

UNDT/2012/158, Koutang

UNAT Held or UNDT Pronouncements

The Tribunal held that the Administration did not have sufficient evidence of Mr. Koutang's level of engagement in outside activities to justify a finding that he had engaged in an outside occupation or employment. Thus, there were no reasonable grounds to sustain a finding of conflict of interest. While Mr. Koutang had installed a private router in his office there was no breach of security and no willful misconduct. Mr. Koutang had no ulterior motive or malicious intent in installing the router. It was at most an error of judgment with no proven adverse effects on the Country Office. The Tribunal also held that in this case, even if the Applicant had been properly found guilty of misconduct, the sanction of termination was disproportionate to the seriousness of the conduct and the sanctions imposed, particularly in comparison to the sanctions imposed on other staff members whose conduct was considerably more serious (ST/IC/2006/48). Engaging in outside activity: The Tribunal found that despite the Applicant's 22% shareholding and seat on the board of directors, he did not have outside employment. It was at the most an appearance of outside employment, which justified further investigation, but in the absence of deeper involvement, did not justify the charge of serious misconduct. Conflict of interest: A conflict of interest only exists where it is possible for the staff member or his business to benefit by reason of his position in the UN. There is no evidence of this, indeed, UNDP instead benefited from Mr. Koutang's association. Proportionality: In disciplinary matters, the administration is bound to act in a proportionate manner. Information circulars assist in determining the scale of misconduct, and the actions of the Administration are subject to review by the Tribunal.

Decision Contested or Judgment/Order Appealed

The Applicant was employed as an Information and Communications Technology ("ICT") Manager in the United Nations Development Programme ("UNDP") in Cameroon. He was summarily dismissed from service with the United Nations for misconduct. Following a finding by a Disciplinary Committee that his actions did not warrant such formidable consequences the Administration amended its decision to one of dismissal but with termination benefits. The Applicant contested that decision.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Applicant was awarded one year's net base salary bearing in mind that he lost his opportunity for re-employment with the UN.

Full judgment

[Full judgment](#)

Applicants/Appellants

Koutang

Entity

UNDP

Case Number(s)

UNDT/NBI/2010/017

Tribunal
UNDT
Registry
Nairobi
Date of Judgement
2 Nov 2012
Duty Judge
Judge Shaw
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Compensation
Separation from service
Applicable Law
Information Circulars

- ST/IC/2006/48

Other UN issuances (guidelines, policies etc.)
Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 10.2
- Rule 110.1

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2011/061

UNDT/2011/104

2010-UNAT-084

2010-UNAT-040