

UNDT/2013/091, Clark and Gilbert

UNAT Held or UNDT Pronouncements

The Applicants argue that the facts were not established and that their actions did not amount to misconduct, since they were acting in self-defense or in defense of someone else. The Tribunal noted that video evidence, i.e. hotel security camera footage, constituted the only reliable evidence to establish the facts in the instant case and concluded that the Applicants, who were on an official mission at the material time, initiated the dispute and the physical altercation and did not act in self-defense when they assaulted a security guard. Accordingly, the UNDT found that the facts constituting misconduct were established, and that the sanction of separation from service with one-month compensation in lieu of notice and termination indemnity was not disproportionate to the misconduct.

Decision Contested or Judgment/Order Appealed

The Applicants, two former staff members of the United Nations Office for Project Services (“UNOPS”), contest the disciplinary measure to separate them from service with one month compensation in lieu of notice, and with termination indemnity, for physical assault.

Legal Principle(s)

Standard of review of disciplinary matters: In reviewing disciplinary matters, the Tribunal must examine (1) whether the facts on which the disciplinary measure was based have been established; (2) whether the established facts legally amount to misconduct under the Rules and Regulations of the United Nations, and (3) whether the disciplinary measure applied is proportionate to the offence. To that effect, the Tribunal has to freely form its conviction in assessing the truth of the disputed facts, on the basis of the available evidence; in cases of termination, the Tribunal has to take into account the standard of proof established by the jurisprudence of the United Nations Appeals Tribunal (UNAT) in the case of Molari 2011-UNAT-164.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Clark and Gilbert

Entity

UNOPS

Case Number(s)

UNDT/GVA/2012/13

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Jun 2013

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Evidence

Separation from service

Standard of proof

Disciplinary cases

Applicable Law

Staff Regulations

- Regulation 1.1(f)
- Regulation 1.2(c)
- Regulation 1.2(f)

Staff Rules

- Rule 10.1(a)
- Rule 10.1(c)
- Rule 10.3(b)

Related Judgments and Orders

2010-UNAT-018

2010-UNAT-022

2010-UNAT-024

2010-UNAT-028

2010-UNAT-040

2010-UNAT-084

2010-UNAT-089

2011-UNAT-164

2013-UNAT-310