

# **UNDT/2010/058, Molari**

## **UNAT Held or UNDT Pronouncements**

In view of the evidence available and the Applicant's refusal to disclose evidence that could exonerate her and that she alone could have produced, the Tribunal considered that the facts on which the disciplinary measure was based had been established. Section 20 of the Convention of the privileges and immunities of the United Nations provides that privileges such as VAT exemption are granted to staff members in the interests of the United Nations and not for the personal benefit of the individuals themselves. Section 21 further provides that the United Nations shall cooperate at all times with the appropriate authorities of Members to prevent the occurrence of any abuse in connection with such privileges. Accordingly, the Applicant's claims that VAT reimbursement is a privilege granted to her by the host country and not by the UN and that UNOPS exceeded its authority by initiating disciplinary proceedings although the Danish chose not to pursue the Applicant directly, are unfounded. Staff regulation 10.2 gives the Secretary-General broad latitude with respect to the appropriate disciplinary measure. The Tribunal nevertheless examines whether the sanction imposed was disproportionate to the offence. In the present case, given the nature of the offence, compounded by the grade and responsibilities of the Applicant and her refusal to fully cooperate with the Danish authorities and UNOPS, the Tribunal found that separation from service was entirely appropriate. Outcome: The application was rejected.

## **Decision Contested or Judgment/Order Appealed**

The Applicant, a Procurement Specialist employed by UNOPS at the L-5 level, was separated from service as a disciplinary measure for falsely certifying store receipts as being eligible for VAT reimbursement. In June 2008, the Applicant submitted to the Danish Ministry of Foreign Affairs, through UNOPS, 42 receipts for VAT reimbursement. In so doing, she certified that the commodities purchased were intended for official purposes or for her personal use. Among the 42 transactions, three were paid cash and 39 were paid with 39 different credit/debit cards. The 42

receipts concerned food items such as milk, bread, fruits and vegetables, purchased in two different supermarkets over short periods of time, e.g. 13 transactions were effected on the same day with 13 different credit/debit cards, or 19 litres of milk were purchased in one day with nine different credit/debit cards. When questioned about these purchases, the Applicant claimed that they had been made on her behalf by friends and relatives, whom she had reimbursed afterwards, to help her organize gatherings at her house. The Applicant however repeatedly refused to disclose to the Administration the identity of these friends and relatives and to provide proofs of payments made by them. Before the Tribunal, the Applicant disclosed the identity of 16 individuals but refused to provide evidence of the payments made by them, with the exception of two payments made by her husband and her mother-in-law.

## Legal Principle(s)

In disciplinary matters, the Administration is not required to prove its case beyond reasonable doubt but only to produce evidence that raises a reasonable inference that misconduct has occurred. Once a *prima facie* case of misconduct is established, the burden shifts to the staff member to provide countervailing evidence or a satisfactory explanation to justify the conduct in question.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Molari

## Entity

UNOPS

## Case Number(s)

UNDT/GVA/2009/085

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

6 Apr 2010

## Duty Judge

Judge Cousin

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Burden of proof

Disciplinary matters / misconduct

Dismissal/separation

Fraud, misrepresentation and false certification

Due process

Separation from service

Termination of appointment (see also, Termination of appointment)

## Applicable Law

### Provisional Staff Regulations and Rules

- Chapter X

### Staff Regulations

- Regulation X

## Related Judgments and Orders

UNDT/2009/009

UNDT/2009/006

UNDT/2010/024

UNDT/2010/034

UNDT/2010/036

UNDT/2010/041

UNDT/2010/052