

UNDT/2024/020, Kavosh

UNAT Held or UNDT Pronouncements

Under “Preliminary Issues”, the Tribunal decided to strike from the record the Applicant’s motion for anonymity and to exceptionally accept the Applicant’s closing submission which exceeded the page limit.

Whether the facts on which the disciplinary measure was based have been established by evidence and up to the required standard of proof.

The Tribunal noted that the sanction was based on four allegations, which it considered separately. After having considered the evidence on record for each allegation, the Tribunal found that it had been established by clear and convincing evidence that:

1. The Applicant sexually exploited the Complainant, a refugee, by engaging in a romantic and sexual relationship with her between late 2017 or early 2018 and November 2020.
2. The Applicant shared a sexually explicit book, the “Sex Bible” with his colleagues, over WhatsApp on 29 October 2018, while he was Acting Head of the UNHCR Shiraz Sub-Office.
3. The Applicant received and stored sexually explicit material in his official UNHCR-issued mobile phone.
4. The Applicant failed to fully cooperate with the investigation by deleting 989 files from his UNHCR laptop before surrendering it as evidence for the investigation, as well as by being untruthful in his responses to questions from IGO and selective in his submission of evidence.

Whether the established facts legally amount to misconduct

The Tribunal referred to the applicable legal framework for each of the allegations and found that the High Commissioner correctly determined that:

1. The Applicant's conduct in relation to the Complainant (a refugee) amounted to sexual exploitation and constituted misconduct.
2. The Applicant's conduct in relation to the "Sex Bible" amounted to sexual harassment and constituted misconduct.
3. The Applicant engaged in a prohibited use of his UNHCR-issued mobile phone, breaching UNHCR rules on the use of IT equipment, which legally amounted to misconduct.
4. The Applicant failed to fully cooperate with the investigation, which legally amounted to misconduct.

Whether the Applicant's due process rights were observed

After having carefully reviewed the case record, including the investigation stage and the disciplinary process, the Tribunal was satisfied that the Applicant's due process rights were fully respected throughout both phases. It also found that the Applicant failed to substantiate his claim that his due process rights were violated.

Whether the disciplinary measure imposed was proportionate to the offence

Noting that the Applicant's misconduct was based on four serious allegations that have been established by clear and convincing evidence, the Tribunal was satisfied that the Applicant's conduct had led to the employment relationship being seriously damaged so as to render its continuation intolerable.

Accordingly, the Tribunal found that the disciplinary measure applied in the present case was proportionate to the grave offences committed.

In light of the above, the Tribunal upheld the disciplinary measure imposed on the Applicant and rejected his request for remedies.

Decision Contested or Judgment/Order Appealed

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

Legal Principle(s)

It is well-settled law that when the disciplinary measure results in separation from service the alleged misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (Molari 2011-UNAT-164; Ibrahim 2017-UNAT-776).

The onus is on an applicant to provide proof of the lack of due process and how it negatively impacted the outcome of the investigation and/or the disciplinary process (Pappachan UNDT/2019/118 Corr.1).

Clear and convincing evidence requires more than a preponderance of evidence but less than proof beyond a reasonable doubt (Molari 2011-UNAT-164). To meet this standard, “[t]here must be a very solid support for the finding; significantly more evidence supports the finding and there is limited information suggesting the contrary” (Applicant 2022-UNAT-1187). “Evidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn from other direct evidence” (Negussie 2020-UNAT-1033).

In determining whether the standard of proof has been met, the Tribunal is “not allowed to investigate facts on which the disciplinary sanction has not been based and may not substitute its own judgment for that of the Secretary-General”. Thus, it will “only examine whether there is sufficient evidence for the facts on which the disciplinary sanction was based” (Nadasan 2019-UNAT-918).

An investigator has a certain margin of discretion, based on a critical assessment of the evidence produced, to decide what is relevant or not for the purpose of the investigation (Beda UNDT-2021-057).

The Administration has broad discretion when it comes to the choice of a disciplinary sanction (Iram 2023-UNAT-134)

The Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity (Appellant 2022-UNAT-1216).

Due deference must be shown to the Secretary-General’s decision on sanction because [art.] 101(3) of the United Nations Charter requires the Secretary-General to hold staff members to the highest standards of integrity and he is accountable to

the Member States of the United Nations in this regard" (Beda 2022-UNAT-1260).

The question to be answered in the final proportionality analysis is whether a staff member's conduct has led to the employment relationship—based on mutual trust and confidence—being seriously damaged to render its continuation intolerable (Rajan 2017-UNAT-781).

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kavosh

Entity

UNHCR

Case Number(s)

UNDT/GVA/2022/029/T

Tribunal

UNDT

Registry

Geneva

Date of Judgement

17 Apr 2024

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Sexual exploitation and abuse

Disciplinary matters / misconduct

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR/AI/2018/18 (Administrative Instruction on Misconduct and the Disciplinary Process)
- UNHCR/AI/2019/13 (Administrative Instruction on End User Computing)
- UNHCR Code of Conduct

Other UN issuances (guidelines, policies etc.)

- Code of Conduct for Legal Representatives and Litigants

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(b)

Staff Rules

- Rule 1.2(e)
- Rule 1.2(f)
- Rule 10.1(a)

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

UNDT Statute

- Article 10.6
- Article 9.4

Related Judgments and Orders

UNDT/2022/032

2011-UNAT-164

2017-UNAT-776

2022-UNAT-1187

2020-UNAT-1033

2019-UNAT-918

2021-UNAT-1076

2023-UNAT-1332

2013-UNAT-336

2013-UNAT-295

2018-UNAT-889

2020-UNAT-1061

2017-UNAT-782

UNDT/2019/118

UNDT/2021/057

2023-UNAT-1340

2022-UNAT-1216

2022-UNAT-1260

2017-UNAT-781