

UNDT/2020/185, Modey-Ebi

UNAT Held or UNDT Pronouncements

The Tribunal found that the Administration discharged the burden of establishing that misconduct had occurred with regard to most of the allegations and that the established facts legally amounted to misconduct under the regulations and rules. There were no due process violations in the investigation and in the disciplinary process leading up to the disciplinary sanction against the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant contested the High Commissioner's decision to dismiss her from service pursuant to staff rule 10.2 (a) (ix) for serious misconduct.

Legal Principle(s)

Judicial review of a disciplinary case requires the Dispute Tribunal to examine: a. whether the facts on which the sanction is based have been established b. whether the established facts qualify as misconduct under the Staff Regulations and Rules c. whether there was a substantive or procedural irregularity and d. whether the sanction is proportionate to the offence. Part of the test in reviewing decisions imposing sanctions is whether due process rights were observed. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When termination is a possible sanction, the "misconduct must be established by clear and convincing evidence," which "means that the truth of the facts asserted is highly probable". This standard of proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable. In order to establish harassment, the test is whether the impugned conduct would be expected or be perceived to cause offence or humiliation to a reasonable person, taking into account the overall circumstances in which the conduct occurred. An internal disciplinary process must comply with the principles of fairness and natural justice and that before a view is formed that a staff member may have committed misconduct, there should be adequate evidential basis following a thorough investigation. Staff rule 10.3(b) lays down the principle that an administrative action should not be more excessive than is necessary for obtaining the desired result⁸² and that the essential elements of proportionality are balance, necessity and suitability.

Outcome

Dismissed on merits

Outcome Extra Text

The Applicant failed to prove that the disciplinary measure was unfounded or disproportionate. She also failed to prove any violation of her due process rights that could justify the rescission of the disciplinary measure.

Full judgment

[Full judgment](#)

Applicants/Appellants

Modey-Ebi

Entity

UNHCR

Case Number(s)

UNDT/NBI/2019/006

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

28 Oct 2020

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Harassment (non-sexual)

Misuse of office

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR/HCP/2014/4 Policy on Discrimination