

UNDT/2012/089, Konate

UNAT Held or UNDT Pronouncements

The Tribunal found that there was not clear and convincing proof that the documents were fake and therefore that count failed. However, as regards the other charges, the Applicant had not denied the violations, rather he had indicated that his superior, the Country Representative, was to blame for giving instructions to the Applicant which were in breach of the rules. The Tribunal considered that the responsibility of an Operations Manager when dealing, in particular, with procurement matters, was such that he could not rely on instructions given from above. Therefore, his liability in respect of these charges was sustained. Whilst a little harsh, the Tribunal did not consider the sanction to be so disproportionate as to require its interference.

Accountability referral: The Tribunal noted with some concern that the superior in question had not been subjected to an investigation, since he had taken another position with a different agency (UNDP). The Tribunal considered this to be a serious failure on the part of the Organisation and referred the matter to the Secretary-General for possible measures to ensure accountability pursuant to Article 10.8 of its Statute.

Decision Contested or Judgment/Order Appealed

The Applicant challenged his separation from service following disciplinary proceedings in which he was found guilty of various violations of the Financial Rules and Procurement Procedures of UNFPA, including the provision of falsified documents in support of a particular procurement process.

Legal Principle(s)

In procurement matters, the defence of following orders cannot be invoked.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Konate

Entity

UNFPA

Case Number(s)

UNDT/NBI/2011/009

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

14 Jun 2012

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Separation from service

Referral for accountability

Applicable Law

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

- UNFPA Financial Rules and Regulations
- UNFPA Procurement Procedures

Staff Rules

- Rule 10.2(vii)

UNDT Statute

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

2010-UNAT-040