

# 2017-UNAT-738, Bertrand

## UNAT Held or UNDT Pronouncements

UNAT refused the Appellant's application for an oral hearing. UNAT held that there was nothing to support the Appellant's submission that UNDT erred in finding that he had not exercised reasonable care by expecting the same standard of care from him as from the Operations Response Unit supervisor. UNAT held that UNDT's finding that the Appellant was not on duty at the relevant time was fully supported by the facts and was not in error. Contrary to the Appellant's submission, UNAT held that UNDT did not suggest that the Appellant intended to cause the loss or foresaw the loss, nor did the doctrine of mens rea have any application to the case. On the Appellant's claim that the imposed sanction was disproportionate, unduly harsh, and absurd, UNAT held that UNDT was correct in its conclusion that the Secretary-General did not overlook the relevant mitigating factors. UNAT held that the Appellant failed to demonstrate any error by UNDT on the issue of mitigation. UNAT recalled its jurisprudence that the level of sanction fell within the remit of the Administration and could only be reviewed in case of obvious absurdity and flagrant arbitrariness. UNAT held that the sanction was a reasonable exercise of the Administration's broad discretion in disciplinary matters. UNAT dismissed the appeal and affirmed the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose on him the disciplinary measure of separation with compensation in lieu of notice and with termination indemnity. He had left a semi-automatic weapon and corresponding ammunition UNATtended in his vehicle and it was stolen, along with a hand-held radio. UNDT rejected his application.

## Legal Principle(s)

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the role of the Tribunal is neither to consider the correctness of the choice by the Secretary-General amongst other courses of action open to him nor to substitute its own decision for that of the Secretary-General.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Bertrand

## Entity

MINUSTAH

## Case Number(s)

2016-982

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

31 Mar 2017

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Separation from service

Termination of appointment (see also, Termination of appointment)

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- MINUSTAH Weapons Policy, Annex E

## Related Judgments and Orders

UNDT/2016/177