

2023-UNAT-1382, Flamur Kazazi

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT did not commit an error of procedure in its case management that affected the outcome of the case. The Appellant had a meaningful opportunity to mount a defense and to question the veracity of the statements against him. The additional witnesses that he wished to call would have been of little assistance to his case.

The UNAT found that the UNDT correctly concluded that the alleged conduct was established by clear and convincing evidence and that the Appellant's actions, i.e., making inappropriate comments of a sexual nature in social settings, amounted to sexual harassment. The UNAT found that the UNDT made appropriate findings on credibility by considering the factors related to the credibility and reliability of the witnesses. In its discretion, the UNDT ultimately correctly held that it believed the evidence of V01 and V02 on the basis of their lack of motive in lying and the probabilities of the statements in question.

The UNAT concluded that the investigation and the disciplinary process were conducted in accordance with the legal framework and investigation guidelines and that the irregularities relied on by the Appellant were not substantial such that they impacted his due process rights.

With regard to the proportionality of the sanction, the UNAT held that the sanction imposed on the Appellant for serious misconduct of multiple incidents and complainants accorded with the policies and practices of the Administration and that the UNDT appropriately considered mitigating factors in making this finding.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/087.

Decision Contested or Judgment/Order Appealed

The Appellant, a former staff member of the United Nations-African Union Mission in Darfur (UNAMID), contested the decision of the Administration to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity and to include his name in the ClearCheck database. In its Judgment No. UNDT/2022/087, the UNDT concluded that there was clear and convincing evidence that the Appellant has committed serious misconduct by sexually harassing V01 and V02 and dismissed his application.

Legal Principle(s)

The UNDT has broad discretion to determine the admissibility of any evidence and the weight to be attached to it. The UNAT will only intervene with the broad discretion conferred on the first instance tribunal in the management of its cases in clear cases of denial of due process of law affecting a party's right to produce evidence. Moreover, it is not necessary for any court, whether a trial or appellate court, to address each and every claim made by a litigant, especially when a claim has no merit.

In order to overturn a finding of fact by the UNDT, the UNAT must be satisfied that the finding is not supported by the evidence or that it is unreasonable. Some degree of deference should be given to the factual findings by the UNDT, particularly where oral evidence is heard. The UNDT has the advantage of assessing the demeanour of witnesses while they are giving evidence and this is critical for assessing the credibility of the witnesses and the persuasiveness of their evidence. Only substantial procedural irregularities in the disciplinary investigation will render a disciplinary measure unlawful.

Sexual harassment, while typically involving a pattern of conduct, may take the form of a single incident. Moreover, the perspective of the person who is the target of the conduct shall be considered and the perpetrator of the offending conduct does not have to intend or be aware of the offending nature of their behaviour.

With regard to the proportionality of the sanction, the Administration has a broad discretion in determining the appropriate disciplinary measure for the established misconduct and the UNAT will only overturn a measure if it finds that it is excessive or unreasonable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Flamur Kazazi

Entity

UNAMID

Case Number(s)

2022-1753

Tribunal

UNAT

Registry

New York

Date of Judgement

20 Nov 2023

President Judge

Judge Sandhu

Judge Ziadé

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

In-lieu compensation

Disciplinary matters / misconduct

Dismissal/separation

Facts (establishment of) / evidence

Proportionality of sanction

Due process

Investigation

Due process

Procedure (first instance and UNAT)

Admissibility of evidence

Separation from service

Case management

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/8

Staff Rules

- Rule 10.1(a)
- Rule 10.2(a)
- Rule 10.3(b)

UNAT RoP

UNAT Statute

- Article 2.1(d)

Related Judgments and Orders

2023-UNAT-1311

2023-UNAT-1341

2015-UNAT-550

2023-UNAT-1332

2019-UNAT-972

2018-UNAT-889

2022-UNAT-1216

2015-UNAT-523

2023-UNAT-1366