

UNDT/2013/172, Bastet

UNAT Held or UNDT Pronouncements

The Tribunal noted that the delegation of authority in disciplinary matters from the SG to the USG for Management in July 2009 had not been published and as such lacked a substantial requirement for taking legal effect. Moreover, the Tribunal found that the USG for Management could not further delegate this power to another person, since any kind of “sub-delegation” should have been provided for in the initial delegation of authority by the SG to the USG for Management, which was not the case. The decision to dismiss the Applicant was taken by the OIC, USG for Management. The Tribunal found that the decision was illegal, since the OIC, USG for Management, lacked the authority to take such decisions. It therefore decided that the decision be rescinded. However, in order to determine the amount of compensation under art. 10.5 of its Statute, the Tribunal considered whether the decision to dismiss the Applicant was justified on the merits. It stressed that it was clear from the available evidence (namely a registered unit deed) that the Applicant was the legal owner of one of the apartments for which he had claimed rental subsidies. On this basis, and without entering into any considerations with respect to e.g. the credibility of witnesses, the Tribunal found that the Applicant had committed serious misconduct and that had the SG—as he should have—himself taken the decision with respect to the disciplinary sanction to be imposed on the Applicant, he would have taken the same decision of dismissal. As a consequence, the Tribunal found that it was not the pure illegality of form committed by the Administration that caused the Applicant to lose his employment, but the mere fault of the Applicant himself. Therefore, the Tribunal ordered that the decision be rescinded, and, in case the Administration decided not to execute the decision, no compensation was to be paid to the Applicant. All other pleas were rejected.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the decision to dismiss him from service, after he had been found to have submitted, over a period of four years, various rental subsidy claims,

though he was perfectly aware that he was not entitled to them, inter alia, because he was the owner of one of the apartments for which he had claimed the subsidies. On the basis of these fraudulent claims, the Applicant received a total of more than USD 90,000 from the Organization. The decision to dismiss the Applicant was taken by the OIC, USG for Management.

Legal Principle(s)

Delegation of authority: Decisions on delegation of authority are important since they modify the statutory powers conferred to Officials of the Organization. Therefore, to produce legal effects, a decision by the SG to delegate the power to dismiss a staff member, in this case to the USG for Management, has to be published. Officer-in-Charge: An Official who received delegation of authority cannot further sub-delegate this authority, unless the initial delegation of authority already provided for a specific sub-delegation. The delegation of authority to dismiss staff members from the SG to the USG for Management did not contain such a possibility for the USG for Management to further sub-delegate. Compensation (art. 10.5 of the Statute): In case a decision to dismiss a staff member for misconduct is rescinded by the Tribunal on grounds of an illegality of form, it has to examine whether the decision was founded on the merits. If it finds that the decision was well-founded and that the SG, had he himself taken the decision as he should have, would have taken the same decision, no compensation is due to the Applicant under art. 10.5, since his loss of employment was due not to the irregularity committed by the Administration, but to the mere fault of the Applicant himself.

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

Bastet

Entity

DESA

Case Number(s)

UNDT/GVA/2013/18

Tribunal

UNDT

Registry

Geneva

Date of Judgement

17 Dec 2013

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Fraud, misrepresentation and false certification

Applicable Law

Administrative Instructions

- ST/AI/2000/16
- ST/AI/371

Staff Regulations

- Regulation 10.1(a)

Staff Rules

- Rule 10.1
- Rule 10.3

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2012/196