

UNDT/2013/076, Mboya

UNAT Held or UNDT Pronouncements

Due Process: UNAT concluded in Molari that “disciplinary cases are not criminal.” So therefore the right and rules pertaining to self-incrimination are purely associated with criminal procedure and therefore does not apply in this instance which is a disciplinary case. The Tribunal finds that she was provided systematically with the evidence, including the payslips in the course of the interview, in addition to an opportunity to review the record of interview. Ultra vires: In this case the person who took the decision as recorded in the letter of dismissal was the Under Secretary-General for Management who took the decision on behalf of the Secretary-General. The facts on the record establish that the decision was not ultra vires.

Proportionality: It is clear from these examples that cases where it had been established that staff members have knowingly submitted or attempted to submit false information to obtain an advantage have resulted in dismissal, whether summary or on notice. In this case where the Applicant admitted to multiple instances of misconduct. There can be no doubt that the decision to dismiss her was entirely proportionate to the offense.

Decision Contested or Judgment/Order Appealed

The Applicant is a former United Nations staff member who was dismissed from service on 2 February 2012 for reasons of misconduct. At the time of the contested decision, she worked with UN-HABITAT in Nairobi, under a Fixed-Term Appointment at the G-6 level, step 5, as an Administrative Assistant in the Research and Monitoring Unit. The alleged misconduct was that the Applicant used falsified pay slips to apply once for a bank loan with the Nairobi Staff Union (NSU) and five times for loans with the United Nations Cooperative Savings and Credit Society (UNSACCO).

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Mboya

Entity

UN-Habitat

Case Number(s)

UNDT/NBI/2012/030

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

17 May 2013

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Due process

Termination (of appointment)

Summary dismissal

Applicable Law

Administrative Instructions

- ST/AI/234/Rev.1

Former Staff Rules

- Rule 1.2(h)
- Rule 10.2(a)(ix)
- Rule 10.3(a)
- Rule 101.2(g)

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(f)

Related Judgments and Orders

2011-UNAT-164

2010-UNAT-084