

UNDT/2024/012, Bham

UNAT Held or UNDT Pronouncements

On whether the facts were established by clear and convincing evidence, the Tribunal found the testimony of each of the Respondent's witnesses to be credible and the testimony of the Applicant to be not worthy of belief. Based on the credible testimony and the other evidence in the record, the Tribunal held that the Respondent had established by clear and convincing evidence that the Applicant committed the acts upon which the disciplinary measure was imposed.

Regarding misconduct, the Tribunal concluded that there was sufficient evidence of sexual harassment, harassment, and abuse of authority by the Applicant, all of which constitute serious misconduct.

On the due process prong, the Tribunal found that the Respondent had demonstrated that the investigation and the disciplinary process leading up to the disciplinary sanction were conducted in accordance with the applicable legal framework and investigation guidelines. The Applicant did not substantiate his claim that the investigation process was tainted. Accordingly, the Tribunal held that the Applicant's due process rights were respected during the investigation and disciplinary process.

On whether the sanction was proportionate to the offence, the Tribunal concluded that the sanction imposed on the Applicant accorded with the practice of the Secretary-General in similar cases of punishing sexual harassment at the upper end of the sanction range for "harassment, sexual harassment and abuse of authority category of cases. This upper end includes termination, particularly in light of the Organization's "zero tolerance" policy for sexual harassment. Accordingly, the Tribunal found that the sanction of dismissal was neither unfair nor unjust. It was rather appropriate and proportionate under all of the circumstances and evidence.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose on him the disciplinary measure of dismissal.

Legal Principle(s)

The role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements: i. Whether the facts were established by clear and convincing evidence; ii. Whether the facts established amount to misconduct; iii. Whether the staff member's due process rights were guaranteed during the entire proceeding; and iv. Whether the sanction is proportionate to the gravity of the offence.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Bham

Entity

UNSOS

Case Number(s)

UNDT/NBI/2023/034

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

11 Mar 2024

Duty Judge

Judge Wallace

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2(a)

Staff Rules

- Rule 1.2(f)

Related Judgments and Orders

2023-UNAT-1370

2023-UNAT-1311

2018-UNAT-869

2014-UNAT-486

2012-UNAT-207

2015-UNAT-550

2020-UNAT-1024

2010-UNAT-084

2020-UNAT-1033