

UNDT/2021/105, Specker

UNAT Held or UNDT Pronouncements

The act of cheating in which the Applicant engaged did not necessitate the use of her UNDP email address. Therefore, the use of the UNDP email address is a distinct and separate from assisting AA in cheating. Considering that the Applicant was a senior staff member, that she had a personal interest in the outcome of the tests in that the person she assisted was her partner, and that the assistance that she provided was significant as she provided AA with full written answers to the test questions, which he then almost completely copied and submitted, the nature and gravity of the Applicant's misconduct is serious. Therefore, the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity imposed in this case is in line with the past practice of the Organization. The sanction imposed on AA is not under review in this case. Moreover, AA is not a staff member and any accountability for his actions is therefore governed by a different legal framework. The Administration has wide discretion to weigh aggravating and mitigating factors when deciding upon the appropriate sanction. The Tribunal finds that the consideration of the above aggravating and mitigating factors in imposing the contested sanction was proper and falls within the Secretary-General's discretion in this case. Considering the nature and gravity of the Applicant's misconduct as well as aggravating and mitigating circumstances, the Tribunal finds that the imposed measure was adequate and there is no basis to interfere with the Administration's exercise of discretion in this matter. The Applicant was notified of the formal allegations in the charge letter, was given the opportunity to respond to those allegations, and was informed of the right to seek the assistance of counsel in her defense. Therefore, the Tribunal is satisfied that the Applicant's due process were respected. In light of the above, the Tribunal upholds the disciplinary measures imposed on the Applicant.

Decision Contested or Judgment/Order Appealed

The Administration's decision to impose the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity equivalent to four months' salary for assisting another person in cheating and misuse of the Organization's resources.

Legal Principle(s)

The general standard of judicial review in disciplinary cases requires the Dispute Tribunal to ascertain: (a) whether the facts on which the disciplinary measure was based have been established; (b) whether the established facts legally amount to misconduct; and (c) whether the disciplinary measure applied was proportionate to the offense. When termination is a possible outcome, the misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. The principle of proportionality in a disciplinary matter is set forth in the staff rule 10.3(b), which provides that "[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct". The Administration has the discretion to impose the disciplinary measure that it considers adequate to the circumstances of a case and to the actions and behavior of the staff member involved, and the Tribunal should not interfere with administrative discretion unless "the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity". The Appeals Tribunal held that "the Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose. The Appeals Tribunal has further stated, "But due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally

fair”. The Appeals Tribunal further explains that this means that the Dispute Tribunal should “objectively assess the basis, purpose, and effects of any relevant administrative decision”.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Specker

Entity

UNDP

Case Number(s)

UNDT/NY/2021/20

Tribunal

UNDT

Registry

New York

Date of Judgement

12 Sep 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

Misuse of information and communication technology resources

Compensation

Non-pecuniary (moral) damages

Applicable Law

Staff Regulations

- Regulation 1.2(b)
- Regulation 11.2(b)

Staff Rules

- Rule 10.3(b)