2011-UNAT-168, Yapa

UNAT Held or UNDT Pronouncements

UNAT considered appeals by both the Secretary-General and Mr Yapa. On the issue of the two-year ban on promotion, UNAT held that UNDT did not commit an error of law in considering that the general legal principle that a sanction may not be imposed on any person unless expressly provided for by a rule in force on the date of the facts held against that person must be respected in disciplinary matters. UNAT held that UNDT did not err on a question of law in finding that the sanction of a two-year ban on promotion lacked a legal basis. On the written censure and demotion, UNAT held that UNDT did not commit an error in procedure such as to affect the contested decision. UNAT held that it fully supported the findings of the UNDT that attempting to cheat in an exam was a serious act which pointed to a certain lack of integrity. UNAT held that UNDT did not err on a question of law in concluding that for a security officer to attempt to cheat constitutes professional misconduct. UNAT held that the requirement of a staff member to supply information concerning facts relevant to his or her integrity, conduct and service was applicable to Mr Yapa. UNAT held that UNDT did not commit an error resulting in a manifestly unreasonable decision by finding that the sanctions imposed on Mr Yapa were not disproportionate to the nature and seriousness of his misconduct. On the matter of compensation, UNAT noted that Mr Yapa had not demonstrated that he had suffered a direct and certain injury, and therefore UNAT held that the UNDT's order for compensation had to be rescinded. UNAT rejected the appeals and upheld the UNDT judgment, with the exception of the award of compensation, which was rescinded.

Decision Contested or Judgment/Order Appealed

Mr Yapa contested the disciplinary sanction of written censure and a demotion by one grade without the possibility of promotion for two years for misconduct in the form of attempting to cheat on a test and refusing to cooperate with an investigation. UNDT rescinded the sanction limiting his promotion and awarded

compensation.

Legal Principle(s)

A sanction may not be imposed on any person unless expressly provided for by a rule in force on the date of the facts held against that person.

Outcome

Appeal dismissed on merits; Appeal granted in part

Full judgment

Full judgment

Applicants/Appellants

Yapa

Entity

UNOG

Case Number(s)

2010-162
2010-163

Tribunal

UNAT

Registry

New York

Date of Judgement

21 Oct 2011

President Judge

Judge Courtial

Language of Judgment

English
French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Disciplinary measure or sanction
Investigation (see category: Investigation)
Investigation

Applicable Law

Former Staff Rules

- Rule 110.3(a)

UNDT RoP

- Article 17.6

UNDT Statute

- Article 9.2

Related Judgments and Orders

UNDT/2010/169
2010-UNAT-024