

2024-UNAT-1412, AAT

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT Judge was not obligated to indicate their inclination on the evidence, especially since all evidence had not yet been presented.

Considering various elements, including the Investigation Report, the WhatsApp message exchanges, and the former staff member's admissions, the UNAT found the Complainant's account of events credible. It concluded that the former staff member's alleged conduct of calling the Complainant to his room on 1 August 2020 and asking her to come to his bed was established by clear and convincing evidence and amounted to sexual harassment. It found no inconsistency between the Complainant's description of their relationship as friendly and her allegations sexual harassment. The UNAT also highlighted the former staff member's obligation, as the Complainant's supervisor, to recognize that power imbalance and its impact on the professional and social relationship and to act accordingly.

Relying on the WhatsApp message exchanges, the UNAT found that the former staff member also engaged in inappropriate communications with the Complainant on 4 and 9 August 2020, which constituted unsolicited sexual advances. The UNAT held that his apology for his conduct did not prevent the Complainant from filing a complaint but only constituted a mitigating factor.

The UNAT found no evidence that the staff member's due process rights had been violated and determined that the sanction imposed was consistent with those applied in similar cases. It further held that the Administration duly considered aggravating and mitigating factors in determining the appropriate sanction.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/135.

Decision Contested or Judgment/Order Appealed

The Appellant, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), 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 for sexual harassment of a United Nations Volunteer at the Quetta Sub-Office in Pakistan.

In its Judgment No. UNDT/2022/135, the UNDT upheld the disciplinary measure and dismissed the former staff members' application. However, the UNDT granted his request for anonymity.

Former staff member appealed.

Legal Principle(s)

A close and friendly relationship between colleagues does not excuse unwanted and inappropriate sexual advances, especially between a supervisor and supervisee.

A supervisor has an obligation to recognize a power imbalance and its impact on the professional and social relationship, and to act accordingly in his dealings with a supervisee.

The impact of an apology with regard to alleged misconduct will depend on the circumstances of the case.

The onus is not on the recipient of sexual advances to signal that the advance is unwanted. The responsibility lies with the perpetrator to ensure that the advances are welcomed before engaging in the conduct.

The UNDT has broad discretion with respect to case management and the UNAT will not interfere lightly with that discretion.

There is a judicial presumption of integrity and impartiality that the Judge has fulfilled his/her task as sworn to do. Any party seeking to set aside a judicial decision owing to the fact that the reasons in the judgment incorporated portions of the submissions of the parties bears the burden of showing that this presumption is rebutted.

The Administration has the burden to establish the alleged misconduct by clear and convincing evidence. Whether an oral hearing will be required depends on the circumstances of the case.

In sexual harassment cases, the onus is not on the recipient of the advances to signal that the advance is unwanted. Rather, the responsibility lies on the perpetrator to ensure that the advances or conduct are welcomed before engaging in such conduct, especially when there is a power imbalance between the parties.

Sexual harassment can occur regardless of the scale of the impact on the possible victim. The mere acceptance of an apology alone does not negate the Complainant's right to subsequently file a complaint of misconduct or to vitiate the conduct from constituting sexual misconduct. The impact of an apology depends on the circumstances of each case.

Only substantial procedural irregularities in the disciplinary investigation will render a disciplinary measure unlawful.

The Secretary-General has broad discretion in determining the appropriate disciplinary measure for established misconduct and the UNAT will overturn a measure only if it finds that it is excessive or unreasonable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

AAT

Entity

UNHCR

Case Number(s)

2023-1789

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Apr 2024

President Judge

Judge Sandhu

Judge Savage

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Procedure (first instance and UNAT)

Case management

Evidence

Credibility assessment

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Other UN issuances (guidelines, policies etc.)

- UNAT Practice Direction No.1

Staff Rules

- Rule 1.2(f)
- Rule 10.1(a)
- Rule 10.3(a)
- Rule 10.3(b)

Related Judgments and Orders

UNDT/2022/135

2020-UNAT-981

2016-UNAT-668

2023-UNAT-1332

2022-UNAT-1259

2011-UNAT-164

2022-UNAT-1308

2022-UNAT-1256

2022-UNAT-1187

2023-UNAT-1384

2018-UNAT-889

2010-UNAT-084

2020-UNAT-1024

2015-UNAT-523