

UNDT/2013/164, Cobarrubias

UNAT Held or UNDT Pronouncements

The Applicant alleged that his due process rights were breached and that the sanction was not proportional. Upon review, the Tribunal considers that the Respondent correctly established the facts but did not fully take into account the mitigating circumstances. The sanction applied is therefore too harsh and is modified by the Tribunal. The contested decision is rescinded and the Applicant is to be reinstated. The disciplinary sanction of separation from service with compensation in lieu of notice and without termination indemnities applied to him is replaced with the sanctions of a written censure, demotion of one grade from grade G-6 step X to G-5 step X with deferment for three years of his eligibility for consideration for promotion starting from 4 April 2011 until 4 April 2014. Due to the presence of exceptional circumstances, the Tribunal saw it fit to award the Applicant more than two years net base salary in compensation. The Respondent is ordered to pay the Applicant partial compensation for loss of earnings according to grade G-5 step 10 retroactively from the date of his separation—4 April 2011—until the day of his effective reinstatement. In the event that the Respondent decides not to reinstate the Applicant, he is ordered to compensate him in the amount of USD5,000 and two years and eight months' net base salary as a reasonable equivalent payment for the damages produced by the rescinded decision, at the rate in the effect on the date of the Applicant's separation from service on 4 April 2011.

Decision Contested or Judgment/Order Appealed

The Applicant is seeking the rescission of the decision to separate him from service, with compensation in lieu of notice and without termination indemnities, following conduct that was determined not to be in accordance with the provisions of the ST/SGB/2004/15.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only specific performance (including rescission with in lieu compensation)

Full judgment

[Full judgment](#)

Applicants/Appellants

Cobarrubias

Entity

DM

Case Number(s)

UNDT/NY/2011/031

Tribunal

UNDT

Registry

New York

Date of Judgement

9 Dec 2013

Duty Judge
Judge Greceanu
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Compensation
Disciplinary matters / misconduct
Dismissal/separation
Investigation
Applicable Law
Secretary-General's bulletins

- ST/SGB/2004/15
- ST/SGB/2008/4
- ST/SGB/2009/7

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 10
- Rule 9.6
- Rule 9.7

UNDT Statute

- Article 10

Related Judgments and Orders

UNDT/2010/053
UNDT/2011/012
UNDT/2011/018
UNDT/2011/068
UNDT/2011/086
UNDT/2011/145
UNDT/2010/169
UNDT/2010/194
UNDT/2010/204
UNDT/2011/046
UNDT/2011/061
UNDT/2011/115
UNDT/2011/123
UNDT/2012/061
UNDT/2012/138
UNDT/2013/002
UNDT/2013/080
UNDT/2013/081
UNDT/2013/102

2010-UNAT-022
2010-UNAT-067
2010-UNAT-084
2010-UNAT-090
2010-UNAT-092
2011-UNAT-131
2013-UNAT-295
2013-UNAT-336
UNDT/2009/072
UNDT/2010/171