

UNDT/2024/007, Aguilar Valle

UNAT Held or UNDT Pronouncements

Considering the lack of any direct evidence before the Tribunal as the alleged victim declined to provide witness testimony, it found that the Respondent had not managed to prove with clear and convincing evidence, or even with the preponderance of evidence, the factual allegations leading to the USG/DMSPC's conclusion that the Applicant had sexually harassed her. In the same vein, the Respondent also failed to demonstrate that the Applicant created a hostile work environment for her.

Whereas the Applicant's actions and behavior were not up to the standard to be expected of a supervisor working for the United Nations, they did not amount to misconduct in the given circumstances. His supervisor should, at least, have intended to resolve problems within the office environment informally and consistently addressed them as performance issues with the Applicant during the entire performance cycle, instead of only doing so in his final performance appraisal and escalating the situation into a disciplinary matter.

Decision Contested or Judgment/Order Appealed

The decision to impose on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity. The Applicant was found, as a supervisor, to have sexually harassed a female colleague, created a hostile working environment, and abused his authority.

Legal Principle(s)

The Dispute Tribunal may only reach a finding of sexual harassment on the basis of sufficient, cogent, relevant and admissible evidence permitting appropriate factual

inferences and a legal conclusion that all the elements of sexual harassment have been established in accordance with the standard of clear and convincing evidence. To ensure the satisfaction of the standard of proof in disciplinary cases, the Dispute Tribunal ordinarily will be obliged to convene an oral hearing at which the alleged wrongdoer will be afforded an opportunity to face and cross-examine those who accuse him or her of misconduct. The failure to call witnesses by the Secretary-General and the denial to the applicant of an opportunity to cross-examine his or her accusers, especially in serious cases, may very well result in a finding that the Secretary-General has failed to meet his burden of proof leading to a rescission of the contested decision. An investigation, given its peculiar methodology, is unlikely in most cases to prove the facts at the standard of clear and convincing evidence.

The job of a United Nations senior official is to build bridges and not to dig trenches in the office environment.

The Appeals Tribunal has affirmed that the Dispute Tribunal is an inquisitorial and not a solely adversarial tribunal. Also, the Appeals Tribunal has consistently reaffirmed that the Dispute Tribunal has wide case management powers as it is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and to do justice to the parties. The wide margin of discretion in all matters relating to case management is reflected in art. 19 of its Rules of Procedure.

Nowhere in the jurisprudence of the Appeals Tribunal is a party granted an unconditional right to state an objection to an opponent party's question to a witness during a hearing. This makes sense as the need for objecting against certain questions is of less importance before the Dispute Tribunal than it would be in cases decided by laymen juries (as opposed to professional and experienced Judges) conducted before an adversarial, and not an inquisitorial, court of law

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Application granted on liability (judgment on remedies and cost to follow).

Full judgment

[Full judgment](#)

Applicants/Appellants

Aguilar Valle

Entity

UNDP

Case Number(s)

UNDT/NY/2022/033

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Feb 2024

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of authority
Dismissal/separation
Facts (establishment of) / evidence
Sexual harassment
Disciplinary matters / misconduct

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNDP Human Resources User Guide on Workplace Harassment and Abuse of Authority (May 2018)

Other UN issuances (guidelines, policies etc.)

- UNDP Policy on Workplace Harassment, Sexual Harassment and Abuse of Authority (2005)

Staff Regulations

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

Staff Rules

- Rule 1.2(f)

UNDT RoP

- Article 17.5
- Article 19

Related Judgments and Orders

2022-UNAT-1210
2022-UNAT-1187
2023-UNAT-1370
2023-UNAT-1361

2022-UNAT-1194

2023-UNAT-1348

2022-UNAT-1283