



UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2022-UNAT-1216



Appellant  
( Appellant )

v.

Secretary-General of the United Nations  
( Respondent )

JUDGMENT

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Before:	Judge Dimitrios Raikos , Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No:	2021-1530
Date:	18 March 2022
Registrar:	Weicheng Lin

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Counsel for Appellant:	Omar Yousef Shehabi, OSLA
Counsel for Respondent:	Francisca Lagos Pola

**THE UNITED NATIONS APPEALS TRIBUNAL**

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the Appellant that his advances were unwanted and that she was not interested in him, but he disregarded her instructions and continued to contact her.

7. Specifically, the investigation revealed that on the night of 11 October 2017 the Appellant invited the Complainant for dinner at his container located with in the United Nations compound. The Complainant accepted the invite and after dinner, the Appellant thanked her for visiting him.

9. The investigation also noted that the Appellant tried to have several of his colleagues intercede on his behalf to encourage the Complainant to withdraw her complaint. The Appellant also tried to smear the reputation of the Complainant, saying that she had mental health or psychological issues and that she was fired from her previous employment.

10. In conclusion, the investigation found that the Appellant engaged in acts of sexual harassment by making unwelcome sexual advances toward the Complainant and by touching her inappropriately on the breast on the night of 12 October 2017. The investigation also established that even though the Complainant told the Appellant that she was not interested in him, he persisted in his advances toward her.

11. On 14 January 2019, the Director, Division of Human Resources, charged the Appellant with misconduct with respect to the allegation that he engaged in sexual harassment. He responded to the charge letter in an email through OSLA on 26 February 2019.

12. On 22 March 2019, the Deputy Executive Director, Management, informed the Appellant that after a review of the entire dossier, she found there was clear and convincing evidence that the Appellant had engaged in sexual harassment. As this was a serious misconduct, the Administration determined that summary dismissal would be the appropriate sanction.

13. On 15 April 2019, the Appellant was informed by the Chief, Policy and Administrative Law Section, that as a result of his dismissal, his details will be included in an electronic database (Screening Database) that is accessible by other entities participating in the United Nations System. The Screening Database contains the details of personnel whose appointments have been terminated following a final determination of sexual harassment.

14. On 12 June 2019, the Appellant filed an application with the UNDT challenging both the summary dismissal decision and the decision to include his information on the Screening Database.

15. On 31

accidentally.<sup>3</sup> The Appellant maintained if there was any touching, it was never intentional.

However, the tribunal found the Appellant clearly lied to the investigators about his behavior.<sup>4</sup>

Notably, the Appellant h7 (e)-43 n ntanidln c-5.7 ((l).8 (e)tg,)1.2 ( i(e)-4.3 ( A)-2.1 (pC-4.3 (f



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25. On 1 March 2021,



the required proportionality analysis, the UNDT did not justify why the ultimate type of termination in its most punitive form was given to the 5a3.9 (o)-3 (.5 [(te)-43 (n )-1.3 Td (5.9 (i)-3.1 (n i)-3n)4.2

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38. Regarding the claim that the UNDT did not appreciate the difference between dismissal and other forms of separation, the Respondent submits the UNDT appreciated these distinctions but decided to uphold the Administration's discretion in determining which was best suited for the Appellant's misconduct.

39. Additionally, the Respondent notes that even though only a single incident of sexual harassment could warrant dismissal because of the seriousness of this type of misconduct and its negative impact on the Organization, in the present case, the Appellant was actually dismissed for a continuous pattern of unwanted behavior in an isolated field location. The Secretary-General highlights that the UNDT appreciated that this case was not only about physical touching, but it was importantly about the persistence of the Appellant who continued to call and attempt to establish a relationship with the Complainant. Despite the Complainant's express requests

articulated grounds of appeal, that the UNDT erred in law and exceeded its competence in concluding that the sanction of dismissal from service meted out on him was proportionate to the offense of having sexually harassed the Complainant. Therefore, this is the sole issue for the Appeals Tribunal to consider.

