

# **UNDT/2011/061, Yisma**

## **UNAT Held or UNDT Pronouncements**

It was common cause that the Applicant had committed misconduct by submitting falsified information to an outside public entity (New York City Housing Development Corporation), including a forged letter from another United Nations staff member, in order to qualify for a subsidized apartment. The only legal issue before the Tribunal was whether the disciplinary measure imposed on the Applicant was proportionate to the established misconduct. The Tribunal found that the Applicant's actions amounted to serious misconduct and that it was reasonable for the Respondent to conclude that the relationship of trust and confidence between the parties was no longer present. The Tribunal found that the Respondent's decision to impose the contested disciplinary sanction was reasonable and within the range of options available to the decision-maker. The Tribunal found that the Administration's discretion in imposing the contested disciplinary measure of separation from service with notice and termination indemnity was properly exercised and the imposed disciplinary measure was not disproportionate. Outcome: The application was dismissed.

**Role of UNDT in reviewing proportionality of a disciplinary measure:**

Disciplinary matters are within the discretionary authority of the Secretary-General. When reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is limited to examining (i) whether the facts on which the disciplinary measure is based have been established; (ii) whether the established facts legally amount to misconduct under the Staff Regulations and Rules; and (iii) whether the disciplinary measure applied is proportionate to the offence. When considering applications challenging the proportionality of the disciplinary measure imposed, the Tribunal will give due deference to the Secretary-General unless the decision is manifestly unreasonable, unnecessary harsh, obviously absurd or flagrantly arbitrary. Should the Tribunal establish that the disciplinary measure was disproportionate, it may order imposition of a lesser measure.

**Mitigating and aggravating factors:** Both aggravating and mitigating circumstances are looked at in assessing the appropriateness of a sanction. Mitigating circumstances may include long and satisfactory service with the Organization; an unblemished disciplinary

record; an employee's personal circumstances; sincere remorse; restitution of losses; voluntary disclosure of the misconduct committed; whether the disciplinary infraction was occasioned by coercion, including on the part of fellow staff members, especially one's superiors; and cooperation with the investigation. Aggravating factors may include repetition of the acts of misconduct; intent to derive financial or other personal benefit; misusing the name and logo of the Organization and any of its entities; and the degree of financial loss and harm to the reputation of the Organization. This list of mitigating and aggravating circumstances is not exhaustive and these factors, as well as other considerations, may or may not apply depending on the particular circumstances of the case.

Long service as a mitigating factor, unblemished service as a mitigating factor: Depending on the circumstances, long service may be a weighty consideration, but there are also limits to the extent to which an employee can rely on a clean disciplinary record and length of service as mitigating factors. Although a long period of satisfactory service will usually be a mitigating factor, there are certain acts of misconduct which are of such a serious nature that no length of service can rescue an employee who is guilty of them from the harshest of disciplinary measures. One such clear act of misconduct is gross dishonesty. Long service does not lessen the gravity of such misconduct.

Proportionality: Ordinarily, separation from service or dismissal is not an appropriate sanction for a first offence. However, the gravity of the misconduct is an important factor in determining the appropriateness of separation or dismissal as a sanction. The impact of the misconduct on the employer's business is also an important consideration. In assessing the gravity of the offence, regard may be had to the employee's circumstances, the nature of the job, the circumstances of the infringement, consistency in taking disciplinary action and so on. Disciplinary cases tend to be very fact-specific and the parties, as well as the Tribunal, must exercise caution in extracting general principles concerning proportionality of disciplinary measures from the types of measures imposed in other cases, as each case has its own unique facts and features.

## Decision Contested or Judgment/Order Appealed

The Applicant filed an application contesting the decision to impose the disciplinary measure of separation of service with notice and termination indemnity.

## Legal Principle(s)

It was common cause that the Applicant had committed misconduct by submitting falsified information to an outside public entity (New York City Housing Development Corporation), including a forged letter from another United Nations staff member, in order to qualify for a subsidized apartment. The only legal issue before the Tribunal was whether the disciplinary measure imposed on the Applicant was proportionate to the established misconduct. The Tribunal found that the Applicant's actions amounted to serious misconduct and that it was reasonable for the Respondent to conclude that the relationship of trust and confidence between the parties was no longer present. The Tribunal found that the Respondent's decision to impose the contested disciplinary sanction was reasonable and within the range of options available to the decision-maker. The Tribunal found that the Administration's discretion in imposing the contested disciplinary measure of separation from service with notice and termination indemnity was properly exercised and the imposed disciplinary measure was not disproportionate.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Yisma

## Entity

UNDP

## Case Number(s)

UNDT/NY/2011/013

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

31 Mar 2011

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

## Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(b)

## Related Judgments and Orders

UNDT/2010/122

UNDT/2010/171

UNDT/2010/204

2010-UNAT-018

2010-UNAT-022

2010-UNAT-024

2010-UNAT-025

2010-UNAT-028

2010-UNAT-040

2010-UNAT-084

2010-UNAT-098