

# **UNDT/2023/111, Applicant**

## **UNAT Held or UNDT Pronouncements**

The Respondent failed to secure the attendance of two victims at the remanded hearing. Four witnesses testified before the Tribunal, including only one victim. None of their testimonies corroborates the charges as laid. On the contrary, they are exculpatory in so far as all three witnesses testify that they did not see the Applicant doing anything improper at the event in question. Accordingly, there is no effective response to the concerns that formed the basis for the Appeals Tribunals' decision to remand the case for a fresh hearing.

Neither the allegations memorandum nor the sanction letter elaborated upon the "sexual nature" of the alleged offence. Consequently, the Administration failed to prove by clear and convincing evidence a key element of sexual harassment under sec. 1.3 of ST/SGB/2008/5: that the verbal or physical conduct, gesture or any other behaviour was of "a sexual nature".

Notwithstanding the above, the facts in relation to the alleged victims have not been proven by clear and convincing evidence. Various factors cast doubt on one of the alleged victim's credibility and reliability as a witness. Thus, it's unsafe to make an adverse finding based only her evidence that the Applicant sexually harassed her. There is no evidence beyond what formed the basis for the impugned judgment. The available evidence does not attain the standard of clear and convincing evidence establishing that the Applicant sexually harassed colleagues.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contests the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice, and with termination indemnity in accordance with staff rule 10.2(a)(viii).

## **Legal Principle(s)**

Before concluding that there has been sexual harassment, there has to be sufficient, credible and reliable evidence proving a high probability that the perpetrator: i) made a sexual advance; ii) made a request for a sexual favour; iii) engaged in conduct or behaviour of a sexual nature; or iv) made a gesture of a sexual nature. In addition, the advance, request, conduct or gesture must be shown to have been unwelcome; might reasonably have been perceived to cause offence or humiliation to another; or have caused a hostile work environment.

The Secretary-General bears the onus of adducing clear and convincing evidence to prove that the misconduct was highly probable. There is no overall onus on the staff member to prove his innocence.

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The Tribunal rescinds the disciplinary sanction and instructs the Respondent to expunge the Applicant's name from the relevant register of sexual harassers into which it may have been entered.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Applicant

## Entity

UNS

## Case Number(s)

UNDT/GVA/2022/016/T

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

4 Oct 2023

## Duty Judge

Judge Tibulya

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Sexual harassment

Disciplinary matters / misconduct

## Applicable Law

Staff Rules

- Rule 10.2(a)(viii)

UNDT Statute

- Article 11.6
- Article 10.5(b)

## TANU Statut du Tribunal

- Article 10.5(a)

## Administrative Instructions

- ST/AI/2017/1

## Secretary-General's bulletins

- ST/SGB/2008/5

## Related Judgments and Orders

2022-UNAT-1210

2016-UNAT-639

UNDT/2021/007

2023-UNAT-1332

2013-UNAT-302

2010-UNAT-024

2015-UNAT-537

2019-UNAT-956

2020-UNAT-1024

2021-UNAT-1183

2011-UNAT-164

2017-UNAT-776

UNDT/2011/069

2022-UNAT-1187

2020-UNAT-1033

2017-UNAT-718

2013-UNAT-280

2022-UNAT-1256

2023-UNAT-1370

2023-UNAT-1361

2021-UNAT-1122

UNDT/2020/053

2012-UNAT-247