

# 2017-UNAT-782, Muindi

## UNAT Held or UNDT Pronouncements

UNAT held that the summary dismissal decision was unlawful because the due process rights under IMO's Staff Regulations and Staff Rules were substantially violated. The Appellant had been charged with misconduct in the form of fraudulent activities undertaken to gain diplomatic accreditation, namely giving instructions to append an electronic signature to an official IMO communication without authorization or instruction by that colleague and misrepresenting his contractual status as internationally recruited in that communication. Noting that the Secretary-General of IMO considered the Appellant's use of the official cell phone for personal or private use in reaching his decision on the summary dismissal, UNAT held that the Appellant was not put on notice and no formal written charge of misconduct was brought against him regarding his cell phone usage. Recalling that the original summary dismissal decision relied solely and entirely on the alleged misconduct with regard to the accreditation letter, UNAT held that the use of the cell phone for personal use (for which there was no disciplinary process) could not be a basis for the Secretary-General of IMO's decision to maintain his earlier decision of summary dismissal. UNAT held that the decision of summary dismissal was unlawful. UNAT granted the appeal in part, rescinded the decision of summary dismissal, providing an in-lieu compensation amount of one year's net base salary in the alternative, and dismissed all of the Appellant's other requests.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the disciplinary measure of summary dismissal for serious misconduct. IMO Staff Appeals Board (SAB) considered that, while the facts of the case amounted to serious misconduct, summary dismissal was too severe and disproportionate to the offence committed. However, the Secretary-General of IMO maintained the decision of summary dismissal.

## Legal Principle(s)

Charges are the legal conclusions that the Administration has reached on the basis of an investigation that asserts that an individual has committed misconduct. In a disciplinary process, a formal written charge of misconduct must be brought against the staff member by the Secretary-General of IMO. Summary dismissal cannot be based on a fact not established through a disciplinary process.

## Outcome

Appeal granted in part

## Outcome Extra Text

Reinstatement or financial compensation; Reinstatement or financial compensation

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Muindi

## Entity

IMO

## Case Number(s)

2017-1063

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

14 Jul 2017

## President Judge

Judge Knierim

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct  
Disciplinary measure or sanction  
Dismissal/separation  
Fraud, misrepresentation and false certification  
Proportionality of sanction  
Termination (of appointment)  
Summary dismissal

## Applicable Law

IMO Staff Regulations and Rules

- Rule 101.2
- Rule 11.1
- Rule 110.1
- Rule 110.3

Other UN issuances (guidelines, policies etc.)

- IMO Guidelines for the Investigation of Serious Misconduct, Appendix F

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.10
- Article 9.2

## Related Judgments and Orders

2017-UNAT-742

2015-UNAT-535