

2013-UNAT-336, Akello

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that it was satisfied that Ms Akello's involvement in the private company Blessed Seasons, which was on a UN list of companies providing escort vehicle services, met the standard of business activity and enterprise prohibited by former Staff Regulation 1.2(m) and that her activities amounted to a conflict of interest. UNAT held that, in ruling otherwise, UNDT erred in law and fact and the Secretary-General's appeal succeeded on that ground. On the issue of whether the very fact that the Internal Affairs Unit investigation, having been preceded by a procedurally flawed and irregular earlier investigation, compelled the investigators to advise Ms. Akello of her right to seek the assistance of counsel, UNAT held that it did not. UNAT held that UNDT erred in law in concluding that there was a right to be apprised of the assistance of counsel during the investigation stage, allowing the ground of appeal. UNAT held that, in light of its determinations that Ms Akello's unauthorised activities also constituted a conflict of interest and that her due process rights were not breached, her summary dismissal was a proportionate sanction (Judge Faherty dissenting). UNAT held that the Secretary-General was entitled to view Ms Akello's actions as misconduct of a serious nature that could properly result in summary dismissal. UNAT held that in deciding that the case merited a sanction other than dismissal, namely a written censure, UNDT erred in law and fact in not attaching any or sufficient weight to the negative effect Ms Akello's actions had had on the Organisation's reputation and image. UNAT accepted as reasonable the Secretary-General's submission that he should not have been put in a position whereby the provision of a military vehicle escort to staff members was tainted by any actual or perceived conflicts of interest. UNAT held that the sanction of dismissal was also proportionate due to the fact that Ms Akello was involved in Blessed Seasons for a period of at least 10 months during the period of time she worked for the Organisation before her involvement came to light. UNAT upheld the Secretary-General's appeal on this ground. UNAT reversed the UNDT judgment and affirmed the administrative decision imposing summary dismissal.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested her summary dismissal for misconduct in the form of inter alia engaging in outside activities, engaging in a serious conflict of interest and misrepresenting facts to the investigators. UNDT granted the application in part, finding the dismissal to be grossly disproportionate and ordering the Applicant's reinstatement or compensation in lieu.

Legal Principle(s)

Due process entitlements, which every staff member has, come into play in their entirety once a disciplinary process is initiated. At the preliminary investigation stage, only limited due process rights apply. In administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Akello

Entity

UNDP

Case Number(s)

2012-368

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2013

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Unauthorised outside activities and conflict of interest

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Summary dismissal

Applicable Law

Former Staff Regulations

- Regulation 1.2(m)

Laws of other entities (rules, regulations etc.)

- OAI Guidelines

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

Staff Rules

- Rule 10.3(a)

Related Judgments and Orders

UNDT/2012/124

2010-UNAT-084

2013-UNAT-295

2010-UNAT-024

2012-UNAT-209