

UNDT/2020/175, Grosse

UNAT Held or UNDT Pronouncements

The Tribunal rejects the Applicant's argument related to the alleged lack of mens rea. It recalls that this is an administrative proceeding and not a criminal case. In the context of administrative/disciplinary proceedings, only the objective facts are essential to determine if misconduct has occurred. The "underlying intentions" of the subject can only be taken into account as mitigating or aggravating circumstances. In the case at hand, the cumulative application of two sanctions of a financial nature (loss of five steps in grade and a fine of three months net base salary) is an excessive exercise of administrative discretion and mitigating factors should have been taken into account. The Tribunal is of the view that a loss of five steps in grade represents already a significant financial burden for the Applicant and, in addition to a written censure, it is already a reasonable and, more importantly, proportionate sanction. The Tribunal will consequently rescind the sanction of a fine of three months' net salary.

Decision Contested or Judgment/Order Appealed

The decision to impose the disciplinary measures of written censure, loss of five steps in grade and a fine of three months' net base salary, in accordance with staff rules 10.2(a)(i), (ii) and (v), for engaging in remunerated outside employment without authorization.

Legal Principle(s)

The role of the Tribunal in disciplinary cases is to perform a judicial review assessing the following elements: a) whether the facts were established according to the applicable standard of proof, i.e., preponderance of evidence b) whether the established facts amount to misconduct c) whether the sanction is proportionate to the gravity of the offence and d) if the staff member's due process rights were

guaranteed during the entire proceeding. The Secretary-General's administrative discretion to impose disciplinary sanctions is not unfettered, and the UNDT can interfere when the sanction lacks proportionality, i.e., when it is excessive, unbalanced and unsuitable. The burden of proof to demonstrate procedural irregularities in the course of an investigation and/or disciplinary proceedings lays with an applicant. Limited due process rights apply during the course of an investigation and due process entitlements only come into play once a disciplinary process is initiated.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Grosse

Entity

UNOG

Case Number(s)

UNDT/GVA/2018/120

Tribunal

UNDT

Registry

Geneva

Date of Judgement

1 Oct 2020

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Applicable Law

Administrative Instructions

- ST/AI/2000/13
- ST/AI/2017/1

Staff Rules

- Rule 10.2(a)(i)

Related Judgments and Orders

2013-UNAT-302

2011-UNAT-123

2015-UNAT-523

2010-UNAT-098

2010-UNAT-084

2010-UNAT-024

2010-UNAT-018

2018-UNAT-859