

UNDT/2019/125, Mpairwe

UNAT Held or UNDT Pronouncements

The Applicant consistently, throughout the proceedings, admitted the fact that sometime between December 2006 and January 2007, he had stated in his job application that he had no relative working for a public international organization, even though he was aware that at the time his brother was working for the United Nations. As such, the fact that the Applicant failed to disclose relevant information when he should have, is essentially not in dispute. Whereas the Applicant insists to call his deed an “oversight”, it is impossible to accept. By invoking the same justifications for not disclosing his brother’s employment while not verifying the state of facts, the Applicant demonstrated, at minimum, indifference regarding the veracity of his submissions. Misconduct was properly established. All the mitigating and aggravating circumstances were properly identified by the Respondent.

Decision Contested or Judgment/Order Appealed

To impose on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii), for knowingly submitting false information in his job application that he did not have a relative working for a public international organization while his brother was working at the United Nations at the time.

Legal Principle(s)

When submitting an application for an appointment it is the candidate’s responsibility to ensure that his application did not contain any inaccuracies and the Organization is under no obligation to prove that a candidate intended to mislead the Organization in his or her answers to the questions of the applications forms. The Organization’s rules of disclosure set out in the various statutory and contractual provisions provide that staff members shall be responsible on appointment for supplying the Secretary-General with whatever information may be required for the purpose of determining their status under the Staff Regulations and Staff Rules or of completing administrative arrangements in connection with their appointments. Staff members shall be held personally accountable for the accuracy and completeness of the information they provide. Staff member are to certify the truth, completeness and correctness of the information and warrants that any misrepresentation or material omission made on the form renders the staff member liable to termination or dismissal. The use of the general word “any” is a clear indication in the language that all false statements will be liable to the sanction of dismissal, be they intentional or negligent. A strict rule in relation to probity and honesty in the disclosure of recruitment information is justified by the unusual and often remote process by which international recruitment occurs within the Organization. As such, a failure by a staff member to comply with his or her disclosure of information obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, is undeniably misconduct. As a “core value” of the Organization, staff members shall uphold the highest standards of integrity. This concept includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. The failure to reply correctly to a prominent and very relevant question in an application form amounts to a false answer from which dishonesty normally may be inferred. Hence, a false answer in an application form is *prima facie* proof of dishonesty, shifting the evidentiary burden to the maker of the false statement to adduce sufficient evidence of innocence. The gravity of the misconduct is related to the subjective element, being a faulty state of mind, and to the objective dangerousness of the conduct, including the rank of the norm breached, the degree of the breach and any negative consequences entailed by it. As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mpairwe

Entity

UNMISS

Case Number(s)

UNDT/NBI/2018/82

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

9 Jul 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Facts (establishment of) / evidence

Applicable Law

Former Staff Rules

- Rule 104.4
- Rule 304.3

Secretary-General's bulletins

- ST/SGB/2009/7

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.5
- Rule 10.3(b)

Related Judgments and Orders

2013-UNAT-388

2017-UNAT-781