

# 2013-UNAT-374, Koutang

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that it could not sustain the conclusion of UNDT that Mr Koutang's actions did not amount to misconduct. UNAT held that the sanction imposed was not unreasonable, absurd, or disproportionate and, as such, UNAT held that it was a reasonable exercise of the Administration's broad discretion in disciplinary matters. UNAT held that UNDT erred in finding the sanction disproportionate and in substituting its opinion for that of the Administration. UNAT allowed the appeal and vacated the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested his summary dismissal (which was later commuted into separation with payment in lieu of notice and termination indemnity) for misconduct involving, in sum, his outside engagement with a private business, including installing a private router that would allow external parties to utilise UNDP corporate resources and possibly its network. UNDT found in favour of the Applicant, concluding that the charges of misconduct were not sustained and that, in any event, the sanction was not proportionate to the offence.

## Legal Principle(s)

When reviewing a disciplinary sanction, the role of the Tribunal 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. UNAT will not substitute the criteria of the administration for its own judgment.

## Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Koutang

Entity

UNDP

Case Number(s)

2013-426

Tribunal

UNAT

Registry

New York

Date of Judgement

17 Oct 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Unauthorised outside activities and conflict of interest

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

Staff Regulations

- Regulation 1.2(m)

Staff Rules

- Rule 110.1

Related Judgments and Orders

UNDT/2012/158

2011-UNAT-123

2010-UNAT-098

2010-UNAT-084

2010-UNAT-024

2010-UNAT-018

2010-UNAT-087