

UNDT/2012/079, Nyepan

UNAT Held or UNDT Pronouncements

Attempted theft: In the instant case, the Applicant's counsel cites the 23 June 2011 Judgment and argued that "it follows that whereas the offence of an attempt to commit an act that could amount, if completed, to misconduct is not envisaged as a sanctionable offence within the prevailing legislative framework of the United Nations, the dismissal of the Applicant must be held to have been ultra vires." This interpretation and application of the Tribunal's reasoning in the said judgment to this case and the Applicant's circumstances is misconceived and misleading. This is because the offence of attempted theft with which the Applicant is charged is a criminal offence in every legal system the world over. It is an act of dishonesty and shows an absence of the core requirement of integrity expected of every staff member of this Organization. Even though the act of attempted stealing belongs in the class of inchoate offences in criminal law, it is a full, complete and sanctionable criminal offence and constitutes a misconduct for which a staff member can be disciplined. It cannot therefore be compared to such misconduct as abuse of authority or other prohibited conduct in the work environment. The Applicant's story that he did not see the bundles of wires in the truck and that he had merely entered and drove the truck to the gate is not credible. A reasonable, responsible and experienced official driver taking a vehicle out of the Organisation's premises must be aware of the proper procedure of requiring authorization for carrying items out of the compound. The essence of this case, however, is that the Applicant was apprehended with the concertina wires, in his possession, attempting to leave the compound without the required authorization. The inconsistencies in the statements of four security guards as to how and when the Applicant accessed and loaded the concertina wires in question into the truck which he attempted to drive out of Star Base premises are not central or material to the case against the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss him for serious misconduct.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nyepan

Entity

UNMIL

Case Number(s)

UNDT/NBI/2009/064

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

31 May 2012

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Termination (of appointment)

Summary dismissal

Applicable Law

Former Staff Regulations

- Regulation 10.2

Former Staff Rules

- Rule 110.3(a)(viii)
- Rule 110.4(c)

Secretary-General's bulletins

- ST/SGB/371

Related Judgments and Orders

UNDT/2011/106