

2014-UNAT-436, Walden

UNAT Held or UNDT Pronouncements

UNAT considered appeals by both the staff member and the Commissioner-General. UNAT held that the fact was undisputed that the staff member knowingly presented non-existent credentials despite questioning the ethics of accepting the document with his qualifications. UNAT held that termination was not disproportionate to the offence, taking into account that the staff member's recruitment, in the first instance, was predicated on the existence of a degree subsequently established to be without merit and which never would have qualified him for selection by the Organisation. UNAT held that UNRWA DT had applied the right test but had arrived at the wrong conclusion when determining termination as disproportionate to the misconduct. UNAT upheld the appeal and vacated the UNRWA DT judgment.

Decision Contested or Judgment/Order Appealed

UNRWA DT Judgment: The Applicant contested the decision to terminate his appointment. UNRWA DT found that 1) the facts on which the decision to terminate the Applicant's employment for knowingly misrepresenting his academic qualifications were not established by clear and convincing evidence; 2) the facts as established by UNRWA did not lawfully amount to misconduct; and 3) therefore the sanction was disproportionate. UNRWA DT found that the Commissioner-General had demonstrated bias and prejudice against the Applicant and that the decision was tainted and prejudiced. UNRWA DT held that the Applicant was denied due process. UNRWA DT decided to offer obiter dicta on what appeared to be irregularities in the Agency's handling of the case. UNRWA DT set aside the decision of the Commissioner-General and ordered reinstatement of the Applicant. Alternatively, UNRWA DT set the amount of compensation at two years' net base salary plus six months' net base salary as compensation.

Legal Principle(s)

When reviewing a disciplinary sanction imposed by the Administration, 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. The requirement of a university degree for a professional position within the Organisation is mandatory and not a policy. UNRWA DT judgment: The Applicant contested the decision to terminate his appointment. UNRWA DT found that 1) the facts on which the decision to terminate the Applicant's employment for knowingly misrepresenting his academic qualifications were not established by clear and convincing evidence; 2) the facts as established by UNRWA did not lawfully amount to misconduct; and 3) therefore the sanction was disproportionate. UNRWA DT found that the Commissioner-General had demonstrated bias and prejudice against the Applicant and that the decision was tainted and prejudiced. UNRWA DT held that the Applicant was denied due process. UNRWA DT decided to offer obiter dicta on what appeared to be irregularities in the Agency's handling of the case. UNRWA DT set aside the decision of the Commissioner-General and ordered re-instatement of the Applicant. Alternatively, UNRWA DT set the amount of compensation at two years' net base salary plus six months' net base salary as compensation.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Walden

Entity

UNRWA

Case Number(s)

2013-498

2013-500

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Jun 2014

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

Standard of review (judicial)

Disciplinary cases

Termination (of appointment)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

UN Charter

- Article 101

UNRWA International Staff Regulations

- Regulation 10.2

Related Judgments and Orders

2013-UNAT-310

2010-UNAT-098

2010-UNAT-028

2010-UNAT-024