

UNDT/2016/210, Ibrahim

UNAT Held or UNDT Pronouncements

The UNDT found that the facts in this case have not been established to the required standard, that is, the alleged misconduct has not been established by clear and convincing evidence. The Respondent's case was based on inconclusive evidence linked together by certain inferences and assumptions, without other possible explanations having been given due weight and consideration. As the facts have not been established, the Applicant's actions cannot be classified as misconduct and no disciplinary measures should have been applied to the Applicant. The UNDT found that this case was not marred by significant procedural irregularities or improper influence such as to constitute a lack of due process resulting in illegality or warranting compensation. The UNDT ordered: (i) rescission of the dismissal or, alternatively, two years' net base salary; and (ii) USD30,000 as compensation for emotional distress.

Decision Contested or Judgment/Order Appealed

The Applicant, a former Security Sergeant at the S-4 level in the Department of Safety and Security ("DSS"), filed an application contesting the decision to impose on him the disciplinary measure of dismissal, following a finding that he "took, without authorization, a bottle of wine belonging to a third party".

Legal Principle(s)

Scope of judicial review in disciplinary cases: When considering appeals against the imposition of disciplinary measures for misconduct, the Tribunal must examine whether the procedure followed is regular, whether the facts in question have been established, whether these facts constitute misconduct, and whether the sanction imposed is proportionate to the misconduct committed. The Appeals Tribunal has reiterated in a number of judgments that due deference is to be afforded to the decision of the decision-maker and that it is not the role of the Dispute Tribunal to substitute a decision that it may have otherwise made, had it been in the shoes of the decision-maker. Standard of proof: When termination is a possible outcome, there should be sufficient proof, and misconduct must be established by clear and convincing evidence, which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable. Proportionality: The jurisprudence on proportionality of disciplinary measures is well-settled. The Tribunal will give due deference to the Secretary-General unless the decision is manifestly unreasonable, unnecessarily harsh, obviously absurd or flagrantly arbitrary. Should the Dispute Tribunal establish that the disciplinary measure was disproportionate, it may order imposition of a lesser measure. However, it is not the role of the Dispute Tribunal to second-guess the correctness of the choice made by the Secretary-General among the various reasonable courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial comp. and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Ibrahim

Entity
DSS
Case Number(s)
UNDT/NY/2015/58
Tribunal
UNDT
Registry
New York
Date of Judgement
30 Nov 2016
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Disciplinary matters / misconduct
Dismissal/separation
Standard of proof
Standard of review (judicial)
Applicable Law
Staff Regulations

- Regulation 1.2(b)

Staff Rules
UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2011/012
2010-UNAT-018
2010-UNAT-025
2010-UNAT-040
2010-UNAT-084
2010-UNAT-087
2010-UNAT-092
2010-UNAT-095
2010-UNAT-098
2012-UNAT-228
2015-UNAT-500
2015-UNAT-503
2015-UNAT-523
2015-UNAT-541
2015-UNAT-549