

# UNDT/2016/109, Ouriques

## UNAT Held or UNDT Pronouncements

The facts at issue and their legal characterization (physical assault) were established. However, the Tribunal found that the sanction imposed was disproportionate, considering that the mitigating circumstances applicable, notably the Applicant's mental health condition at the time of the incident giving rise to the disciplinary measure and alleged provocation before it, were not fully and properly considered. It was noted that the investigation failed to gather sufficient evidence on these aspects, which were thus not properly put before the decision-maker.

Unlawfulness of a "forfeit approach" in disciplinary measures: Generally, it falls within the Secretary-General's discretion to assess the gravity of facts constituting misconduct. In addition, it is legitimate for the Administration, as a matter of fairness and equality of treatment among staff, to follow the principle of "parity of sanctions", whereby comparable conducts should bring about similar sanctions. However, an approach by which the sanction imposed would be dictated almost exclusively by the general nature and characterization of the misconduct would imply that little room is left to appreciate the individual circumstances of each case, including its actual severity, and notably to attach proper weight to aggravating and mitigating factors. Such a line of action would run against the duty to issue disciplinary measures commensurate to the nature and gravity of the facts.

Interview/statement of the complainant in a disciplinary investigation: It is not an absolute requirement in the course of an investigation to take a statement of the complainant on a misconduct case, nor to have such a statement formally recorded and signed by hand. If clear and convincing evidence exists from other sources there is no obligation to bring the inquiries further. This has to be determined on a case by case basis. However, if the absence of an interview with and a formal statement of the complainant imply that certain facts remain to be elucidated, that is problematic to the extent that a disciplinary measure may end up being imposed on the basis of an incomplete investigation. Organization's duty of care of staff: Failure to properly take into account a staff member's health and security before deciding upon the termination of his service as a disciplinary sanction may reveal a dereliction of the

duty of care towards him or her.

## Decision Contested or Judgment/Order Appealed

The Applicant appealed the decision to separate him from service with compensation in lieu of notice and with termination indemnity as a disciplinary measure.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Both financial compensation and specific performance ordered.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Ouriques

## Entity

UNOG

## Case Number(s)

UNDT/GVA/2015/149

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

16 Aug 2016

## Duty Judge

Judge Downing

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

## Applicable Law

Administrative Instructions

- ST/AI/371

Information Circulars

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

- ST/IC/2014/26
- ST/IC/2015/22

#### Staff Rules

- Rule 1.2(f)
- Rule 10.2
- Rule 10.3(b)

#### UNDT Statute

- Article 10.5(a)

## Related Judgments and Orders

2010-UNAT-024  
2015-UNAT-537  
2013-UNAT-302  
2014-UNAT-398  
2014-UNAT-436  
2013-UNAT-374  
2013-UNAT-310  
2010-UNAT-018  
2010-UNAT-022  
2010-UNAT-040  
2010-UNAT-028  
2015-UNAT-549  
2010-UNAT-084  
2012-UNAT-207  
2014-UNAT-480