

UNDT/2024/034, IK

UNAT Held or UNDT Pronouncements

This case revealed overt sexual harassment where both words and physical touching were used and attempted to extract sexual favour, but even though no such favour was extracted, the harassment caused harm to the victim who was put in fear of loss of her position in the Organization and caused unnecessary tension in the staff relations between the persons involved.

In this case both words and acts were used together during a short period of persistence. When this happens in a work setting it can cause serious emotional stress and hurt. Based on the evidence this is what occurred in this case.

Even a much less intimidating form of declaration of interest of sexual kind may cause such tension. Unfortunately, in this case there was touching which demonstrated a strong intention to achieve what was intended. It was therefore permissible to assume that tensions and strained relations would have been caused by the sexual harassment.

The Complainant's uncertainty about the date of the alleged incident was the weakest link in the case against the Applicant. However, it was not in itself a strong enough area of doubt to totally repudiate the Complainant's report that she was sexually harassed.

The Tribunal was of the view that the circumstances in which the incident occurred were highly plausible.

The witnesses called by the Complainant reinforced the main evidential premises of her complaint.

The Tribunal was satisfied that this incident occurred and was sufficient to establish a case of sexual harassment against the Applicant.

The Tribunal was satisfied that the Applicant understood the charge against him. He was allowed to call witnesses and put his case. He declined to call witnesses. But that was his own decision and neither the Complainant nor the Tribunal played any part in that decision.

Dismissal is one of the most draconian and drastic penalties that can be imposed in an administrative/employment matter. However, the alternative would leave open the possibility of retaliation in the workplace. Also, where there is a likelihood that the harassment had an impact on the victim, the possibility was that a more lenient sentence would open the Organization to a claim in damages as a result of the continued unabated impact of the harassment.

Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contested the disciplinary measure imposed on him of dismissal pursuant to staff rule 10.2(a)(ix) for engaging in sexual harassment.

Legal Principle(s)

The United Nations policy on sexual exploitation speaks to various kinds of situations in which sexual abuse, intimidation, blackmail, physical force and influence singularly or collectively are used overtly or impliedly or where a person, male or female, may fairly assume that if they do not give in to sexual demands they may face further harassment, discrimination, retaliation or punishment.

There are degrees of intimidation, both intended and unintended. Some may just be in words.

In some cases, a degree of perceived harassment can be forgiven or treated with a response which presupposes that a man’s or woman’s inappropriate approach was withdrawn without sexual harm and that his feelings may have been pure emotion free of any physically aggressive acts.

In sexual harassment cases it is also often the case that a face-to-face confrontation between the parties is particularly damaging to the victim. In the circumstance, the occasion for confrontation is the trial and even there certain precautions can be

made to protect the alleged victim against re-victimization.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

IK

Entity

UNHCR

Case Number(s)

UNDT/NBI/2023/007

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

27 May 2024

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Sexual exploitation and abuse

Sexual harassment

Disciplinary matters / misconduct

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR/AI/2018/18 (Administrative Instruction on Misconduct and the Disciplinary Process)

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Rules

- Rule 10.2(a)(ix)