

2010-UNAT-084, Sanwidi

UNAT Held or UNDT Pronouncements

As a preliminary matter, UNAT rejected an application by the Staff Union of the ICTY for leave to file a friend-of-the court brief under Article 17 of its Rules of Procedure on the scope of review of the Secretary-General's decision in disciplinary proceedings and the standard of proof in disciplinary proceedings, on the basis that the facts and legal issues were not so complex that the brief would assist it. UNAT held that UNDT, in exercising judicial review, may interfere with the exercise of the Secretary-General's discretion in disciplinary proceedings against a staff member on the ground that the disciplinary measure is not proportionate to the misconduct, however, UNDT must show due deference to the Secretary-General's decision. UNAT held that it could not overlook the fact that the Appellant was a Procurement Officer at the P-4 level in the Procurement Section of MONUC and held senior positions as Chief of the Contracts Unit and later Chief of the Supplies Service Unit. UNAT noted that the Appellant occupied a position of trust and great financial responsibility and was called upon to take an important financial decision, therefore, a high standard of conduct and integrity was expected from him. UNAT held that the Appellant's actions were a serious breach of the Staff Regulations and the Procurement Manual. UNAT held that the Appellant's misconduct was serious and the disciplinary measure of summary dismissal was not disproportionate. UNAT allowed the appeal, set aside the UNDT judgment and affirmed the Secretary-General's decision to summarily dismiss the Appellant.

Decision Contested or Judgment/Order Appealed

The Applicant challenged his dismissal for serious misconduct for entering into a currency exchange transaction with a vendor paid USD 3.4 million by MONUC between 2002 and 2007. UNDT found that the acts did not amount to serious misconduct and that the penalty of summary dismissal was disproportionate to the conduct.

Legal Principle(s)

The jurisprudence of the former UN Administrative Tribunal, though of persuasive value, is not binding precedent for UNDT and UNAT. The principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. It is not the role of UNDT to consider the correctness of the choice made by the Secretary-General amongst the various courses of actions open to him; nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General. In exercising judicial review, the role of UNDT is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. In judicial review, as opposed to a merit-based review, due deference is always shown to the decision-maker.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Sanwidi

Entity

MONUC

Case Number(s)

2010-082

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Oct 2010

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Procurement irregularities

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Summary dismissal

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UN Procurement Manual

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(g)

UN Charter

- Article 101.3

UNAT RoP

- Article 17

Related Judgments and Orders

UNDT/2010/036