

2014-UNAT-408, Jahnsen Lecca

UNAT Held or UNDT Pronouncements

UNAT found no merit to the Appellant's claims that UNDT had failed to make findings on the specific category of misconduct and that she did not receive notice of the specific charge of theft prior to receiving a disciplinary sanction. UNAT held that disciplinary cases were not criminal and that there was no need to give notice of a specific charge of theft because the charge against the Appellant was taking, without authorisation, a staff member's property. UNAT noted that the Appellant did not dispute having taken a bicycle without the owner's permission, but that she claimed she did not intend to steal it, a claim which UNDT clearly rejected. UNAT held that UNDT's finding, that the facts alleged constituted misconduct, was fully supported by the facts. UNAT held that UNDT had correctly addressed the issue of the proportionality of the disciplinary measure. UNAT found that the Appellant had failed to establish that UNDT made any error of fact or law. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate her from service for theft. UNDT determined that the only issue before it was the proportionality of the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnities. UNDT concluded that the said disciplinary measure considered some extenuating circumstances as it was not the most severe available, given the serious nature of the established misconduct. UNDT held that the Secretary-General was not legally required to consider the opinions of those who had worked with the Applicant before taking a disciplinary decision. UNDT dismissed the application.

Legal Principle(s)

Judicial review of a disciplinary case requires UNDT to consider the evidence adduced and the procedures utilised in the course of the investigation by the Administration. Disciplinary cases require UNDT to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct under the Staff Regulations and Rules, and whether the sanction is proportionate to the offence. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When termination is a possible outcome, the misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Jahnsen Lecca

Entity

ICTY

Case Number(s)

2013-458

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Facts (establishment of) / evidence

Separation from service

Termination of appointment (see also, Termination of appointment)

Applicable Law

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(f)

Related Judgments and Orders

UNDT/2012/206

2013-UNAT-302