

UNDT/2017/054, Elobaid

UNAT Held or UNDT Pronouncements

UNDT noted that notifying the Assistant Secretary-General of the Office of Human Resource Management, in a case where authority to issue a reprimand has been delegated, is not required. Even if it was, its omission could not have had any impact on the validity of the impugned decision. The Applicant had not been properly given the opportunity to comment on the facts and circumstances prior to the issuance of a written or oral reprimand, thus his right to respond embodied by staff rule 10.2(c) was not observed. The facts relevant for the decision were not established to the required standard and the organ issuing the reprimand failed to make a finding of misconduct. UNDT rescinded the decision to issue the Applicant with a written reprimand and ordered the Respondent to expunge the reprimand from the Applicant's Official Status File.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions to reprimand him for “failing to observe the standards of conduct expected of an international civil servant” and to not provide him with a copy of the Office of Internal Oversight Services Investigation Report.

Legal Principle(s)

The main purpose of notification foreseen in ST/AI/371 is to enable a decision by the Assistant Secretary-General of the Office of Human Resource Management as to the pursuance of a disciplinary or administrative actions. The provision for opportunity to comment prior to the issuance of a written or oral reprimand in staff rule 10.2(c) is designed to implement the minimum element of adversarial dispute, where the staff member could impress arguments in their defence upon the decision-maker. A decision to reprimand a staff member requires preponderance of evidence as its factual basis, given its final character and lasting negative consequences.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The contested decision was rescinded. The Respondent was ordered to expunge the written reprimand from the Applicant's official status file.

Full judgment

[Full judgment](#)

Applicants/Appellants

Elobaid

Entity

OHCHR

Case Number(s)

UNDT/NBI/2016/36

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

13 Jul 2017

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Burden of proof

Disciplinary

Disciplinary matters / misconduct

Facts (establishment of) / evidence

Due process

Right to comment/respond

Applicable Law

Administrative Instructions

- ST/AI/2004/3
- ST/AI/292
- ST/AI/371

Agreements, conventions, treaties (etc.)

- International Covenant on Civil and Political Rights

Staff Rules

- Rule 1.2
- Rule 10.1
- Rule 10.2(a)
- Rule 10.2(b)
- Rule 10.2(c)
- Rule 10.3(a)

Related Judgments and Orders

2018-UNAT-822