

UNDT/2012/088, Destanne de Bernis

UNAT Held or UNDT Pronouncements

Challenging the validity of a medical certificate: When a staff member submits a medical certificate to justify his or her absence or the failure to fulfill a professional obligation, and where the Administration questions the validity of the medical certificate, it must have the staff member examined by the Organization's medical service or, in the event of further dispute, by a medical commission. Outcome: Judgment in favour of applicant in full (both financial compensation and rescission ordered)

Decision Contested or Judgment/Order Appealed

One day before he was separated from service, the Applicant, whose appointment was terminated because his medical condition rendered him incapacitated for further service, was imposed the disciplinary measure of demotion with deferment, for a period of one year, of eligibility for consideration for promotion. This measure was imposed on the grounds that he had failed to attend an interview in connection an investigation into the individual responsibilities of UN personnel in relation to the attack on UN premises in Algiers in 2007. Before the Tribunal, the Applicant challenged this disciplinary measure and submitted that the investigation in relation to the attack on UN premises in Algiers was not authorized, that it was tainted by irregularities and that his actions were prompted by concerns about the effect of this investigation on his health. The Tribunal notes that the investigation in relation to the attack on UN premises in Algiers was duly authorized, and that the alleged irregularities of this investigation have no bearing on the investigation or disciplinary process concerning the Applicant's failure to cooperate. It further observes that, even though the Applicant had not provided a medical certificate for not attending the interview as soon as he had received it, the Administration was in possession of such certificate at the time when it imposed on him the contested measure. The Tribunal finds that the disciplinary measure was thus based on incorrect facts, and it accordingly orders its rescission as well as financial compensation in the amount of USD8,000 for the moral damage suffered by the Applicant.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Judgment in favour of applicant in full (both financial compensation and rescission ordered)

Full judgment

[Full judgment](#)

Applicants/Appellants

Destanne de Bernis

Entity

UNDP

Case Number(s)

UNDT/GVA/2012/21

Tribunal

UNDT

Registry

Geneva

Date of Judgement

11 Jun 2012

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Disciplinary measure or sanction

Applicable Law

Staff Rules

- Rule 1.2(c)

Related Judgments and Orders

2010-UNAT-018

2010-UNAT-022

2010-UNAT-028