

2014-UNAT-407, Toukolon

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT's conclusion, that the assault committed was not misconduct and that the Organisation's jurisdictional competence did not extend to the physical assault of a non-UN staff member even where the assault is perpetrated by a staff member, was based on reasoning which was unsupported by law or the facts. UNAT held that, not only the issue had not been raised in the case presented to UNDT, but such a proposition had also no foundation in the staff regulations, staff rules, administrative instructions, or jurisprudence. UNAT held that there is nothing in A/RES/64/110 that could possibly prevent the Organisation from taking disciplinary measures against a staff member who fails to comply with his or her obligations under the UN Charter, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant. UNAT held that the assault against Ms Oduke was properly within the jurisdictional competence of the Organisation and that it would draw its own conclusions as to proportionality of the disciplinary measure. UNAT held that UNDT erred in considering that Mr Toukolon's drunkenness and the fact that Ms Oduke, a non-UN staff member, was at the Base outside curfew hours, constituted mitigating factors. UNAT held that the determination that the said conduct was serious misconduct was a reasonable exercise of the Secretary-General's discretion. UNAT held that it was a reasonable exercise of his discretion to determine that assault, together with the other charges, rendered the staff member unfit for further service with the Organisation, and was satisfied that separation from service with compensation in lieu of notice and with termination indemnity – which is not, after all, the most severe form of dismissal – was neither unfair nor disproportionate to the seriousness of the offences. UNAT upheld that appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the proportionality of the disciplinary measure of separation from service, seeking reinstatement and compensation. UNDT rescinded his separation from service with compensation in lieu of notice and with termination indemnity and ordered that he be paid his salaries and entitlements from 6 July 2011 until the date of the closure of UNMIS.

Legal Principle(s)

The goal of the Resolution A/RES/64/110, as set out in its preamble, is “to ensure that the original intent of the Charter of the United Nations can be achieved, namely that United Nations staff and experts on a mission would never be effectively exempt from the consequences of criminal acts committed at their duty station, nor unjustly penalized without due process”. The General Assembly will not tolerate the immunity of the United Nations being used as a shield permitting the criminal behaviour of staff members and experts on a mission from being properly prosecuted.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Toukolon

Entity

UNMIS

Case Number(s)

2013-457

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Assault (verbal and physical)

Disciplinary measure or sanction

Dismissal/separation

Inappropriate or disruptive behaviour

Applicable Law

Administrative Instructions

- ST/AI/371

GA Resolutions

- A/RES/64/110

Staff Rules

- Rule 10.1(a)
- Rule 10.3(a)

Related Judgments and Orders

UNDT/2013/012

2011-UNAT-164

2010-UNAT-087

2010-UNAT-018

2010-UNAT-024

2010-UNAT-084

2010-UNAT-098

2011-UNAT-123

2013-UNAT-302

2013-UNAT-366