

UNDT/2011/207, Rasool

UNAT Held or UNDT Pronouncements

The Tribunal found that the Applicant's rights to defence had been breached during the disciplinary procedure because the investigation report and all its attachments had not been shared with him. It concluded however that such a procedural flaw did not affect the established facts, since the Applicant had admitted to them, and did not warrant the rescission of the contested decision, since the established facts amounted to misconduct. The Tribunal nevertheless rescinded the summary dismissal on the ground that it was disproportionate to the established facts. It ordered: (i) the reinstatement of the Applicant, (ii) his demotion from G-7 to G-6, (iii) as an alternative to the reinstatement, the payment of the net base salary he would have received at the G-6 level from 4 October 2007 until the expiration of his FTA on 30 April 2008. Taking into account that the moral prejudice suffered by the Applicant was partly due to his own misconduct, the Tribunal awarded him two months' net base salary as moral damages.

Tribunal's jurisdiction in disciplinary matters: When reviewing a disciplinary measure, the Tribunal must examine first whether due process was followed, second whether the facts on which the sanction is based have been established, third whether the established facts qualify as misconduct, and finally whether the sanction is proportionate to the offence.

Rights of defence in disciplinary cases: Respect of the rights of defence required the Administration to provide the Applicant with the investigation report, as well as all documents and testimonies obtained, and it precluded the Administration from being the sole judge of the evidentiary material to be shared with the Applicant or not.

Procedural flaw in disciplinary proceedings: When the imposition of a disciplinary measure is tainted by a procedural flaw, the Tribunal must determine which consequences to draw from such flaw. The Tribunal cannot rescind a disciplinary measure on the basis of a procedural flaw if in any event the disciplinary measure would have been the same.

The purpose of the investigation is to determine whether the alleged facts are established; if the staff member suspected of misconduct admits to the alleged facts, the procedural flaw has no impact on the facts.

Proportionality: The disciplinary measure of summary dismissal is disproportionate where the staff

member's honesty has not been called into question and the only charges held against him/her are the failure to report to his/her hierarchy an attempted fraud and the sharing with a supplier of other suppliers' quotations in order for that supplier to prepare his own quotation.

Decision Contested or Judgment/Order Appealed

The Applicant was summarily dismissed on 4 October 2007, on two counts: failing to inform his supervisor that a supplier had provided two falsified quotations and sharing with a supplier the quotations of other suppliers in order for him to prepare his own quotation. The Applicant admitted to the acts but contested the regularity of the investigation and disciplinary processes, as well as the proportionality of the disciplinary measure imposed on him.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Rasool

Entity

UNICEF

Case Number(s)

UNDT/GVA/2011/070 (formerly UNDT/NY/2010/030/UNAT/1668)

Tribunal

UNDT

Registry

Geneva

Date of Judgement

6 Dec 2011

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Fraud, misrepresentation and false certification

Due process

Investigation

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNICEF Anti-Fraud Policy

- UNICEF Human Resources Manual on Policy, Procedure

Related Judgments and Orders

2010-UNAT-022

2010-UNAT-025