

UNDT/2024/107, Kourouma

UNAT Held or UNDT Pronouncements

The Tribunal decided to dismiss the application.

In the light of the facts established and the finding of misconduct, the three allegations mentioned in the sanctioning letter, relating to ‘sexual molestation’, constitute ‘serious misconduct’ under the terms of paragraph (b) of Staff Regulation 10.1. In addition, under paragraph (a) of Rule 10.2 of the Staff Rules, on the basis of which the sanction was imposed, dismissal is a possibility.

Dismissal is one of the most severe sanctions that can be imposed in an administrative or employment matter. However, a more lenient sanction would leave open the possibility of reprisals in the workplace. In these circumstances, the Administration has no choice but to impose dismissal as a sanction for sexual harassment.

Decision Contested or Judgment/Order Appealed

The Petitioner filed an application challenging the summary dismissal disciplinary action taken against him pursuant to United Nations Staff Rule 10.2(a)(ix).

Legal Principle(s)

With particular reference to the consideration of evidence of sexual misconduct, the Administrative Jurisdiction Tribunal stated in Hallal UNDT/2011/046, at paragraph 55 (as confirmed by the Appeals Tribunal in Hallal 2012-UNAT-207), that ‘in sexual harassment cases, credible oral evidence from victims may be fully sufficient to support a finding of gross misconduct, without the need for further corroboration’, because “[i]n such cases, it is not always the case that the facts can be corroborated by notebook entries, emails or similar documentary evidence, and the absence of such documents should not automatically deprive the victim's version of any force or significance”.

A review of the Organisation's past practice shows that the most severe disciplinary measures have been imposed in sexual harassment cases, namely termination of service or dismissal pursuant to Staff Rule 10.2(a); these measures have been upheld by the Appeals Tribunal in various judgments, such as, for example, Applicant 2013-UNAT-280, Applicant 2013-UNAT-302, Khan 2014-UNAT-486 and Nadasan 2019-UNAT-918.

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Outcome

Dismissed on merits

Outcome Extra Text

Article 9(4) of the Statute of the Dispute Tribunal provides that in conducting a judicial review in disciplinary matters, the Tribunal is required to determine (a) whether the facts giving rise to the disciplinary measure are established; (b) whether the facts established constitute misconduct; (c) whether the penalty is proportionate to the misconduct; and (d) whether the official's right to due process has been respected. Any misconduct punishable by dismissal must be established by clear and convincing evidence, i.e. such as to demonstrate that the truth of the alleged facts is highly probable (in this regard, see the Appeals Tribunal's Karkara 2021-UNAT-1172, para. 51 judgment and, for example, its Modey-Ebi 2021-UNAT-1177, para. 34, Wakid 2022-UNAT-1194, para. 58, and Bamba 2022-UNAT-1259, para. 37 judgments).

The Appeals Tribunal emphasised that it was not for the Dispute Tribunal to assess the merits of the Secretary-General's choice from among the various options available to him, or to substitute its own decision for that of the Secretary-General (see Sanwidi 2010-UNAT-084, para. 40).

Full judgment

[Full judgment](#)

Applicants/Appellants

Kourouma

Entity

UNHCR

Case Number(s)

UNDT/NY/2023/013

Tribunal

UNDT

Registry

New York

Date of Judgement

6 Dec 2024

Duty Judge

Judge Adda

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Sexual harassment

Right to a hearing

Right to comment/respond

Corroboration/hearsay

Right to confront complainant

Termination of appointment (see also, Termination of appointment)

Disciplinary cases

Disciplinary matters / misconduct

Due process

Evidence

Separation from service

Standard of review (judicial)

Applicable Law

Staff Rules

- Rule 10.1(b)
- Rule 10.2(a)(ix)

Related Judgments and Orders

2015-UNAT-549
2021-UNAT-1172
2021-UNAT-1177
2022-UNAT-1194
2022-UNAT-1259
2011-UNAT-164
2019-UNAT-955
2010-UNAT-084
UNDT/2011/046
2012-UNAT-207
2018-UNAT-819
2018-UNAT-889
2021-UNAT-1076
2019-UNAT-913
2018-UNAT-811
2015-UNAT-523
2020-UNAT-1024
2018-UNAT-859
2013-UNAT-280
2013-UNAT-302
2014-UNAT-486
2019-UNAT-918
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