

# UNDT/2015/120, Nyekan

## UNAT Held or UNDT Pronouncements

The Tribunal concluded that there were critical procedural irregularities that rendered the investigation and the contested decision unlawful. Procedural irregularities: The Tribunal concluded that: (i) in the light of the findings of the Inspection Mission, which investigated the same complaints as the Investigation Team, it was an abuse of discretion on the part of the Respondent to establish a second body and labeling it an Investigation Team to carry out the same exercise that had been carried out by the Inspection Mission; (ii) the Investigation Team committed a number of procedural irregularities by failing to apprise the Applicant of the precise allegations against her; by putting words in the mouth of witnesses; by asking highly leading questions; by coming to conclusions in the absence of evidence; by ignoring the testimony and comments of the Applicant; and by sitting on appeal on the findings of the Inspection Mission to justify their conclusions based on the same set facts; and (iii) the charge letter failed to comply with paragraph 6(a) of ST/AI/371 because it did not inform the Applicant of the precise nature of the allegations made by the Complainants or the facts that had been proven to support said allegations. Additionally, the Respondent failed to comply with paragraph 6(b) of ST/AI/371 by not providing the Applicant with copies of the complaints, which formed part of the documentary evidence of the alleged misconduct. Establishment of facts by clear and misconduct: The Tribunal concluded that the procedural irregularities were so egregious that the whole disciplinary process was flawed. Thus, the Tribunal did not consider whether the facts on which the disciplinary measures were based had been established and whether the established facts legally amounted to misconduct.

## Decision Contested or Judgment/Order Appealed

The Applicant challenged UNHCR's decision to impose on her the disciplinary measures of a written censure as per staff rule 10.2(a)(i) and a fine of one month's net base salary as per staff rule 10.2(a)(v).

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal ordered rescission of the decision, removal of the written censure from the Applicant's official status file and the reimbursement of the fine deducted from her salary.

Full judgment

[Full judgment](#)

Applicants/Appellants

Nyekan

Entity

UNHCR

Case Number(s)

UNDT/NBI/2013/23

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

23 Dec 2015

Duty Judge

Judge Boolell  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Disciplinary matters / misconduct  
Abuse of authority  
Disciplinary measure or sanction  
Harassment (non-sexual)  
Due process  
Investigation  
Applicable Law  
Administrative Instructions

- ST/AI/371
- ST/AI/371/Amend.1

Laws of other entities (rules, regulations etc.)  
Other UN issuances (guidelines, policies etc.)

- UNHCR IOM/054/2005-FOM/054/2005 (Inter-Office Memorandum No. 054/2005 and Field Office Memorandum No. 054/2005)
- UNHCR IOM/029/2005-FOM/029/2005 (Inter-Office Memorandum No. 29/2005 and Field Office Memorandum No. 29/2005)

Staff Rules

- Rule 10.2

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2010/001  
UNDT/2010/053  
UNDT/2011/115  
UNDT/2011/162  
UNDT/2012/039  
2010-UNAT-099  
2011-UNAT-123  
2012-UNAT-207  
2012-UNAT-270  
2013-UNAT-289  
2013-UNAT-292  
2013-UNAT-309  
2013-UNAT-364  
2015-UNAT-509  
2015-UNAT-535