

2023-UNAT-1340, Mubashara Iram

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT had not erred in holding that there had been clear and convincing evidence that the staff member harassed other staff members over a substantial period of time, and that this behaviour constituted serious misconduct. The UNAT affirmed that there was clear and convincing evidence to support the seven allegations that Ms. Iram used abusive language, made insulting remarks, shouted and bullied individuals, engaged in inappropriate touching, and made unwelcome contacts with individuals at their homes after working hours. The UNAT found that the staff member's due process rights were respected during the investigation process as she was interviewed and had the opportunity to respond to the allegations. In the present case, due process did not require the UNDT to hold an oral hearing and give her an opportunity to confront and cross-examine the witnesses. The UNAT also held that the UNDT erred in law and exceeded its jurisdiction when it concluded that the disciplinary sanction of separation from service with compensation in lieu of notice and with termination indemnity was not proportionate to the misconduct, rescinded it and replaced it by a more lenient measure. The UNAT noted that the staff member's misconduct was of a very serious nature. For several years, she had harassed her colleagues. The consequences to her workplace were grave. The sanction was necessary to protect the efficiency of the workplace and the health of other staff members. Contrary to the UNDT's findings, the UNAT held that insufficient and inadequate actions by the management or Ms. Iram's positive performance evaluations cannot be regarded as a mitigating factor which would render the disciplinary sanction unproportionate. UNAT pointed out that a more lenient sanction which would have allowed Ms. Iram to continue working, included the risk that other staff members' health would further be harmed, that they would leave UNICEF to avoid harassment, and that there would be an impact on the efficiency of the Organization. The UNAT dismissed the staff member's appeal, granted the Secretary-General's appeal and modified Judgment No. UNDT/2022/039 so as to dismiss her application in its entirety, and referred the case to the Secretary-General for possible action to enforce accountability.

Decision Contested or Judgment/Order Appealed

A former staff member contested the decision to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity. In Judgment No. UNDT/2022/039, the UNDT granted the application in part, rescinded the contested disciplinary measure and replaced it by that of demotion of one step in grade with deferment, for three years, of eligibility for consideration for promotion, ordered the Secretary-General to reinstate her and effect any back payments accordingly, and as an alternative, be paid compensation in lieu of reinstatement a sum equivalent to 12 months of her net-base salary at the rate that she would have been paid had she been demoted at the time of her separation, minus the termination indemnity that she received upon her separation. The UNDT ordered that payment of that amount was due within 60 days of the date on which the Judgment becomes executable. The staff member and the Secretary-General each appealed.

Legal Principle(s)

In disciplinary cases under Article 2(1)(b) of the Appeals Tribunal Statute, the UNDT will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether the staff member's due process rights were respected. In disciplinary matters, the tribunals will only review whether there is sufficient evidence for the allegations as

asserted in the disciplinary decision. It is of no legal relevance that other allegations were dropped before or during the disciplinary proceedings. The principle of falsus in uno, falsus in omnibus does not apply. Clear and convincing evidence can be established without an oral hearing in certain circumstances and this is in the discretion of the Dispute Tribunal. The Administration has a broad discretion when it comes to the choice of a disciplinary sanction.

Outcome

Appeal dismissed on merits; Appeal granted

Outcome Extra Text

The case is referred to the Secretary-General for possible action to enforce accountability.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mubashara Iram

Entity

UNICEF

Case Number(s)

2022-1704

Tribunal

UNAT

Registry

New York

Date of Judgement

8 May 2023

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dismissal/separation

Facts (establishment of) / evidence

Harassment (non-sexual)

Proportionality of sanction

Investigation

Temporal (ratione temporis)

Oral hearings

Referral for accountability

Disciplinary matters / misconduct

Jurisdiction / receivability (UNAT)

Procedure (first instance and UNAT)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(f)

Staff Rules

- Rule 10.2(a)
- Rule 10.3(b)

UNAT RoP

- Article 18.1
- Article 29(b)
- Article 7.1(a)

UNAT Statute

- Article 2.1(b)
- Article 2.1(d)
- Article 7.1(c)
- Article 8.3

UNICEF Executive Directives

- CF/EXD/2012-007

Related Judgments and Orders

2022-UNAT-1259

UNDT/2022/039

2019-UNAT-976

2013-UNAT-366

2013-UNAT-302

2019-UNAT-918

2020-UNAT-1061

2018-UNAT-886

2018-UNAT-860

2022-UNAT-1216

2021-UNAT-1171

2020-UNAT-1070