

UNDT/2021/148, Applicant

UNAT Held or UNDT Pronouncements

The Tribunal noted that the Applicant had not offered any statement, or evidence, which would contradict the fundamental findings of the disciplinary process regarding the objective element of the impugned conduct, that is, that he made requests largely based upon incorrect information. The Tribunal thus concluded that the Respondent had substantiated with clear and convincing evidence the factual basis of the contested decision. The Tribunal also established that the Applicant acted in violation of staff regulations 1.2(b) and 1.2(q), and staff rule 1.7 and hence his actions amounted to misconduct. On whether the sanction was proportionate to the offence, the Tribunal confirmed that the Applicant was separated with compensation in lieu of notice, which is a legitimate sanction under staff rule 10.2. Therefore, the measure imposed was in line with the prevailing practice in the Organization and was not disproportionate. The Tribunal further concluded that the Applicant's due process rights were observed during the investigation and disciplinary processes. Accordingly, the application was dismissed.

Decision Contested or Judgment/Order Appealed

The Applicant contested a decision of the Under-Secretary-General for Management Strategy, Policy and Compliance dated 11 November 2019 imposing on him the disciplinary measure of separation from service, with compensation in lieu of notice, and without termination indemnity.

Legal Principle(s)

The role of the Tribunal in disciplinary cases is to perform a judicial review of the case and assess the following elements: Whether the facts were established by clear and convincing evidence; Whether facts amount to misconduct; Whether the sanction is proportionate to the gravity of the offence; and Whether the staff member's due process rights were guaranteed during the entire proceeding.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

MINURSO

Case Number(s)

UNDT/NBI/2020/14

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

2 Dec 2021

Duty Judge

Judge Milart

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

Applicable Law

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(q)

Staff Rules

- Rule 1.7