

# **2025-UNAT-1539, Desire**

## **Hatungimana**

### UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT acted correctly by conducting a judicial review of the case.

It found that the UNDT properly assessed the credibility of the witnesses who testified before it and correctly relied on the credible testimony of Ms. V, who had no motive to lie, to conclude that it had been established by clear and convincing evidence that the former staff member had sexually harassed her by making comments of a sexual nature in May and December 2020. While Ms. V's testimony alone would have been sufficient in this context, the UNAT noted that it was corroborated by colleagues who were present during the incidents. Regarding one colleague, V.M., the UNAT held that he cannot be faulted for reporting the misconduct to the responsible official, even if he may have used the situation to achieve a hidden objective.

The UNAT found that the sanction imposed on the former staff member was lawful and proportionate, given the seriousness of his misconduct and the Organization's zero-tolerance policy towards sexual harassment.

The UNAT held that the former staff member's due process rights had been respected, noting that the contested decision ultimately cleared him of some of the charges. It further found that J.R.'s complaint was admissible, as it constituted a denunciation of an alleged misconduct rather than an assertion of its truth.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2024/018.

### Decision Contested or Judgment/Order Appealed

A former staff member of the United Nations High Commissioner for Refugees (UNHCR) contested the decision of the Administration to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity for harassment and sexual harassment.

In its Judgment No. UNDT/2024/018, the UNDT concluded that it had been established by clear and convincing evidence that the former staff member had committed sexual harassment and dismissed his application.

Former staff member appealed.

## Legal Principle(s)

The UNAT will not admit evidence which was known to a party and could have, with due diligence, been presented to the UNDT.

The appeals procedure is corrective in nature and is not an opportunity for a dissatisfied party to reargue his or her case.

When termination is a possible outcome, misconduct must be established by clear and convincing evidence—a standard that requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable.

The UNDT's findings on witness credibility deserve particular deference on appeal. The assessment of the credibility and reliability of a witness will depend on a variety of factors including: the witness' candour and demeanour; the witness' biases; internal and external inconsistencies in the evidence; the probability or improbability of particular aspects of the witness' version; the calibre and cogency of the witness' testimony when compared to that of other witnesses testifying in relation to the same incident; the opportunities the witness had to experience or observe the events in question; and the quality, integrity, and independence of the witness' recall of the events. The testimony of a single witness may be sufficient to support a finding of misconduct.

The UNAT will only overturn a disciplinary measure as disproportionate if it finds it to be excessive, unreasonable, or in cases of obvious absurdity and flagrant

arbitrariness. The most important factors to be considered include the seriousness of the offence, the length of service, and the disciplinary record of the employee.

Hearsay evidence will be admissible if the evidence aims to prove the existence of the occurrence of a fact, not its truthfulness.

## Outcome

Appeal dismissed on merits

## Outcome Extra Text

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Desire Hatungimana

## Entity

UNHCR

## Case Number(s)

2024-1926

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

15 May 2025

## President Judge

Judge Forbang

Judge Ziadé

Judge Sandhu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Proportionality of sanction

Sexual harassment

Corroboration/hearsay

Credibility assessment

Production of evidence

Oral hearings

Disciplinary matters / misconduct

Evidence

Procedure (first instance and UNAT)

## Applicable Law

Other UN issuances (guidelines, policies etc.)

Staff Rules

- Rule 10.2(a)(viii)

UNAT RoP

UNAT Statute

UNDT Statute

- Article 2.5
- Article 8.3

- Article 2.1(b)
- Article 9.4

UNHCR Administrative Instructions

Laws of other entities (rules, regulations etc.)

- UNHCR/HCP/2014/4

Provisional Staff Regulations and Rules

- Rule 10.2

UNDT RoP

- Article 18.1

UNHCR Administrative Instruction

- UNHCR/AI/2019/15

## Related Judgments and Orders

UNDT/2024/018

2016-UNAT-674

2016-UNAT-693

2019-UNAT-977

2017-UNAT-715

2010-UNAT-084

2013-UNAT-302

2023-UNAT-1375

2020-UNAT-1033

2022-UNAT-1256

2022-UNAT-1210

2022-UNAT-1259

2014-UNAT-403

2011-UNAT-164

2023-UNAT-1332

2012-UNAT-207

2021-UNAT-1136

2021-UNAT-1137

2013-UNAT-280

2017-UNAT-781

2018-UNAT-819