

UNDT/2017/021, Kamugisha

UNAT Held or UNDT Pronouncements

Termination for misconduct vs. termination for facts anterior: Termination on the basis of staff regulation 9.3(a)(v) and staff rule 9.6(c)(v) is not to be confused with a measure involving separation as a result of disciplinary proceedings, including in cases where the facts in question could have constituted misconduct. Neither the procedure, nor the standard of proof is to be transposed from one to the other. Regarding in particular the standard of proof applicable to “facts anterior”, in the absence of a clear applicable legal norm or ruling of the Appeals Tribunal, it may not be assumed, without question, that the standard of proof required is the same as applicable to separations for misconduct. Investigation of facts anterior: The Administration is under no legal obligation to conduct its own investigation in cases where a staff member is terminated on the grounds of facts anterior to his/her appointment. The need for such an investigation is to be decided in light of the circumstances of each case. What is important is that there has to be a sufficiency of evidence to support the findings being relied upon. In such circumstances, the Administration is required to examine the information received in a fair and balanced manner, and to provide the staff member with an adequate opportunity to comment on the information received and to adduce any further explanation or facts. Standard of proof regarding facts anterior: In the absence of a clear applicable legal norm or ruling of the Appeals Tribunal, it may not be assumed, without question, that the standard of proof required is the same as applicable to separations for misconduct.

Decision Contested or Judgment/Order Appealed

The Applicant, who had served for several years as UNV in UNMIL, before leaving the Organization and being subsequently appointed to a post with UNAMA, appealed the termination of his fixed-term appointment for facts anterior to his appointment with UNAMA. In particular, the facts the Organization considered that, had they been known at the time he was being considered for selection, would have prevented his appointment were repeated instances of medical insurance fraud while he was a UNV. The Tribunal found: (1) that the Applicant was treated in accordance with procedural fairness and his due process rights were respected, notably during the investigation of the facts in question; (2) that the facts relied upon to support the contested decision were established, to a sufficient standard appropriate to a termination on the basis of facts anterior within the meaning of staff regulation 9.3(a)(v) and staff rule 9.6(c)(v)—in fact, in this particular case, even if the standard of clear and convincing evidence was to be applied, this standard was met; (3) that, given that the facts in question were sufficiently serious that they would in all probability have resulted in disciplinary action against the concerned staff member, there is nothing unreasonable in the decision-maker’s assessment that, if the Administration had been aware that the Applicant had engaged in fraudulent health insurance claims at the time he was being considered for selection, he would not have been appointed.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kamugisha

Entity

UNAMA

Case Number(s)
UNDT/GVA/2016/24
Tribunal
UNDT
Registry
Geneva
Date of Judgement
21 Mar 2017
Duty Judge
Judge Meeran
Language of Judgment
English
French
Issuance Type
Judgment
Categories/Subcategories
Separation from service
Applicable Law
Staff Regulations

- Regulation 9.3(a)(v)

Staff Rules

- Rule 9.6(c)(v)

UN Charter

- Article 101.3

Related Judgments and Orders

UNDT/2016/198
2011-UNAT-164
2013-UNAT-302
2010-UNAT-098
2010-UNAT-087
2016-UNAT-668
2016-UNAT-634