

UNDT/2016/221, Rajan

UNAT Held or UNDT Pronouncements

The disciplinary sanction was based on the finding that he had made a material misrepresentation on several personal history forms when applying for jobs. The UNDT found that it has been established that on three occasions—sometime in or around October 2011, on 25 March 2005 and on 21 February 2007—the Applicant’s personal history forms incorrectly indicated he did not have “relatives employed by a public international organization”, whereas his brother was in fact employed by the United Nations until 8 December 2008. The UNDT found, however, that the established facts did not amount to misconduct. The UNDT found that the Applicant provided plausible and reasonable explanations that were not given sufficient weight by the Administration. The UNDT found that this was a case of an oversight and perhaps a certain degree of carelessness, but certainly not a matter that fell under the category of misconduct warranting a disciplinary sanction. Accordingly, no disciplinary measures should have been applied. The UNDT ordered rescission of separation and reinstatement or, alternatively, compensation in the amount of two years’ net base salary, minus the termination indemnity and payment in lieu of notice paid to the Applicant upon his separation. The UNDT further ordered that the record of investigation and disciplinary sanction, as well as any adverse material pertaining hereto, shall be removed from the Applicant’s personnel files.

Decision Contested or Judgment/Order Appealed

The disciplinary measure of separation from service with termination indemnity and compensation in lieu of notice.

Legal Principle(s)

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. Mitigation: There is a duty to mitigate losses and the Tribunal should take into account the staff member's earnings, if any, during the relevant period of time for the purpose of calculating compensation. Termination indemnity: The Applicant's termination indemnity should be taken into account when awarding compensation. This is consistent with the Appeals Tribunal's pronouncement in Warren 2010-UNAT-059 that "the very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations". Moral damages: The Appeals Tribunal has consistently held that, as a general principle of compensation, moral damages may not be awarded without specific evidence supporting the claim for such relief.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Rajan

Entity

OCHA

Case Number(s)

UNDT/NY/2015/54

Tribunal

UNDT

Registry

New York

Date of Judgement

22 Dec 2016

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Disciplinary matters / misconduct

Disciplinary measure or sanction

Separation from service

Applicable Law

Secretary-General's bulletins

- ST/SGB/2009/7
- ST/SGB/2014/1

UNDT RoP

- Article 4.7

UNDT Statute

- Article 10.5