

# UNDT/2024/056, Hunt

## UNAT Held or UNDT Pronouncements

The Tribunal found that:

- (a) The Applicant did not satisfy the criteria which would support his claim to whistleblower protection.
- (b) The facts of the contested decision were properly established. Since the Complainant had the relevant qualifications and experience, the Applicant's attacks on her were neither well founded, nor did they constitute a fair response or comment in the circumstances. The concerns were defamatory of her professionalism and integrity. Accordingly, the Applicant made disparaging remarks about the Complainant in front of other UNJSPF staff. In addition, the Applicant isolated the Complainant at work; the allegation that the Applicant harassed the Complainant was supported by clear and convincing evidence; there was clear and convincing evidence that the Applicant created a hostile or offensive work environment for the Complainant and thereby abused his authority; there was clear and convincing evidence that the Applicant disclosed confidential and commercially sensitive information about the Investment Fund transaction to the media; there was clear and convincing evidence that he engaged in unauthorized outside activities by volunteering with an external entity, CMRR, in senior administrative and operational positions.
- (c) The established facts legally amounted to misconduct under the applicable Regulations and Rules.
- (d) The disciplinary measure applied is proportionate to the offences.

## Decision Contested or Judgment/Order Appealed

The decision to impose upon the Applicant "the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity"

## Legal Principle(s)

The prevailing legal regime only requires that the abuser has improperly used a position of influence, power or authority against another. There is no requirement that the abuser should have direct decision-making authority, control and interest with regard to the affected individual's career. The position of influence, power or authority does not have to be of a direct senior-to-junior nature. Moreover, the policy ascribes abuse of authority a wider meaning in that it includes conduct that creates a hostile or offensive work environment.

On the principle of proportionality, the Appeals Tribunal held in its seminal judgment in *Sanwidi* 2010-UNAT-084, as affirmed in many later judgments, that (see para. 39): "... ... [T]he principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive. This involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective". In *Egian* 2023-UNAT-1333, the Appeals Tribunal further found that: "even though the sanctions ultimately imposed could be considered severe or harsh, they were nevertheless not unreasonable, absurd or disproportionate, and therefore the Appeals Tribunal did not substitute its judgment for that of the Administration" (see para. 104).

## Outcome

Dismissed on merits

## Outcome Extra Text

According to the Appeals Tribunal, if the parties agree to certain facts, then the Dispute Tribunal is not to further review these facts but accept them as settled (see *Ogorodnikov* 2015-UNAT-549, para. 28).

The Administration bears the burden of establishing, by clear and convincing evidence, that the misconduct occurred, which means that the truth of the facts asserted is highly probable (see para. 51 of *Karkara* 2021-UNAT-1172, and similarly in, for instance, *Molari* 2011-UNAT-164; *Diabagate* 2014-UNAT-403; *Modey-Ebi* 2021-UNAT-1177; *Khamis* 2021-UNAT-1178; *Wakid* 2022-UNAT-1194; *Nsabimana* 2022-UNAT-1254; *Bamba* 2022-UNAT-1259. Pursuant to art. 9.4 of the Statute of the Dispute Tribunal, and in keeping with established jurisprudence (see, for instance, *Maslamani* 2010-UNAT-028, para. 20), the Tribunal's role is to determine: a. Whether the facts on which the disciplinary measure was based have been established; b. Whether the established facts legally amount to misconduct under the applicable Regulations and Rules; c. Whether the disciplinary measure applied is proportionate to the offence; and d. Whether there was a substantive or procedural irregularity.

Full judgment

[Full judgment](#)

Applicants/Appellants

Hunt

Entity

UNJSPF

Case Number(s)

UNDT/NY/2023/024

Tribunal

UNDT

Registry

New York

Date of Judgement

4 Sep 2024

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of authority

Disciplinary measure or sanction

Dismissal/separation

Facts (establishment of) / evidence

Inappropriate or disruptive behaviour

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

- ST/AI/2000/13

Secretary-General's bulletins

- ST/SGB/2017/2/Rev.1
- ST/SGB/2019/8

#### Staff Regulations

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

#### Staff Rules

- Rule 1.2(a)
- Rule 1.2(f)

#### UNDT Statute

- Article 9.4

#### Related Judgments and Orders

2015-UNAT-549

2021-UNAT-1172

2011-UNAT-164

2014-UNAT-403

2021-UNAT-1177

2021-UNAT-1178

2022-UNAT-1194

2022-UNAT-1254

2022-UNAT-1259

2010-UNAT-084

2023-UNAT-1333