

UNDT/2012/010, Israbhakdi

UNAT Held or UNDT Pronouncements

Demotion: A demotion is not a purely financial disciplinary measure, unlike a fine or loss of steps. It also carries a stigma and a loss of responsibilities. Discretion of the Secretary-General in disciplinary matters: Due deference must be shown to the Secretary-General's choice of the appropriate disciplinary measure. Establishment of charges: If the disciplinary measure is justified with respect to the established facts in relation to a certain charge, it is not necessary to determine whether additional charges are also established. Violation of due process rights and compensation: Not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision dated 10 January 2011 to impose on him the disciplinary measure of demotion of one grade with deferment, for three years, of eligibility for consideration for promotion. He admits to one of the charges against him, to wit, knowingly and willfully accessing the electronic mailbox of a colleague without authorization, but refutes another one. The Applicant contends that the demotion was disproportionate to the admitted offence, in particular in view of its financial impact. The Tribunal however dismisses the claim, finding that the decision to demote the Applicant did not exceed the Respondent's discretionary power. As regards the second charge, the Tribunal considers that, in view of its finding that the misconduct to which the Applicant admitted was serious enough to justify a demotion, the issue of whether the second charge is sufficiently established has become moot. The Tribunal further finds that the Applicant's due process rights have been violated because evidence on which the Respondent relied to arrive at the conclusion that the second charge was sufficiently established had not been shared with the Applicant. However, the Tribunal finds that the Applicant did not suffer any harm as a result of the above-mentioned violation and therefore does not

award any compensation. On 5 December 2011, after the Dispute Tribunal had raised on its own motion the issue of the legality the three-year ban on promotion and in light of the subsequent findings by the Appeals Tribunal in Yapa 2011-UNAT-168, the Respondent reversed that portion of the disciplinary measure. The Tribunal finds that this is insufficient to repair the harm done to the Applicant and assesses the appropriate compensation at USD10,000.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Judgment in favour of Applicant in part (only financial compensation ordered). The Applicant was awarded USD 10,000.

Full judgment

[Full judgment](#)

Applicants/Appellants

Israbhakdi

Entity

UNCTAD

Case Number(s)

UNDT/GVA/2011/020

Tribunal

UNDT

Registry

Geneva

Date of Judgement

18 Jan 2012

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Facts (establishment of) / evidence

Due process

Right to comment/respond

Applicable Law

Secretary-General's bulletins

- ST/SGB/2004/15

Staff Rules

- Rule 1.2(b)
- Rule 1.2(f)
- Rule 1.2(q)

Related Judgments and Orders

2010-UNAT-018

2010-UNAT-022

2010-UNAT-024

2010-UNAT-042

2010-UNAT-076

2010-UNAT-084

2010-UNAT-089

2010-UNAT-095

2011-UNAT-168