

UNDT/2024/059, Soum

UNAT Held or UNDT Pronouncements

Receivability

The Respondent challenged the receivability of the application. However, the Tribunal found it receivable as it considered that the Applicant challenged the decision not to initiate an investigation into her complaint of potential prohibited conduct, and not the outcome of the management evaluation as argued by the Respondent.

Merits

The Tribunal recalled that it is not mandated to conduct a fresh investigation in the matter, nor to draw its own conclusions of the evidence. Instead, it is tasked with identifying whether the preliminary assessment was conducted properly based on the evidence and information available to the investigators.

A complete reading of the evidence provided by the Applicant to the investigators did not disclose any preferential assignment of tasks, bias, discrimination, or any other conduct that might indicate an instance of harassment. Instead, the evidence on record showcases the Applicant's own disagreements over the distribution of tasks within the unit, and work and performance-related grievances with her FRO.

On review of the evidence on record, the Tribunal agrees with Inspector General's Office (IGO) that the evidence the Applicant provided does not support her allegations and, that, even if proven, would fall within the scope of performance management.

As such, it finds no legal or significant factual basis to overturn the decision of IGO concerning its conclusion that the Applicant's allegations fell outside its mandate and did not warrant a full investigation.

Furthermore, the Tribunal is satisfied that the Organization took appropriate steps to support the Applicant's request to be removed from a work environment she found

disagreeable, and does not find any duty of care violations.

Consequently, the Tribunal decided to reject the application in its entirety.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to initiate a full fact-finding investigation into her allegations of harassment, discrimination, islamophobia, and racism, against her First Reporting Officer.

Legal Principle(s)

In determining the lawfulness of an administration decision concerning the investigation of a complaint, the Tribunal may “enter into an examination of the propriety of the procedural steps that preceded and informed the decision eventually made, inasmuch as they may have impacted the final outcome”.

Accordingly, in assessing the legality of the decision not to initiate an investigation into the Applicant’s complaint, “the Tribunal must examine whether the Administration breached its obligations pertaining to the review of the complaint and the investigation process that ensued, as set out primarily in ST/SGB/2008/5”.

In cases of harassment and abuse of authority, the Tribunal is not vested with the authority to conduct a fresh investigation into the initial complaint. As for any discretionary decision of the Organization, it is not the Tribunal’s role to substitute its own decision for that of the Administration.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Soum

Entity

UNHCR

Case Number(s)

UNDT/GVA/2023/030

Tribunal

UNDT

Registry

Geneva

Date of Judgement

12 Sep 2024

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Harassment (non-sexual)

Bias/favouritism

Fact-finding investigation

Disciplinary cases

Disciplinary matters / misconduct

Discrimination and other improper motives

Investigation
Standard of proof

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR/AI/2019/15 Administrative Instruction on Conducting Investigations in UNHCR

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 2.1(a)

Related Judgments and Orders

2023-UNAT-1332

2016-UNAT-639

2017-UNAT-765

2018-UNAT-876

2011-UNAT-123

2010-UNAT-084

2018-UNAT-873

2015-UNAT-518/Corr.1

2014-UNAT-454

2010-UNAT-100

2015-UNAT-505

2023-UNAT-1329

UNDT/2017/055

UNDT/2016/009

UNDT/2021/077

UNDT/2018/016 Corr.1

UNDT/2012/057