

UNDT/2021/078, Valme

UNAT Held or UNDT Pronouncements

There was clear and convincing evidence that the Applicant used his position of authority to unduly influence the continued employment of FM at GITTS, MINUSCA. The fact that the Applicant failed to disclose a conflict of interest arising from his sexual relationship with FM and his continued involvement in her recruitment at GITTS, MINUSCA were proved by clear and convincing evidence. The Applicant sent interview questions to the complainant, and there was clear and convincing evidence that the Applicant used his position of authority as Chief of GITTS, MINUSCA, to unduly influence the recruitment of the complainant as an individual contractor at GITTS, MINUSCA. The allegation that between December 2016 and December 2017, the Applicant attempted to interfere with the OIOS investigation into his conduct by asking possible witnesses to gather and share information pertaining to the alleged misconduct, and gave them suggestions on how to respond to the investigators during their interviews was established by clear and convincing evidence. There were no due process violations during the investigation process. The sanction of separation from service with compensation in lieu of notice and with termination indemnity was reflective of the gravity of the Applicant's misconduct and consistent with the past practice of the Organization. The Applicant's reliance on his history of satisfactory service with no disciplinary record did not constitute a mitigating factor, since the Charter of the United Nations requires staff members of the Organization to demonstrate the highest standards of efficiency, competence and integrity.

Decision Contested or Judgment/Order Appealed

The Applicant was challenging the Respondent's decision to dismiss him from service for serious misconduct with compensation in lieu of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii).

Legal Principle(s)

The Tribunal's role in disciplinary cases is 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; and c. 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 outcome, the Administration must prove the facts underlying the alleged misconduct by "clear and convincing evidence", which requires more than a preponderance of evidence but less than proof beyond reasonable doubt, and "means that the truth of the facts asserted is highly probable". The proportionality principle limits discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result. The purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity and suitability. The Secretary-General has wide discretion in determining the appropriate disciplinary measure, due deference should be shown to the Secretary-General's disciplinary decisions, it is not the role of the Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him, and that the Tribunal is more concerned with how the decision-maker reached the impugned decision, not the merits of the decision.

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal found that the sanction of separation from service with compensation in lieu of notice and with termination indemnity was reflective of the gravity of the Applicant's misconduct and consistent with the past practice of the Organization.

Full judgment

[Full judgment](#)

Applicants/Appellants

Valme

Entity

MINUSCA

Case Number(s)

UNDT/NBI/2021/078

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

30 Jun 2021

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Disciplinary measure or sanction

Dismissal/separation

Applicable Law

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(f)
- Regulation 1.2(g)
- Regulation 1.2(m)

Staff Rules

- Rule 1.2(c)
- Rule 1.2(g)
- Rule 10.2(a)(viii)