

UNDT/2021/058, Bravo

UNAT Held or UNDT Pronouncements

UNDT preliminarily decided not to admit the Non-Governmental Organization (NGO) Coordinator's testimony into evidence, holding that it was not required because the case record already contained relevant evidence in relation to the facts in which he had been involved. UNDT held that the evidence showed that neither the Applicant nor the Senior Programme Officer were involved in the implementation of the project. In fact, a Senior Reintegration Officer had overall responsibility for it as he requested an operational advance and, consequently, was personally responsible for the funds. UNDT, therefore, held that the Applicant had no authority to request a performance guarantee from the NGO Coordinator. UNDT held that there was no evidence to suggest that the Applicant personally profited from the amount taken from the NGO Coordinator, but that his involvement in the fraud scheme was established. UNDT was not convinced of the probative value of a handwritten note allegedly proving that the request for funds from the NGO Coordinator constituted a performance guarantee. UNDT held that by returning the alleged performance guarantee, the real intention of the Applicant and the Senior Programme Officer was to avoid that the NGO Coordinator denounce the matter to the Administration. UNDT held that the evidence showed that on 26 April 2017, when the Applicant returned the money to the NGO Coordinator, the Applicant and the Senior Programme Officer ignored that the NGO Coordinator had already forwarded his accusatory email to the Field Associate (Shelter Cluster). UNDT held that the facts on which the disciplinary measure was based were established through clear and convincing evidence. Given the gravity of the Applicant's misconduct, UNDT held that the decision to dismiss him from service was not arbitrary but a reasonable exercise of the High Commissioner's discretion in applying sanctions for misconduct. UNDT accordingly confirmed the disciplinary sanction imposed on the Applicant. 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.

Decision Contested or Judgment/Order Appealed

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

Legal Principle(s)

When reviewing disciplinary cases, it is UNDT's role to determine: a) Whether the facts on which the disciplinary measure was based have been established according to the applicable standard; b) Whether the established facts legally amount to misconduct under the Staff Regulations and Rules; c) Whether the disciplinary measure applied is proportionate to the offence, and d) Whether the Applicant's due process rights were respected during the investigation and the disciplinary process. When the 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 that 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. 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

Bravo

Entity

UNHCR

Case Number(s)

UNDT/GVA/2019/019

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 May 2021

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary

Disciplinary matters / misconduct

Dismissal/separation

Facts (establishment of) / evidence

Investigation

Due process

Applicable Law

Laws of other entities (rules, regulations etc.)

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

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