

UNDT/2015/101, Onifade

UNAT Held or UNDT Pronouncements

The Tribunal concluded that: the investigation was carried out in accordance with the correct procedures; the facts were established by clear and convincing evidence; the facts established amounted to misconduct under the staff regulations and rules and that the sanction imposed was not excessive. Due process and procedural fairness: The Tribunal rejected the Applicant's submission that the investigation into his actions should not have been commenced because there was no evidence of harm to the Organization. Pursuant to ST/AI/371/Amend.1, once there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, an investigation is mandatory. Whether misconduct caused the Organization harm is to be considered as part of the investigation and its consequences. It is not a factor in deciding whether an investigation should be commenced. Establishment of facts by clear and convincing evidence: The Tribunal found that the evidence against the Applicant was overwhelming especially since he accepted responsibility for his actions. With respect to the Applicant's claim that the absence of loss or damage to the Organization was not taken into account, the Tribunal held that this is not a fact that is determinative of the finding of misconduct but a matter of mitigation or aggravation and goes to the degree of severity of the disciplinary measure imposed. Whether the established facts amounted to misconduct: The Tribunal concluded that the facts established to a high degree of probability that the Applicant had breached staff regulation 1.2(g). He used his office as a P-5 State Coordinator to obtain a private, albeit non-financial, gain for himself – an unauthorised extended visit to the Mission by his friend. In addition, he intentionally falsified official documents entrusted to him by virtue of his office. This was a breach of former staff rule 1.2(h). Proportionality of the disciplinary sanction: The Tribunal concluded that the sanction imposed on the Applicant was not excessive or abusive because he used his senior position and delegated authority to prepare and approve several false documents, including making a false signature and dishonestly holding himself out as an official of another organisation. The Tribunal noted that while these may not be the most

serious forms of misconduct, they are also not minor as they represent a lapse of integrity.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to separate him from service for misconduct.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Onifade

Entity

UNMISS

Case Number(s)

UNDT/NBI/2014/83

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 Oct 2015

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Disciplinary matters / misconduct

Dismissal/separation

Due process

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/371/Amend.1
- UNMISS AI No. 005/2011

Former Staff Rules

- Rule 1.2(h)

Information Circulars

- UNMIS IC 334/2011
- ST/IC/2014/26

Other UN issuances (guidelines, policies etc.)

- UNMISS SIU Standard Operating Procedures

Secretary-General's bulletins

- ST/SGB/2013/3

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(g)

Staff Rules

- Rule 10.1
- Rule 10.2(a)

Related Judgments and Orders

UNDT/2012/039

2011-UNAT-164

2013-UNAT-364

2015-UNAT-523

2015-UNAT-545