

UNDT/2021/090, Temu

UNAT Held or UNDT Pronouncements

The charge was properly investigated and proffered. There was due process of law and the Applicant at all times had every opportunity to refute the charge and show that UNDP had failed to prove it by clear and convincing evidence or that there were mitigating circumstances. There was no doubt in the process and the ability of the Applicant to understand the charge and make representation about it. Any difficulty in contradicting the charge during the process with documentary evidence was cured by the fact that the matter was provided an oral hearing before the Tribunal.

Accountability referral: the Tribunal referred the matter to the Secretary-General for action on accountability in relation to the decision to order separation of the Applicant during maternity leave.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's decision to separate her from service for misconduct.

Legal Principle(s)

Clear and convincing evidence is not as high a threshold as "beyond reasonable doubt." "[W]hen termination is a possible outcome", the Appeals Tribunal has held that the evidentiary standard is that the Administration must establish the alleged misconduct by "clear and convincing evidence", which "means that the truth of the facts asserted is highly probable."

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal found that some of the charges were not proved to the appropriate standard, but the charge relating to conflict of interest was sufficiently made out.

Full judgment

[Full judgment](#)

Applicants/Appellants

Temu

Entity

UNDP

Case Number(s)

UNDT/NBI/2019/34

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

28 Jul 2021

Duty Judge

Judge Belle

Language of Judgment

English

Appeal Status

Appealed

Appeal Number

2022-UNAT-1281

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Procurement irregularities

Evidence

Credibility assessment

Separation from service

Referral for accountability

Applicable Law

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 1.2

Related Judgments and Orders

2022-UNAT-1281