

UNDT/2024/016, Applicant

UNAT Held or UNDT Pronouncements

There is no evidence that the facts that were taken into consideration to substantiate the investigator's finding of "prior conduct" were properly investigated up to the threshold of clear and convincing evidence. Therefore, the credibility assessment made by the Administration via the use of prior conduct evidence cannot stand, and the alleged prior conduct evidence was not considered by this Tribunal in its judicial review of the facts.

With respect to the allegation that the Applicant sexually harassed V01, based on the 8 and 21 November 2017 emails, which confirm the Applicant's persistency with the idea of sharing an accommodation on Airbnb, and the contemporaneous indirect testimonial evidence on record, which confirms V01's perception of pressure at the time of the incident, the Tribunal considers the allegation to be established to the standard of clear and convincing evidence.

With respect to the allegation that the Applicant harassed V01 by creating an intimidating and hostile work environment, it is established to the standard of clear and convincing evidence that the Applicant changed his workplace behavior towards V01 after the mission to South Korea, and after she rejected him. He started putting significant pressure on her, monitoring her work and whereabouts closely, and was unpredictable and erratic in his behavior towards her.

In the Tribunal's view, it is established that the manner in which the Applicant managed his professional relationship with V01 was so problematic to the point of outside third parties noticing a change in his behaviour during a specific time. The foregoing leaves no doubt about the nature of the Applicant's intentions and supports V01's allegations with respect to what happened months prior in South Korea. That is, the subsequent workplace harassment is consistent with V01's allegations that she suffered sexual harassment from the Applicant, thus befitting a finding of misconduct also in this respect.

Given the gravity of the misconduct, the Tribunal views the sanction as proportionate to the misconduct, and agrees that remaining in service would be irreconcilable with the core values professed by the United Nations.

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 25 per cent of the termination indemnity.

Legal Principle(s)

When termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing evidence requires more than a preponderance of evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable.

in imposing a disciplinary sanction, decision makers enjoy a wide discretionary area of judgment. Due deference should be given to the discretion of the decision maker. In conducting a judicial review, the Dispute Tribunal “shall consider the record assembled by the Secretary-General and may admit other evidence” to assess: whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the Applicant’s due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence.

It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him, nor it is the role of the Tribunal to substitute its own decision for that of the Secretary-General.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNODC

Case Number(s)

UNDT/GVA/2020/036/R1

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Mar 2024

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Harassment (non-sexual)

Sexual harassment

Disciplinary matters / misconduct

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(a)

Staff Rules

- Rule 1.2(f)
- Rule 10.2

UNAT Statute

- Article 9.4

UNDT Statute

Related Judgments and Orders

2011-UNAT-164

2021-UNAT-1167

2016-UNAT-692

2022-UNAT-1196

2022-UNAT-1210

2022-UNAT-1187

2021-UNAT-1137

2013-UNAT-280

2017-UNAT-781

2018-UNAT-819

2021-UNAT-1171

2021-UNAT-1076