

UNDT/2019/109, Negussie

UNAT Held or UNDT Pronouncements

The Tribunal concluded that the Applicant had attempted to physically remove M, the staff member of a WFP contractor, from WFP premises and that in so doing, he had been imprudent and reckless since he could have sought the assistance of security personnel. The Tribunal found, however, that the allegations that the Applicant had initiated the fight with M and continued to fight severely and inflict serious injuries on him, had not been established by clear and convincing evidence. The Tribunal further found that in imposing the disciplinary sanction on the Applicant, WFP had unlawfully considered as an aggravating factor unreported, uninvestigated and unsubstantiated allegation that in April 2013 the Applicant had pushed a WFP driver. The Tribunal found the Applicant's agreement to pay compensation in the amount of USD1,900 to M to have been coerced and that the agreement could not be relied on to establish his culpability and that the Respondent had relied erroneously in part on a medical certificate which did not support the claim of serious injuries inflicted on M. It held that the following factors also militated against a finding that the agreement was evidence of the Applicant's guilt: the fact that WFP may legitimately have sought to preserve its goodwill with its host community the extent of threats to WFP by the local community and its involvement and interference during the investigator's fact-finding which resulted, in effect, in the community eliciting assurances from the investigator and others that the Applicant be punished. These factors caused the Tribunal to find the investigative process irredeemably tainted. The Tribunal was of the view that professional investigators in the Organization have no excuse for conducting less than painstaking investigations or for not seeking to verify the credibility of questionable documents relied upon in their investigations. The Tribunal rescinded the decision to separate the Applicant from service and awarded in-lieu compensation in the amount of 12 months' net base salary.

Decision Contested or Judgment/Order Appealed

The decision to separate him from service with compensation in lieu of notice and with termination indemnities following a disciplinary process.

Legal Principle(s)

When applying the principle of similar facts evidence in civil cases, the court must be satisfied that the evidence is relevant, uncontroversial and probative. The weight to be attached to admitted evidence is within the discretion of the UNDT Judge (Messinger 2011-UNAT-123)

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal found that the Respondent unfairly dismissed the Applicant because the reasons upon which the Applicant's separation from service was based were not established by clear and convincing evidence. The Tribunal ordered the Respondent to rescind the administrative decision and to reinstate the Applicant or to pay in-lieu compensation in the amount of 12 months' net base salary. Since the Applicant did not provide corroborating evidence, his claim for moral damages was refused. The Tribunal refused the Applicant's request for an accountability referral in relation to the investigator.

Full judgment

[Full judgment](#)

Applicants/Appellants

Negussie
Entity
WFP
Case Number(s)
UNDT/NBI/2014/115/R1
Tribunal
UNDT
Registry
Nairobi
Date of Judgement
17 Jun 2019
Duty Judge
Judge Izuako
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Separation from service
Applicable Law
UNDT Statute

- Article 10.5(a)

Related Judgments and Orders
UNDT/2016/057
2016-UNAT-700
2020-UNAT-1033