

# 2013-UNAT-334, Konate

## UNAT Held or UNDT Pronouncements

UNAT held that, whilst not all the allegations of misconduct with which the staff member was charged were proven, it was established by UNDT that the Appellant failed to apply formal methods of solicitation in respect of contracts, in violation of UNFPA Financial Regulations, Rules and Procurement Procedures and also failed to refer a contract to the UNFPA Headquarters Contracts Review Committee, in violation of further norms. UNAT held that the Appellant had not established any errors of fact or law warranting reversal of the impugned judgment. UNAT held that UNDT correctly declined to accept a defence based on alleged superior orders. UNAT held there was no reason to depart from the conclusion that the sanction was not unduly harsh, as the sanction could not be considered absurd or arbitrary. UNAT noted that the misconduct was committed by a Procurement Officer. UNAT held that the sanction in such disciplinary cases must be apt not only to punish the wrongdoer but also to publicise the Organisation's commitment to combat all forms of corruption. UNAT held that that separation from service did not appear to be disproportionate and corresponded with the logical loss of trust as a consequence of the misconduct. UNAT dismissed the appeal and affirmed the UNDT judgment.

Accountability Referral: UNAT affirmed the UNDT referral for possible action to enforce accountability. UNAT held that the Administration's apparent lack of action with respect to another staff member who might have been involved did not reduce the Appellant's accountability but justified the UNDT's decision to refer the case to the Secretary-General for further action.

## Decision Contested or Judgment/Order Appealed

ICAO Decision: The Applicant, a Procurement Officer, contested the decision to separate him from service with compensation in lieu of notice for misconduct in the form of acting in breach of the financial rules and procurement procedures. Whilst UNDT was not convinced that the so-called fake documents were forgeries, UNDT

found against the Applicant.

## Legal Principle(s)

When reviewing a disciplinary sanction, the role of UNAT is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Konate

## Entity

UNFPA

## Case Number(s)

2012-364

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

28 Jun 2013

## President Judge

Judge Simón

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Procurement irregularities

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Referral for accountability

## Applicable Law

Laws of other entities (rules, regulations etc.)

- UNFPA Financial Regulation 14.8(b)
- UNFPA Procurement Procedure A.4
- UNFPA Procurement Procedure C.1
- UNFPA Procurement Procedure C.4.2

UNFPA Financial Regulations and Rules

- Regulation 14.8
- Rule 111.11(b)(ii)
- Rule 114.14(a)

## Related Judgments and Orders

UNDT/2012/089

2010-UNAT-028

2010-UNAT-024