

# **UNDT/2011/104, Goodwin**

## UNAT Held or UNDT Pronouncements

The Tribunal found that the initial imposition of the reprimand was justified based on the Applicant's own admitted supervisory failings. However, the Tribunal found that the withdrawal and subsequent reinstatement of reprimand were improper, as was the decision to transfer the Applicant from his post. The Tribunal directed the parties to confer on the issue of compensation.

## Decision Contested or Judgment/Order Appealed

Reprimand.

## Legal Principle(s)

An employer may not reopen a matter and is bound by the principle that an employee, once he has been dealt with on charges arising from a particular set of facts, cannot be tried again on new charges arising from the same facts. The desirability of finality of disputes within the workplace cannot be gainsaid. The Secretary-General has a discretionary authority in the administration of the affairs of the Organisation which will not lightly be interfered with by the Tribunal. In order for the Tribunal to intervene, what must be shown is a failure of the Secretary-General to exercise this discretionary authority reasonably in accordance with the law, i.e., not in a manner that is illegal, irrational, procedurally defective or where the outcome is disproportionate to what is necessary in the circumstances.

Unsatisfactory or poor work performance arising from misconduct and that caused by circumstances beyond a worker's control are treated differently since the culpability of the staff member is different. There may be instances where performance failures warrant disciplinary measures. Factors that may be taken into account include the position occupied by the staff member, his past record, the level of seniority, the length of service, the degree of culpability, the risk to the

organisation as a result of the conduct, etc. In general, higher standards of competence and performance are expected of senior managerial employees. Factors like inadequate resources or organisational problems are to be taken into account as part of a proper investigation and assessment. Failing to fulfill a proper supervisory role may constitute dereliction of duty warranting disciplinary action, not just administrative action. In respect of an administrative measure, as provided for in, for example, former staff rule 110.3(b)(i), a staff member is entitled to the same kind of review by the Tribunal as he would have received if the measure had been a disciplinary one.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Goodwin

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2009/120

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

21 Jun 2011

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Disciplinary matters / misconduct

Performance management

Reassignment or transfer

Discretion

## Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 101.2(b)
- Rule 110.3(a)(i)
- Rule 110.3(b)(i)
- Rule 111.2(a)

Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 10.2(b)(i)

## Related Judgments and Orders

UNDT/2011/061

2010-UNAT-022

2010-UNAT-084

2010-UNAT-098