

2015-UNAT-511, Bastet

UNAT Held or UNDT Pronouncements

UNAT considered appeals by both the Secretary-General and Mr Bastet. UNAT held that the disciplinary measure was regularly adopted by an individual properly vested with the delegated authority to make that decision and that therefore, the imposition of the disciplinary measure was valid and its rescission as ordered by UNDT had to be vacated. UNAT upheld the appeal from the Secretary-General, accepting the argument that Staff Rule 10. 1(c) expressly provided that the authority to impose disciplinary measures was vested in the Secretary-General or officials with delegated authority and did not require that such delegation took any specific form. UNAT held that the Secretary-General had validly delegated the powers outlined in Staff Rule 10. 1(c) in favour of the Under-Secretary-General (USG) for Management. UNAT held that any adequate mechanism can be used for the purpose of delegation, provided that it contains a clear transmission of authority to the grantee concerning the matter being delegated. UNAT held that, absent any express requirement of prior publication, the delegation became effective upon issuance and may be known by staff members and other departments of offices once it is exercised. UNAT did not share the view of UNDT that the delegation needed to be officially published since it inserted a formal exigency not required by the norms. UNAT noted that the delegation of authority was attributed to a functional post and not to the individual personal holding that post, therefore in the absence of the USG for Management, the authority could be exercised by the Officer-in-Charge (OIC). UNAT rejected Mr. Bastet's argument that disciplinary measures may only be taken by the USG for Management personally. UNAT did not concur with UNDT on the invalidity of the practice of designating OICs. UNAT held that the impugned decision was adopted by a competent authority and could not be considered invalid for that reason. UNAT found no reason to depart from the conclusions of the thorough judicial review conducted by UNDT with respect to the merits of the disciplinary procedure, specifically that Mr Bastet could not ignore that he was officially the legal owner of the apartment and submitted a lease agreement to obtain rental subsidy without disclosing that fact. UNAT held that the fact the staff

member did not disclose the situation at the time of claiming a monetary benefit was enough to constitute misconduct. UNAT held that Mr Bastet's appeal did not satisfy the burden arising from the UNAT Statute as he failed to demonstrate that the impugned judgment was based on an error of fact resulting in a manifestly unreasonable decision. UNAT allowed the Secretary-General's appeal; vacated the rescission ordered in the UNDT judgment; affirmed the UNDT judgment with respect to the merits of the impugned decision and its order for no compensation; and dismissed Mr Bastet's appeal.

Decision Contested or Judgment/Order Appealed

Mr Bastet contested the decision to impose on him the disciplinary measure of dismissal from service and recovery of his rental subsidy payments for knowingly submitting inaccurate claims for rental subsidy allowance, certifying the accuracy of such claims and receiving the allowance, to which he was not entitled. UNDT held that, while the misconduct was established by the facts and therefore the dismissal could be justified, the decision was unlawful on the basis that it was not taken by the proper authority.

Legal Principle(s)

Any adequate mechanism can be used for the purpose of delegation, provided that it contains a clear transmission of authority to the grantee concerning the matter being delegated. Compensation cannot be granted when there is no breach of a staff member's rights or administrative wrongdoing in need of repair.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Bastet

Entity

DESA

Case Number(s)

2014-583

2014-586

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Feb 2015

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Rental subsidy

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

Staff Rules

- Rule 10.1(c)

UNAT Statute

- Article 2(e)

Related Judgments and Orders

UNDT/2013/172

2014-UNAT-436

2013-UNAT-374

2010-UNAT-095

2014-UNAT-420