

# **2016-UNAT-700, Negussie**

## UNAT Held or UNDT Pronouncements

UNAT held that UNDT had violated the Appellant's due process rights by not rendering a fully reasoned judgment and had thus committed an error in procedure such as to affect the decision of the case. UNAT held that UNDT should have examined and stated in its judgment whether there was clear and convincing evidence that the Appellant continued to fight in a severe manner causing physical injury. UNAT held that UNDT should have addressed the question as to whether there was clear and convincing evidence that the Appellant had used physical force against a driver in April 2013, especially since there were doubts in this regard. UNAT held that, only if part of the allegations could be established by clear and convincing evidence, the disciplinary sanction could be upheld. UNAT held that, in this case, it would be necessary to carefully examine whether the imposed sanction is still proportionate. UNAT upheld the appeal and vacated the UNDT judgment. UNAT remanded the case to UNDT for adjudication consistent with the UNAT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate him from service on the grounds of an alleged physical assault. UNDT dismissed the application and found that the facts on which the disciplinary measure was based had been established by clear and convincing evidence. UNDT, however, found procedural breaches in the investigation and that the Applicant's right to due process had been prejudiced by the failure to provide him with the investigation report, even though he did not request it.

## Legal Principle(s)

Judicial review of a disciplinary case requires UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the

Administration. In this context, UNDT is 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. To observe a party’s right of due process, especially in disciplinary matters, it is necessary for UNDT to undertake a fair hearing and render a fully reasoned judgment.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Negussie

## Entity

WFP

## Case Number(s)

2016-931

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

28 Oct 2016

## President Judge

Judge Knierim

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Assault (verbal and physical)

Disciplinary measure or sanction

Dismissal/separation

Separation from service

Termination of appointment (see also, Termination of appointment)

## Related Judgments and Orders

UNDT/2016/057

2015-UNAT-550

2013-UNAT-302

2014-UNAT-403

2011-UNAT-164

2015-UNAT-512