

# UNDT/2010/024, Diakite

## UNAT Held or UNDT Pronouncements

When the Applicant filled his PT8 form, he claimed daily subsistence allowance (DSA) for the period he would spend in Geneva for training purposes when he was fully aware that he was proceeding there to meet with an NGO or to have consultations with colleagues at HQ. As the purpose of his travel had changed he used funds earmarked for training for a different purpose without obtaining prior written authorisation. There was a note on his PT8 form that during January, the Applicant was on leave but this was not sufficient to absolve him. He received DSA for the period he was away from the mission, including the period when he was on annual leave. The Applicant should not have taken the DSA either directly or vicariously as he was simply not entitled to it, especially since no amendment had been made to the PT8. Even after he had received the money, he kept silent for about six months until an investigation was initiated in the case in June 2006. The Respondent discharged his burden of proof. The evidence presented by the Respondent in support of the charge was capable of belief and there was nothing to indicate that in arriving at this conclusion the Respondent did not consider all the facts for and against the Applicant. Having taken into consideration the Applicant's unblemished record, his attitude, the manner in which the act was perpetrated and the need to protect the integrity of the Organization, the Tribunal concluded that the sanction imposed by the Respondent was not disproportionate to the serious misconduct that was established. The Applicant failed to substantiate his general complaints of bias, improper motives or abuse of process against the Respondent.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose on him the disciplinary measures of a written censure and demotion by one grade from P5 to P4, without a possibility of promotion for two years.

## Legal Principle(s)

The role of the Tribunal is to consider the facts of the investigation, the nature of the charges, the response of the staff member, oral testimony if available, and draw its own conclusions. The Tribunal is in no way bound by the findings of the JDC or the Secretary-General on the facts disclosed. In disciplinary matters, the Respondent bears both the legal and evidentiary burden to provide evidence that raises a reasonable inference that misconduct has occurred. Once a prima facie case of misconduct is established, the staff member must provide satisfactory evidence to justify the conduct in question. Once the Tribunal determines that the evidence in support of the charge is credible the next step is to determine whether the evidence is sufficient to lead to the reasonable conclusion that the act of misconduct has been proved. The exercise involves scrutiny of the facts, the nature of the charges, the defence put forward and the applicable rules and regulations.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Diakite

## Entity

UNMEE

## Case Number(s)

UNDT/NBI/2009/040

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

8 Feb 2010

## Duty Judge

Judge Boolell

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Fraud, misrepresentation and false certification

Standard of proof

Disciplinary cases

Standard of review (judicial)

Disciplinary cases

## Applicable Law

Administrative Instructions

- ST/AI/371

Staff Rules

- Rule 110.4