

UNDT/2019/119, Bhatia

UNAT Held or UNDT Pronouncements

The Applicant was charged with having engaged in two acts of misconduct, namely: cheating and helping others cheat in the psychometric and English language tests of the Entry-Level Humanitarian Professional Programme (EHP). The Tribunal pronouncements are reflected following the different steps in the analysis of the contested decision. Have the facts on which the disciplinary measure was based been established? The Tribunal found that the investigation report clearly stated the facts and the alleged misconduct. It also provided substantial and critical assessment of the evidence presented to the investigator either in documentary or testimonial form. After consideration of the oral testimonies at the hearing and of all the evidence on file, the Tribunal did not find any evidence of ill motivation on the part of the witnesses, and was satisfied that the facts related to the allegations against the Applicant were established on the required standard (balance of probabilities). Do the established facts amount to misconduct? The Tribunal considered that, by having access to the questions prior to his own test, the Applicant had the opportunity to prepare the right answers for the tests and prepare himself in advance. This cannot be regarded as “proper preparation for the test” since it goes far beyond the “normal” preparation that a candidate would do. The Tribunal also noted that the Applicant’s behaviour is the reflection of an unethical conduct that goes against the core values and obligations of staff members enshrined in the Staff Regulations, and led to an undue privileged situation in his favour to the detriment of other candidates who did not act as such. Consequently, the Tribunal found that the Applicant’s behaviour as per the established facts amounted to misconduct. Were the Applicant’s due process rights respected during the investigation and the disciplinary process? The Tribunal noted that the onus is on the Applicant to provide proof of lack of due process and how it negatively impacted the investigation and or disciplinary process. However, other than making the allegations, the Applicant did not provide substantial evidence that his due process rights were violated during the investigation and or the disciplinary process. The Tribunal recalled that during the investigation stage only limited due process

rights apply. This means that the investigator has a certain margin of discretion, based on a critical assessment of the evidence produced, to decide what is relevant or not for the purpose of the investigation. The Tribunal also noted that the Applicant did not identify any witness, so he could not claim that the investigator did not interview witnesses who could have provided testimony in his favour. The Tribunal concluded that there was no evidence of bias or procedural irregularity. Were the disciplinary measures applied proportionate to the offence? The Tribunal considered that bearing in mind the circumstances of the case, the cumulative application of two disciplinary sanctions was not excessive nor unreasonable. The Tribunal concluded that the imposed sanctions were proportionate to the offence committed.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision of the United Nations High Commissioner for Refugees to impose on him the disciplinary measures of loss of three steps in grade and deferment, for a period of two years, of eligibility for consideration for promotion.

Legal Principle(s)

When the disciplinary sanction results in separation from service, the alleged misconduct must be established by clear and convincing evidence. This standard of proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. In other words, it means that the truth of the facts asserted is highly probable (Molari 2011-UNAT-164). However, when separation is not at stake, as in the present case, the standard of proof is “preponderance of evidence or balance of probabilities” (Benamar UNDT/2017/025). It is not the task of the Dispute Tribunal to conduct fresh investigations but rather to determine if there was a proper investigation into the allegations (Messinger 2011-UNAT-123). The principle of proportionality means that a sanction should not be more excessive than is necessary for obtaining the desired result.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Bhatia

Entity

UNHCR

Case Number(s)

UNDT/GVA/2017/087

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Jun 2019

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 10.1(a)
- Rule 10.2(a)

UNDT Statute

- Article 2.1(b)

Related Judgments and Orders

2010-UNAT-084

2014-UNAT-415

2010-UNAT-018

2010-UNAT-024

2011-UNAT-164

UNDT/2017/025

2015-UNAT-549

2011-UNAT-123

2018-UNAT-819

2013-UNAT-295

2013-UNAT-336

2015-UNAT-523

2010-UNAT-040