

2023-UNAT-1366, AAN

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the staff member.

The UNAT found that because of a combination of the staff member's failure to recall the events in question and of the UNDT's decision (concurrent in by the parties) not to hold an in-person hearing, the UNDT had appropriately referred to the investigation report.

The UNAT was of the view that the UNDT had correctly determined the staff member's acts were sexual in nature. The staff member had, without invitation, encouragement or consent, embraced two different women in a sexual manner at a party at a staff retreat. The UNAT held that the UNDT properly concluded that AAN's conduct fell within the definition of prohibited conduct, namely, sexual harassment, set down in the relevant UNICEF directive. The UNAT rejected the staff member's contention that the UNDT should have considered as a mitigating factor that this was a one-off incident caused by his excessive drinking. The staff member's long dedicated service, and absence of any disciplinary record should not be underestimated, but the converse of this positive factor is that as a senior staff member he should have known not to behave in such a manner. The UNAT concluded that in arriving at an appropriate sanction, a balance was required to be struck between the Appellant's long record and seniority, and the nature of his behavior, and the UNAT did not agree that the Administration or the UNDT got this balance wrong.

The UNAT noted that several grounds of appeal were inadmissible.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/073.

Decision Contested or Judgment/Order Appealed

A former staff member contested the disciplinary decision to separate him from service, with compensation in lieu of notice, and with termination indemnity, for sexual harassment.

In Judgment No. UNDT/2022/073, the UNDT dismissed the application. The UNDT found that the investigation had gathered clear and convincing evidence that supported the allegations that the staff member had touched two female colleagues without their consent, the acts being sexual in nature. The UNDT was of the view that the sanction imposed was adequate and proportionate to the gravity of the offence. The UNDT noted that his due process rights had been respected; he had not indicated the relevance of other proposed witnesses.

Legal Principle(s)

When the appellant criticizes the investigators for not interviewing his nominated witnesses, the answer was for the appellant to ask the Dispute Tribunal to hear from these witnesses at an oral hearing.

Notwithstanding a staff member's assertion that hugging and touching of women by men is culturally acceptable behavior for him, his actions were clearly sexual in nature and not acceptable by or towards United Nations staff.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

AAN
Entity
UNICEF
Case Number(s)
2022-1732
Tribunal
UNAT
Registry
New York
Date of Judgement
31 Jul 2023
President Judge
Judge Colgan
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Proportionality of sanction
Discretionary authority
Subject matter (ratione materiae)
Confidentiality
Disciplinary cases
Disciplinary matters / misconduct
Jurisdiction / receivability (UNAT)
Procedure (first instance and UNAT)
Standard of review (judicial)
Applicable Law
Secretary-General's bulletins

- ST/SGB/2019/8

Staff Regulations

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

UNDT RoP

- Article 16

UNICEF Executive Directives

- CF/EXD/2012-007

Related Judgments and Orders

UNDT/2022/073
2023-UNAT-1348
2022-UNAT-1210