

UNDT/2014/060, Mizyed

UNAT Held or UNDT Pronouncements

The UNDT found that the Applicant's explanations for how the missing card came to be in his possession were so far-fetched as to be unbelievable. He was shown to have had the opportunity to take illegal possession of the card and stood to make a pecuniary benefit from so taking it. There were several material inconsistencies in the Applicant's case and he was found not to be credible, contradicting himself in the course of the investigation and in his testimony before the Tribunal. The facts upon which the sanction was based were established and amounted to serious misconduct on the part of the Applicant. Burden of proof - The Applicant did not tell the truth and failed to discharge the burden of establishing that the Administration wrongfully imposed a disciplinary measure on him in this case. Proportionality - The Appeals Tribunal has repeatedly stated that in disciplinary cases the role of the Tribunal is among other things to examine whether the sanction is proportionate to the offense. The Tribunal's jurisprudence maintains that in assessing the proportionality of a sanction both the aggravating as well as the mitigating factors should be taken into consideration. Separation from service - Termination of employment is only applicable in the most severe of cases. A review of the Secretary-General's practice in disciplinary matters shows that cases of misappropriation, theft or taking of the Organization's property usually attracts the most severe of sanctions. Misconduct - The Tribunal's jurisprudence supports a measure of separation from service in cases where the misconduct is so serious as to make "the continued employment relationship intolerable". The Applicant in misappropriating the missing fuel card violated the relationship of trust that existed between him and the Organisation.

Decision Contested or Judgment/Order Appealed

The Applicant is a former staff member of the United Nations Truce Supervision Organization (UNTSO). He contested primarily the decision to separate him from service.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mizyed

Entity

UNTSO

Case Number(s)

UNDT/NBI/2013/33

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

12 Jun 2014

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Separation from service

Applicable Law

Information Circulars

- ST/IC/2010/26
- ST/IC/2011/20
- ST/IC/2012/19
- ST/IC/2013/29

Staff Regulations

- Regulation 1.2

Related Judgments and Orders

2010-UNAT-018

2010-UNAT-022

2010-UNAT-024

2010-UNAT-028