

2016-UNAT-668, Onifade

UNAT Held or UNDT Pronouncements

UNAT preliminary denied the Appellant's motions for leave to respond to the answer to the appeal and his request for production of documents and evidence, on grounds that there were no exceptional circumstances. UNAT then considered the merits of the appeal. UNAT affirmed UNDT's decision that the investigation was not ultra vires. Whilst the Special Representative of the Secretary-General did not initiate the investigation, the nature of Chief Conduct and Discipline Team duties gave him authority to refer the matter to SIU for investigation. Even if the initiation of the investigation gave rise to a procedural irregularity, there was overwhelming uncontested evidence of Appellant's actions, which he also admitted. UNAT noted that the investigation was carried out properly, that the Appellant's due process rights were respected, that the finding of misconduct was established through clear and convincing evidence and that the sanction was proportionate. Moreover, UNAT held that the Appellant did not establish how the evidence he sought to be produced would have affected the outcome of the case. UNAT dismissed the appeal and affirmed UNDT's judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity. UNAT found that the investigation was not ultra vires. UNDT held that it was established by clear and convincing evidence that the Applicant had breached Staff Regulation 1. 2(g). Moreover, UNDT found that the disciplinary measure was proportionate. UNDT dismissed the application in its entirety.

Legal Principle(s)

The decision to launch an investigation into allegations of misconduct, institute a disciplinary process, and impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority. Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of the office or responsible officer shall undertake an investigation. An appellant may not raise an argument on appeal that ought to have been raised before the first instance Tribunal. Case management issues, including the question of whether to call a certain person to testify or to order the production of documents, remain within the discretion of the UNDT and do not merit a reversal except in clear cases of denial of due process of law affecting the right to produce evidence by a party.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Onifade

Entity

UNOHCI

Case Number(s)

2016-879

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Facts (establishment of) / evidence

Investigation (see category: Investigation)

Proportionality of sanction

Investigation

Applicable Law

Administrative Instructions

- ST/AI/371/Amend.1

Staff Rules

- Rule 101.1

UNAT RoP

- Article 8
- Article 9

Related Judgments and Orders

UNDT/2015/101

2010-UNAT-056

2013-UNAT-292

2011-UNAT-110

2012-UNAT-239

2012-UNAT-231

2011-UNAT-164

2010-UNAT-087

2010-UNAT-098

2013-UNAT-302

2015-UNAT-580