

2023-UNAT-1373, Mihai Nastase

UNAT Held or UNDT Pronouncements

Mr. Nastase appealed the UNDT Judgment.

The UNAT affirmed the UNDT's finding that it had not been established by evidence that the administrative decision to close his complaint was actuated by bias against him and was therefore unlawful.

The UNAT dismissed Mr. Nastase's contention that the UNDT erred in finding that the fact that in 2019, Mr. Nastase had filed a complaint against the CIOS alleging misconduct was unrelated to his performance issues. The UNAT found that because these events were not part of his complaint of harassment and abuse of authority in relation to his performance review complaint, it could not have been taken into consideration when the decision to close that complaint was made. The UNAT further found that even if this ground of challenge to the involvement in his performance assessment by the CIOS had been an issue in the preliminary assessment of his complaint of harassment, there had been no persuasive evidence adduced to support the proposition that there was improper interference in the decision to close the complaint attributable to those earlier events.

The UNAT dismissed the appeal and affirmed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Nastase challenged the decision not to open, after a preliminary assessment, an investigation into his harassment complaint against the Chief, Infrastructure Operations Section (CIOS).

The UNDT held that a decision to close a complaint of alleged prohibited conduct is discretionary in nature, and that the USG/DOS' decision not to investigate the harassment complaint was lawful.

The UNDT held that there were no indicia of harassment in the e-mails and follow-up actions that were the object of Mr. Nastase's complaint, and that the CIOS' e-mails to him stated nothing more than a performance issue that needed to be addressed and the follow-up measures taken by his supervisors were well within their managerial discretion.

The UNDT thus dismissed the application.

Legal Principle(s)

While it is true that, in general, a staff member cannot insist that the Organization take disciplinary action against another staff member, that is not to say that a staff member does not have rights that, if warranted, may mean that the Organization should take such action against another staff member.

A fact-finding investigation may follow a preliminary assessment if there are sufficient grounds or reason to believe that a staff member has engaged in prohibited conduct towards the complainant.

The MEU evaluation is an organizational internal check of the correctness of a decision and not a separately challengeable decision. If a management evaluation finds the original decision erroneous, that will usually bring about, fully or in part, the staff member's desired result. If the management evaluation is to uphold the original decision, an appellant's remedy is to challenge the original decision in the UNDT.

A staff member's dissatisfactions about criticisms of his or her work performance do not normally alone constitute harassment of, or abuse of authority against, the staff member whose work performance is criticized. That is not to say that the way critique is exhibited cannot constitute such misconduct: rather, what is described as "normal" performance management interactions should be addressed in that, and not in a disciplinary, context. Staff members subject to adverse work performance assessments will naturally and even inevitably be concerned about them and may frequently disagree with the assessments, including the appropriateness of the mechanism used to make those assessments. Those, and other related concerns such as whether the adverse performance is that of the individual staff member or of his/her team are matters that the system of performance management allows to be aired.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mihai Nastase

Entity

UNOPS

Case Number(s)

2022-1718

Tribunal

UNAT

Registry

New York

Date of Judgement

4 Aug 2023

President Judge

Judge Colgan

Judge Sandhu

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of authority

Harassment (non-sexual)

Fact-finding investigation

Disciplinary matters / misconduct

Investigation

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/8

Related Judgments and Orders

2023-UNAT-1367