

# UNDT/2011/115, Ibrahim

## UNAT Held or UNDT Pronouncements

The Applicant's alleged abuse of Buddy qualified as such conduct. Not returning the Applicant to the Canine Unit. It was proper not to return the Applicant to his former job after the disciplinary case against him had been dismissed. Not returning Buddy. Since Buddy was surrendered to the custody of the New York State Police, the United Nations would appear to have transferred back the property rights over Buddy to the New York State Police. Regardless of the outcome of the disciplinary case against the Applicant, it would therefore seem that the Respondent is not able to return Buddy to the Applicant without the consent of the New York State Police. Given the circumstances of the case, including the close working relationship between the Canine Unit and New York State Police, the Tribunal, however, finds that it fell duly within the Respondent's margin of appreciation to decide not to request the New York State Police to return Buddy to the Applicant after the disciplinary charges against him had been dismissed. Outcome: Application dismissed in its entirety.

## Decision Contested or Judgment/Order Appealed

The Applicant worked as a Security Officer and dog handler with the DSS Canine Unit. Some of the Applicant's colleagues made a report to the DSS/IAU that the Applicant had abused the working dog, "Buddy", that had been assigned to him. The IAU initiated a preliminary investigation, after which Buddy was taken away from the Applicant; the Applicant also was transferred to another unit and was suspended with full pay, and disciplinary charges were brought against him. Eventually, the Applicant was cleared of all allegations, but Buddy was not returned to him and he was not transferred back to the DSS Canine Unit.

## Legal Principle(s)

Clearly defining the contested administrative decision. It is the responsibility of an applicant to clearly define the issues of her or his case, as well as the administrative decision s/he wishes to appeal. Application of ST/AI/371. The Tribunal may not set aside the application of an administrative issuance in force, unless it finds that its provisions are in breach of an instrument that has a higher authority in the legal hierarchy of the United Nations normative framework. The provisions of ST/AI/371 may be considered to be ambiguous and clearer legislative guidance could be wished, but, for the purposes of the present case, the Tribunal has not detected any inconsistencies between ST/AI/371 and General Assembly resolution 48/218B.

Initiating a preliminary investigation. To initiate such investigation: (a) the alleged behaviour must amount to possible “unsatisfactory conduct”, i.e., misconduct under former staff rule 110.1; and (b) There must be “reason to believe” that the staff member in question behaved in such a way. The legal status of the Canine Manual. The Canine Manual form part of the Applicant’s contract of employment as a dog handler. At minimum, it may be viewed as a binding instruction from a supervisor in accordance former staff rule 101.2(b). Abusing a working dog. This clearly constitutes a violation of the obligations that United Nations staff members are to uphold as international civil servants under staff regulations 1.2(b), (f) and (q).

Initiating a preliminary investigation. Under ST/AI/371, sec. 2, the crucial question for the decision-maker is to determine whether there is “reason to believe” that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed. As stated in Abboud UNDT/2010/001, para. 4, the “reason to believe” must be more than mere speculation or suspicion; it must be reasonable and must be based on facts sufficiently well-founded, although not necessarily proven, to rationally incline the mind of an objective and reasonable decision-maker to the belief that the staff member has engaged in the relevant conduct. The purpose of the preliminary investigation. The very purpose of this initial examination is precisely to establish the facts of the matter in question in order to enable the relevant decisionmaker to decide whether the situation may give reason for initiating a disciplinary case. The onus when alleging bias. It follows from the jurisprudence of the Appeals and Dispute Tribunals that when an applicant alleges bias or any other improper motivation against her or him, the onus is on her or him to provide “sufficient evidence” to prove the contention. The removal of Buddy. Since working dogs are in the custody of the United Nations, the Organization, as their custodian, has the full right to make decisions regarding them, including whether they are to be removed from a dog handler. Nevertheless, as with all decisions, the Organization has an obligation to make decisions that are proper and

in good faith and the discretion of the Secretary-General is not unfettered. Timing of the right to legal assistance. This right may arise before the formal charges are presented, namely if and when an investigation, preliminary or not, starts to focus adversely on a specific person for a charge of unsatisfactory behaviour. Inter-departmental transfers. Pursuant to ST/AI/2006/3, sec. 2.4, it was within the managerial prerogative of the head of department/office to transfer her or his staff members within their department/office insofar as this was done to a vacant post at the same level. Observance of the Applicant's due process rights. The Applicant has failed to substantiate any due process violations and nothing in the case record suggests that any such breaches have occurred. Suspending the Applicant. While former staff rule 110.2 did not set out any legal standard for when to suspend a staff member, under ST/AI/371, sec. 4, a suspension could be imposed upon a staff member following a preliminary investigation and had to involve conduct that is of "such a nature and of such gravity", including where the conduct in question "might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not possible". The Respondent's responsibility for delays of the Joint Disciplinary Boards. The Respondent is responsible for any delays and/or flaws in these proceedings. Whether undue delay occurred depends on the specific circumstances of the case in question. The propriety of maintaining the suspension of the Applicant during the disciplinary process. Under ST/AI/317, sec. 6, a staff member, against whom a charge of misconduct has been made, may be suspended from duty "if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible".

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Ibrahim

## Entity

DSS

## Case Number(s)

UNDT/NY/2010/037/AT/1693

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

27 Jun 2011

## Duty Judge

Judge Kaman

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Burden of proof

Due process

Investigation

Legal services (OSLA or other) and self-representation

Legal assistance

Reassignment or transfer

Discretion

## Applicable Law

### Administrative Instructions

- ST/AI/2006/3
- ST/AI/371

### GA Resolutions

### Staff Regulations

- Regulation 1.2

### Staff Rules

- Rule 101.2
- Rule 110.1
- Rule 110.2
- Rule 110.4

### UNDT Statute

### UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

UNDT/2010/044

UNDT/2010/176

UNDT/2010/203

UNDT/2011/085

UNDT/2009/083

UNDT/2010/122

UNDT/2010/204

UNDT/2009/096

UNDT/2009/025

UNDT/2010/108

UNDT/2009/088

UNDT/2011/018

2010-UNAT-087

2010-UNAT-049

2010-UNAT-012

2010-UNAT-096