

2018-UNAT-859, Samandarov

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the allegation that UNDT usurped its discretion by failing to show due deference in substituting its own preference of sanction for that of the Secretary-General was overstated. UNAT held that UNDT had correctly balanced the competing considerations and concluded reasonably that the cumulative imposition of a written censure and the loss of two steps in grade were disproportionate to the misconduct. UNAT found that UNDT did not misdirect itself in accepting as mitigating factors the fact that Appellant had lost all his belongings during the Taliban attack, that he might be sensitive about anyone interfering with his belongings, and that he had suffered anxiety and stress from the attack. UNAT concluded that the loss of two steps in grade was not proportionate and was thus unlawful; a written censure was sufficient as the suitable and necessary means to achieve the object of discipline required on the facts. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision to impose a disciplinary measure of written censure and loss of two steps in grade in accordance with Staff Rule 10. 2(a)(i) and (ii). UNDT partially granted the application. UNDT found that the threat to break the phone amounted to misconduct. UNDT further held that there was no evidence of bias or procedural irregularities during the investigation and disciplinary process and the Applicant's due process rights were consequently not violated. UNDT concluded that the cumulative imposition of a written censure and the loss of two steps in grade was "excessive, unreasonable and disproportionate to the misconduct" and rescinded the disciplinary measure of loss of two steps in grade. UNDT accordingly ordered the Organisation to (a) retroactively place the Applicant at the step he should have been at prior to the imposition of the rescinded disciplinary measure; (b) recalculate the Applicant's step increments; and (c) pay the Applicant the loss of salary that he suffered because of the loss in steps.

Legal Principle(s)

Judicial review of a disciplinary case requires consideration of the evidence adduced and the procedures utilized during the investigation by the Administration. UNDT must determine 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. UNDT, in exercising judicial review, therefore, may interfere with the exercise of the Secretary-General's discretion in disciplinary proceedings against a staff member on the ground that the disciplinary measure is not proportionate to the misconduct. The proportionality principle limits the discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the result. The purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity, and suitability.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Samandarov

Entity

UNAMA

Case Number(s)

2018-1152

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Standard of review (judicial)

Disciplinary cases

Judicial review (general)

Applicable Law

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(f)

Staff Rules

- Rule 10.2(a)(i)
- Rule 10.2(a)(ii)

UN Charter

- Article 101.3

UNAT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2017/093