

2024-UNAT-1427, AAS

UNAT Held or UNDT Pronouncements

The UNAT held that the Inspector General's Office (IGO) and the Administration failed to properly consider relevant factors brought to their attention during the investigation into the staff member's misconduct. Specifically, they did not consider the medical context in which the established misconduct occurred, which could have been exculpatory for the staff member. The UNAT found that they failed to investigate and appreciate the potential effects of the staff member's brain tumour and/or treatment on certain aspects of his interpersonal relations with other staff members.

The UNAT held that the Secretary-General failed to demonstrate that the sanction imposed was proportionate to the former staff member's misconduct.

The UNAT determined that it was clearly beyond the UNDT's jurisdiction to remand the case, as it did so as part of its substantive merits-based Judgment and without the required concurrence of the Secretary-General. Consequently, the UNAT set aside that remedy made in excess of the UNDT's jurisdiction.

Regarding the UNDT's failure to award in lieu compensation, the UNAT held that since rescission did not appear practicable in the present circumstances, the UNDT was incorrect in directing the remedy of rescission; therefore, it was unnecessary to determine whether the UNDT erred in this regard.

The UNAT found no error in the award of moral damages. It emphasized that there was expert medical evidence diagnosing the former staff member with disorders shortly after the imposition of the disciplinary sanction.

The UNAT granted the appeal in part, reversed the UNDT's remand of the case to the Administration and rescission of the contested decision in Judgment No. UNDT/2022/132 and affirmed the award of moral damages.

Decision Contested or Judgment/Order Appealed

A former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), contested the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity for engaging in workplace harassment, discrimination and creating a hostile working environment.

In its Judgment No. UNDT/2022/132, the UNDT rescinded the contested decision, remanded the case to the Administration for proper treatment, and ordered the Secretary-General to pay the former staff member compensation in the amount of USD 5,000 for moral damages.

The Secretary-General appealed.

Legal Principle(s)

Investigators have an obligation to investigate and report on both exculpatory and inculpatory evidence. Once alerted of a staff member's medical condition with possible influential and relevant medical factors, investigators are expected to inquire further into those factors.

The Organization has a separate role from the investigators and an independent responsibility to consider and apply relevant factors in its decision-making. That role involves making decisions about the proven nature of the conduct complained of, determining whether it amounted to misconduct, and if so, deciding on the appropriate sanction.

If the UNDT orders rescission of an administrative decision in a case involving appointment, promotion, or termination of employment, it must (and not may) also set in lieu compensation.

The onus of proving harm for which moral damages are sought lies with the staff member and is based on the balance of probabilities. The amount awarded in moral damages cannot be precisely calculated arithmetically; rather, it depends on the fact and degree of the harm caused to the staff member, and significant discretion should be reserved to the first instance tribunal that saw and heard the evidence.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

AAS

Entity

UNHCR

Case Number(s)

2023-1787

Tribunal

UNAT

Registry

New York

Date of Judgement

2 May 2024

President Judge

Judge Colgan

Judge Sandhu

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Evidence of harm

In-lieu compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Dismissal/separation

Harassment (non-sexual)

Proportionality of sanction

Evidence

Medical evidence

Investigation

Fact-finding investigation

Applicable Law

Administrative Instructions

- ST/AI/2017/1

UNDT Statute

- Article 10.4
- Article 10.5

UNHCR Administrative Instruction

- UNHCR/AI/2019/15

Other UN issuances (guidelines, policies etc.)

Related Judgments and Orders

UNDT/2021/120

2022-UNAT-1214

2017-UNAT-745

2023-UNAT-1404

2019-UNAT-926

2022-UNAT-1267

2017-UNAT-742