

UNDT/2021/057, Beda

UNAT Held or UNDT Pronouncements

UNDT held that the Applicant had no authority to demand a performance guarantee from an NGO Coordinator and that the Applicant's intention was not to keep a performance guarantee, but rather to obtain a bribe from the NGO Coordinator. UNDT held that it was not convinced of the probative value of the alleged handwritten note which the Applicant claimed was evidence of his intention to request a performance guarantee. On the issue of the Applicant returning the alleged performance guarantee, UNDT held that the real intention of the Applicant and the Senior Programme Assistant was to avoid the NGO Coordinator denouncing the matter to the Administration. On the retraction of the NGO Coordinator's testimony by the NGO Coordinator, UNDT held that it unclear, contradictory and appeared to be driven by ulterior motives. UNDT held that the retraction was not reliable evidence and could not be used to override the NGO Coordinator's initial testimony and the contemporary evidence collected during the investigation. UNDT held that the facts upon which the disciplinary measure were based were established through clear and convincing evidence. UNDT held that the Applicant's behaviour, by colluding to solicit and obtain a bribe from the NGO Coordinator, amounted to corruption. UNDT held that by engaging in corruption, the Applicant breached his obligations under staff regulation 1.2 (in particular staff regulations 1.2(b), 1.2(e), 1.2(f) and 1.2(g)) and staff rule 1.2 (staff rules 1.2(k) and 1.2(p)). UNDT held that the Applicant's behaviour amounted to misconduct and demonstrated his lack of integrity to serve as an international civil servant. UNDT held that, in assessing the proportionality of the disciplinary sanction to be applied, the High Commissioner properly considered mitigating and aggravating circumstances of the case as well as his and the Secretary-General's practice in similar cases. UNDT held that the decision to dismiss the Applicant was not arbitrary but a reasonable exercise of discretion in applying sanctions for misconduct and confirmed the sanction. UNDT held that the Applicant's allegations on procedural irregularities were unsubstantiated and that his due process rights were respected during the investigation and the disciplinary process. UNDT rejected the application.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to dismiss him from service following a disciplinary proceeding in which he was accused of corruption.

Legal Principle(s)

An administrative decision is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. When a disciplinary sanction results in separation from service, the alleged misconduct must be established by clear and convincing evidence. The Secretary-General has wide discretion in applying sanctions for misconduct and at all relevant times he must adhere to the principle of proportionality. Once misconduct has been established, the level of sanction can only be reviewed in cases of obvious absurdity or flagrant arbitrariness. The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency. Due process entitlements only come into play in their entirety once a disciplinary proceeding is initiated, whereas at the preliminary investigation stage only limited due process rights apply. An 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.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Beda

Entity

UNHCR

Case Number(s)

UNDT/GVA/2018/066

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 May 2021

Duty Judge

Judge Bravo

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Fraud, misrepresentation and false certification

Misuse of office

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR IOM No. 044/2013-FOM 044/2013

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(g)
- Regulation 1.2(p)

Staff Rules

- Rule 1.2(k)

Related Judgments and Orders

2010-UNAT-084

2014-UNAT-415

2010-UNAT-018

2010-UNAT-024

2011-UNAT-164

2013-UNAT-280

2010-UNAT-040

2017-UNAT-781

2013-UNAT-336

2013-UNAT-295