAT-1177

2020-UNAT-1006

2020-UNAT-1000

2011-UNAT-123

2021-UNAT-1172

2021-UNAT-1183

2013-UNAT-334

2015-UNAT-523
2013-UNAT-374
2016-UNAT-700
2020-UNAT-1070
2018-UNAT-873
2013-UNAT-337
2019-UNAT-956
2018-UNAT-889
UNDT/2022/015