

# UNDT/2010/094, Bertucci

## UNAT Held or UNDT Pronouncements

**Jurisdiction of Tribunal:** Although the Administration released the moneys to the applicant, when the jurisdiction of the Tribunal is properly engaged, the mere fact that the Administration “corrects” the decision in question does not end the matter. The applicant is still entitled to seek a determination that the decision is unlawful and an award of compensation. **Legality of withholding entitlements:** The test is not guilt of the staff member but merely “reason to believe” that they may have been grossly negligent, causing loss. This is an undemanding test, amongst other things satisfied even if there is evidence of innocence, unless that evidence is so cogent and evidently reliable as to render it unreasonable to entertain the suspicion in question. **Failure to provide access to source documents of investigation:** An applicant’s opportunity to respond at the preliminary charge/investigation stage before a report is finalised should not arbitrarily be limited simply because the practice is not to disclose the material. The only proper reason for non-disclosure – confidentiality aside – is that it is not necessary in order for an adequate response to be made, but if parts of conversations with witnesses are relied on in a report, this will be unlikely to justify non-disclosure. **Outcome:** The decision to refuse to give the applicant access to the whole of the material supporting the provisional allegations upon which he was asked to comment was unlawful and a nominal award of compensation (USD500) was made to him for the breach of this right. The application was otherwise dismissed.

## Decision Contested or Judgment/Order Appealed

On the applicant’s retirement from the United Nations in 2008 certain monies were withheld from his entitlements upon the ground that there were pending disciplinary proceedings concerning allegations of mismanagement that had resulted in financial loss. After exchanges of correspondence, eventually all the applicant’s entitlements were paid. The applicant’s case is that this delay was not lawful because the charges were groundless and that due process was not followed during the investigation as he was not given full disclosure of the material being considered in relation to the pending charges against him. The disciplinary proceedings do not appear to have been advanced since his retirement.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Bertucci

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/117

Tribunal

UNDT

Registry

New York

Date of Judgement

15 May 2010

Duty Judge

Judge Adams

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Disciplinary matters / misconduct

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/2004/3
- ST/AI/371

Secretary-General's bulletins

- ST/SGB/2009/7

Staff Rules

- Rule 10.1(a)
- Rule 110.1

Related Judgments and Orders

UNDT/2010/001