43. The Organization has a variety of disciplinary sanctions at its disposal. Staff Rule 10.2(a) provides different disciplinary measures ranging from different types of warnings and reprimands to “[s]eparation from service, with notice or compensation in lieu of notice (...) and with or without termination indemnity” and “[d]ismissal. ”

44. Staff Rule 10.3(b) provides, *inter alia*, that “[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct”. In the present case, this means that the Dispute Tribunal as well as this Tribunal must determine whether the Secretary-General’s imposition of the ultimate sanction of dismissal from service meets the justice of the case, after due consideration is given to the entire circumstances of the case.

45. The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures: to wit: a sanction within the limits stated by the respective norms, which is sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the trib8-1.732 Td [(to)-3 staf(p)-3.8 (e)-4 ade iso ntqufe ofmere th me adm-4.4 (-5.4 (p)T



and convincing evidence to have sexually harassed the Complainant, including the Appellant's touching of her breast. As the UNDT held:<sup>27</sup>

The Tribunal is satisfied that the evidence of sexual harassment is clear and convincing. There is sufficient evidence consistent with the events of the night of 12 October 2017 to the effect that the Applicant was pursuing the Complainant for a sexual relationship. Indeed, even if the touching was accidental, the indication of the Complainant of her disinterest should have been enough to bring his advances to a halt. But it was not. The Complainant was made to feel that her desire to be left alone outside of a professional relationship, was of no moment.

49. Further, the touching of the Complainant's breast was only a fraction of the Appellant's unwanted behavior



with the Complainant until the matter was resolved in his favour and if not, never contact the Complainant again. But he disregarded such standards.

55. We fully agree with this holding. Consequently, given the seriousness and degree of the Appellant's misconduct, the sanction of summary dismissal from service was not unreasonable, absurd, or disproportionate. The Appeals Tribunal finds that it was a reasonable exercise of the Secretary-General's discretion to determine that engaging in acts of sexual harassment of a junior colleague is in violation of the standards that have been consistently reiterated by the Organization since at least 1992. This rendered the Appellant unfit for further service with the Organization, and therefore, this Tribunal is satisfied that summary dismissal from service was neither unfair nor disproportionate to the seriousness of the offense.

56. Arguably, the Appellant violated the relationship of trust that existed between him and the Organization. His conduct was particularly egregious in light of the position he occupied, that of Chief of Field Office in Kadugli, Sudan, at the P-4 level while the Complainant was a United Nations Volunteer. As such, the Appeals Tribunal finds that, in these circumstances, imposing the disciplinary sanction at the strictest end of the spectrum was not disproportionate and manifestly abusive but a reasonable exercise of the Administration's broad discretion in disciplinary matters – a discretion with which this Tribunal will not lightly interfere. Accordingly, the UNDT also did not err in finding the sanction proportionate to the offense.

57. This conclusion renders it unnecessary to examine the other grounds of appeal advanced by the Appellant that the UNDT erred in law and failed to exercise its jurisdiction by declining to compare the allegations of misconduct in this case with the Organization's past practice in similar cases of misconduct and by failing to follow UNAT jurisprudence.

58. At any rate, the Appellant's contentions are devoid of merit for the following reasons. For one thing, the UNDT was alive to the UNAT jurisprudence on the matter at issue and fully complied with it. It applied the correct legal standards in considering the proportionality of the imposed disciplinary sanction and striking the right balance between the lawful exercise of the Secretary-General's discretion to select an adequate and proper sanction and the Appellant's right to judicial protection. Again, in determining the proportionality of a sanction, the UNDT should observe a measure of deference. Even supposing the UNDT did not agree with the administrative decision, this would not change the reasonableness of the decision.





challenge it, he should have first submitted a request for management evaluation, pursuant to Article 8 of the Dispute Tribunal Statute, which he failed to do.

*Request for compensation*

62. The Appellant's claim for compensation is rejected. Since no illegality was found, there was no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative w (ati)-3mr(ati)h55d w

Judgment

64. The appeal is dismissed, and Judgment No. UNDT/2020/220 is upheld.

Original and Authoritative Version: English

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