

UNDT/2011/162, Mushema

UNAT Held or UNDT Pronouncements

The Tribunal noted that in reviewing disciplinary cases, its role is to examine: (i) whether the facts on which the disciplinary measure was based have been established; (ii) whether the established facts legally amount to misconduct; (iii) the proportionality of the disciplinary measure; and (iv) whether there was a substantive or procedural irregularity. Further, the Tribunal noted that in reviewing disciplinary cases, it must scrutinize the facts of the investigation, the nature of the charges, the response of the staff member, oral testimony if available and draw its own conclusions. The Tribunal is therefore not bound by the findings of the ad hoc Disciplinary Committee or of the Administration. The Tribunal concluded that the facts upon which the disciplinary measure was based was established. However, after examining the facts against the relevant rules and regulations, the Tribunal concluded that the established facts did not legally amount to misconduct within the meaning of staff rule 110.3. Consequently, the Tribunal held that the penalty of separation from service was disproportionate and unwarranted. Additionally, the Tribunal concluded that there were procedural irregularities in the conduct of the investigation and the disciplinary proceedings that form a separate basis for awarding compensation to the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of WFP, is contesting the decision to separate him from service for reasons of misconduct in the form of gross negligence. In September 2007, 13.033 metric tons of WFP vegetable oil went missing from a WFP warehouse. As the Senior Logistics Assistant, the Applicant was responsible for supervising the staff of the WFP warehouses.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal ordered rescission of the decision to separate the Applicant from service. In the alternative, the Respondent is to compensate the Applicant for loss of earnings from the date of his separation from service to the date of the Tribunal's judgment. Further, the Respondent is to compensate Applicant in the amount of six months net base salary for the procedural irregularities in the investigation and disciplinary process.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mushema

Entity

WFP

Case Number(s)

UNDT/NBI/2010/022/UNAT/1662

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Sep 2011

Duty Judge

Judge Boolell

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Separation from service

Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/371

GA Resolutions

- A/RES/63/253

Other UN issuances (guidelines, policies etc.)

- UNDP/ADM/97/17 (Accountability, Disciplinary Measures and Procedures)
- WFP Food Storage Manual
- WFP Transport Manual
- WFP Warehouse Management Handbook

Staff Rules

- Rule 110.3

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

2010-UNAT-018

2010-UNAT-022

2010-UNAT-024

2010-UNAT-028

2010-UNAT-040

UNDT/2010/024

UNDT/2010/053

UNDT/2011/067

UNDT/2011/123

UNDT/2011/054