

2013-UNAT-388, Ainte

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that in such a case, where the material facts were not in dispute, no additional investigation was required to establish the misconduct. UNAT held that UNDT erred in law in finding that the investigative and disciplinary process had not been properly conducted and that Mr Ainte's due process rights had been violated by the absence of an official investigation. UNAT held that Mr Ainte had not demonstrated that the Secretary-General failed in any other way to observe his due process rights. UNAT held that the Secretary-General was correct in deciding that the established facts amounted to misconduct. UNAT held that, in certifying his Personal History Profile, Mr. Ainte took responsibility for its veracity and that he was aware any misrepresentation or material omission could result in disciplinary action. UNAT held that Mr Ainte could not argue that he was unaware of the gravity with which the UN treats false applications. UNAT held that Mr Ainte should have completed the form himself or, at the very least, checked it carefully. UNAT rejected Mr Ainte's claim that the termination was disproportionate. UNAT held that the Secretary-General had the discretion to determine the appropriate level of sanction and that termination of a senior official for the very serious misconduct of submitting a false document was not absurd, unlawful, or otherwise disproportionate. UNAT held that it would not interfere with the legal exercise of that discretion. UNAT held that the principle of double jeopardy is a principle of criminal law and was not applicable to the case. UNAT allowed the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose upon him the disciplinary measure of separation from service with compensation in lieu of notice and termination indemnity for misconduct in the form of misrepresentation of his educational qualifications. UNDT found for the Applicant.

Legal Principle(s)

The principle of double jeopardy is a principle of criminal law that is not applicable to disciplinary cases.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Ainte

Entity

UNAMID

Case Number(s)

2013-442

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

Separation from service

Termination of appointment (see also, Termination of appointment)

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 10.3(a)

Related Judgments and Orders

UNDT/2012/191

2013-UNAT-310

2010-UNAT-040