

2017-UNAT-781, Rajan

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. UNAT dismissed Mr Rajan's motion for the appeal to be heard on an expedited basis as it had become moot as the ordinary case management constraints meant it could not have been heard any earlier. UNAT held that the UNDT made an error of law in holding that the Secretary-General was obliged to prove that Mr Rajan had the intention to mislead the Organisation. UNAT held that there was no doubt that Mr Rajan misrepresented the true situation more than once. UNAT held that it was Mr Rajan's responsibility to ascertain that he was providing accurate information to the Organisation. UNAT held that in not providing accurate information to the Organisation, he violated his obligation under Staff Rule 1. 2(b) to uphold the highest standard of integrity in all matters relating to his work and his status and in contravention of the certification. UNAT held that such violations constituted misconduct, whatever his state of mind at the time. UNAT held that UNDT also erred on a question of law in finding that the Secretary-General failed to show that Mr Rajan was guilty of misconduct. UNAT held that the termination of Mr Rajan's employment was within the reasonable range of responses. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose on him the disciplinary sanction of separation from service with three months' compensation in lieu of notice and termination indemnity. The Applicant had not indicated on his application form that he had a brother who worked for the UN. UNDT found that the decision to separate the Applicant was unlawful on the grounds that the established facts did not amount to misconduct because he did not act with dishonesty or with an intention to mislead.

Legal Principle(s)

A false answer in an application form is prima facie proof of dishonesty, shifting the evidentiary burden to the maker of the false statement to adduce sufficient evidence of innocence. When submitting an application for an appointment, it is the candidate's responsibility to ensure that his or her application does not contain any inaccuracies and the Organisation is under no obligation to prove that a candidate intended to mislead in his or her answers to the questions of the application forms. The contract of employment is specifically entered into in good faith on a supposition of the accuracy of the information provided.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Rajan

Entity

UNOG

Case Number(s)

2017-1065

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Jul 2017

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary matters / misconduct

Disciplinary measure or sanction

Proportionality of sanction

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

Former Staff Rules

- Rule 104.10
- Rule 104.4

Staff Rules

- Rule 1.2(b)
- Rule 1.5
- Rule 1.5(a)
- Rule 10
- Rule 4.7
- Rule 4.7(a)

Related Judgments and Orders

UNDT/2016/221