

2017-UNAT-745, Ouriques

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT erred when it concluded that the Administration's decision was unlawful and that the sanction imposed was disproportionate to the nature and gravity of the behaviour triggering it. UNAT held that UNDT erred when it ordered rescission of the sanction and compensation in lieu thereof and substituted the sanction imposed for a lesser one. UNAT held that the Secretary-General had broad discretion to determine whether the assault amounted to serious misconduct and to determine the appropriate disciplinary measure. UNAT held that all the relevant facts on which the sanction was based were satisfactorily established such that the decision-maker was in a position to adequately weigh all of them and that the Administration fully complied with its duty to investigate the facts, which were established in the preliminary report. UNAT held that the mental health status of Mr Ouriques was considered upon receipt of the information provided and the Administration was under no duty to inquire further into his mental state. UNAT held that the Administration exercised its discretion in a reasonable manner. UNAT noted that the sanction imposed on Mr Ouriques was not the most severe sanction and that the Administration took into account his long, satisfactory service, amongst other mitigating factors. UNAT held that the Administration's decision was lawful and the sanction imposed was proportionate. UNAT granted the Secretary-General's appeal and vacated the UNDT judgment. Judge Halfeld dissented.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision separating him from service with compensation in lieu of notice and with termination indemnities, as a disciplinary measure for assault. UNDT ordered rescission of the disciplinary measure, replaced it with a two-year deferment of eligibility for consideration for promotion, and awarded moral damages.

Legal Principle(s)

It is neither the role of UNDT to consider the correctness of the choice made by the Secretary-General nor to substitute its own decision for that of the Secretary-General.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Ouriques

Entity

UNOG

Case Number(s)

2016-974

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Termination (of appointment)

Disciplinary sanction

Applicable Law

Staff Rules

- Rule 1.2(f)
- Rule 10.1
- Rule 10.2(a)

Related Judgments and Orders

UNDT/2016/109