

UNDT/2011/067, Borhom

UNAT Held or UNDT Pronouncements

The initial fact-finding investigation was fundamentally flawed, unreliable and a sham. The failure to conduct a proper investigation but to resort to arm-chair analysis and conclusions based on the unreliable initial fact-finding investigation was not only useless but constituted a violation of the provisions of ST/AI/371 and the Applicant's due process rights. The Preliminary Investigation Report is characterized by a lack of direct evidence from the alleged victims and a heavy reliance on second hand evidence made by third party witnesses. The IGO/Investigation Unit failed to establish facts that could legally amount to misconduct or serious misconduct. The evidence adduced by the Respondent does not sufficiently support the charges of extortion and attempted extortion. The Respondent has failed to discharge his burden of proving that misconduct has taken place. The decision to summarily dismiss the Applicant went beyond what was required to achieve the objective of creating a culturally diverse and harmonious workplace free of harassment and abuse of authority as spelt out in ST/SGB/2005/20.

Decision Contested or Judgment/Order Appealed

The Applicant contested his summary dismissal for misconduct.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Respondent is ordered to rescind the Applicant's summary dismissal and to reinstate him in service with retroactive effect. Compensation awarded for moral damages and for violation of due process rights. Respondent also ordered to remove all material relating to the Applicant's dismissal from his official status file.

Full judgment

[Full judgment](#)

Applicants/Appellants

Borhom

Entity

UNHCR

Case Number(s)

Judge Agency

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

8 Apr 2011

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process

Investigation

Fact-finding investigation

Standard of proof

Termination (of appointment)

Summary dismissal

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 101.2(2)
- Rule 110.4(c)

Other UN issuances (guidelines, policies etc.)

- UNHCR IOM/054/2005-FOM/054/2005 (Inter-Office Memorandum No. 054/2005 and Field Office Memorandum No. 054/2005)

Secretary-General's bulletins

- SGB/2008/5

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(e)
- Regulation 1.2(o)
- Regulation 1.2(q)

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

2010-UNAT-081

UNDT/2010/118

UNDT/2010/056

UNDT/2010/036

UNDT/2009/036