

UNDT/2011/181, Choi

UNAT Held or UNDT Pronouncements

The Tribunal finds no flaws in the procedure leading to the dismissal of the Applicant. It further finds, based on its assessment of the intern's credibility and on the evidence available, that the facts have been established. It also concludes that they qualify as misconduct, even though the Respondent erroneously relied on ST/SGB/2008/5; the latter was indeed issued on 11 February 2008 and was therefore not applicable at the time of the misconduct. Finally, the Tribunal, recalling the Secretary-General's discretion in disciplinary matters and considering the circumstances of the case, finds that the sanction was proportionate to the offence. Cross-examination of complainant during investigative and disciplinary proceedings: Investigators are not required by the rules applicable to disciplinary matters to allow the subject of an investigation to cross-examine a complainant. Whether the facts have been established: Since the Applicant has consistently denied the truth of the facts alleged against him, the Respondent must adduce sufficient evidence to prove that they occurred. To determine whether the facts have been established, the Tribunal must assess the credibility of the complainant's allegations and to that effect it will only consider those aspects of her claims which are corroborated by testimonies or documentary evidence. Applicable law: The Secretary-General erred in relying, in the contested decision, on an administrative issuance that was not applicable at the time of the misconduct. Discretion of the Secretary-General in disciplinary matters: As regards disciplinary measures, it is not for the Tribunal to substitute its judgment to that of the Secretary-General who enjoys discretionary authority. The extent of the Tribunal's review over the proportionality of a disciplinary measure is therefore limited.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to dismiss him for misconduct in the form of harassment and abuse of authority.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Choi

Entity

ESCAP

Case Number(s)

UNDT/GVA/2011/047

Tribunal

UNDT

Registry

Geneva

Date of Judgement

24 Oct 2011

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Dismissal/separation

Harassment (non-sexual)

Evidence

Investigation

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Regulations

- Regulation 1.2(f)

Former Staff Rules

- Rule 101.2(d)
- Rule 110.1

Secretary-General's bulletins

- ST/SGB/2008/5

Related Judgments and Orders

2010-UNAT-084

2010-UNAT-089