

2013-UNAT-337, Leal

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that grounds existed to discharge Mr Leal for misconduct, without needing to address the issue of the alleged circumvention of the recruitment process for the purposes of hiring. UNAT held that the misconduct and disciplinary measure of dismissal fell within the discretion of the Secretary-General and could not be seen as disproportionate to the offences unless it was the result of proven abuse or arbitrary exercise of that discretion. UNAT held that the key elements of Mr Leal's due process were met. UNAT held that, since the requirements of due process were not disregarded, given that Mr Leal was informed of the charges against him and he had the opportunity to contest them, the interests of justice were served. UNAT reaffirmed its disapproval of the awarding of compensation in the absence of actual prejudice. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision to separate him from service with payment in lieu of notice and without termination indemnity for misconduct in the form of allowing an individual to work without a contract, ordering workers to be locked inside a warehouse without an exit or a bathroom and receiving, storing and distributing pornography on his UNDP computer and through his UNDP email account. UNDT found that the Applicant's due process rights were violated and, while the misconduct was established, UNDT found that the sanction was disproportionate and ordered it to be changed to separation with termination indemnity.

Legal Principle(s)

Due deference must be shown to the Secretary-General's administrative decisions. There are no legal grounds that can justify the awarding of compensation in the absence of actual prejudice.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Leal

Entity

UNDP

Case Number(s)

2012-374

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Misuse of or failure to exercise reasonable care in relation to UN property or assets

Applicable Law

UN Charter

- Article 101.3

Related Judgments and Orders

2012-UNAT-209

2013-UNAT-302

2010-UNAT-089

2010-UNAT-084

2010-UNAT-018