

# 2018-UNAT-862, Majut

## UNAT Held or UNDT Pronouncements

On appeal by the Secretary-General, UNAT found that UNDT erred in fact and in law in its finding that the facts of misconduct were not established by clear and convincing evidence. UNAT noted that a proper consideration of the whole of the evidence could only have led to one conclusion, and that is that the individual assaulted the victim. UNAT found that UNDT did not consider the evidence objectively, specifically by giving misplaced importance to minor inconsistencies, coming to unreasonable conclusions on the facts which were not supported by the evidence, and making speculations instead of findings based on the evidence. UNAT also held that UNDT erred when it determined that the investigation had not been properly conducted and that the individual's due process rights had not been respected, as he was able to present his version of the events and was given, and availed himself of, the opportunity to challenge the allegations against him. UNAT also held that the Secretary-General has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose and found that the sanction imposed in this case for assaulting a fellow staff member falls well within that discretion and was not disproportionate to the misconduct. UNAT held that UNDT's judgment could not be allowed to stand and, accordingly, allowed the appeal and vacated UNDT's prior judgment.

## Decision Contested or Judgment/Order Appealed

The individual contested the decision to separate him from service. UNDT found that there was no clear and convincing evidence that the individual had physically assaulted the victim. It also found that the investigation had not been properly conducted and that the staff member's due process rights had not been respected, in that he had not been informed of the allegations of misconduct against him at the beginning of the interview and he had not had the opportunity to respond to them in full. UNDT concluded that the individual had unlawfully been separated from service. UNDT rescinded the separation decision and ordered the removal of any reference

to the disciplinary sanction of separation from service from the individual's official status file. As an alternative to the rescission of the separation decision, UNDT ordered that the individual be paid USD 5,000. In addition, UNDT ordered the Administration to pay the individual the equivalent of his net salary for the period 17-30 June 2016 as material damages and moral damages.

## Legal Principle(s)

The attendance of a witness can be dispensed with so long as the Tribunal is satisfied that the staff member accused of misconduct is given a fair and legitimate opportunity to defend his position. Staff members shall uphold the highest standards of efficiency, competence, and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty, and truthfulness in all matters affecting their work and status. The Secretary-General has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Majut

## Entity

UNMISS

## Case Number(s)

2018-1158

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Jun 2018

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Due process

Right to comment/respond

Right to confront complainant

Evidence

Corroboration/hearsay

Evidence of harm

Standard of proof

Termination (of appointment)

Disciplinary sanction

## Applicable Law

Staff Regulations

- Regulation 1.2(b)

## Staff Rules

- Rule 1.2(f)
- Rule 10.1
- Rule 10.3

## Related Judgments and Orders

UNDT/2017/100

2013-UNAT-302