

# 2018-UNAT-889, Sall

## UNAT Held or UNDT Pronouncements

UNAT considered the appeal of the Appellant and the cross-appeal of the Secretary-General. UNAT denied the Appellant's request for an oral hearing, noting that it would not have added any further value or clarification of the factual and legal issues. UNAT held that the Secretary-General's cross-appeal was receivable, according to Article 9(4) of the RoP. UNAT held that the UNDT erred in holding that the disciplinary investigation was flawed by procedural irregularities. UNAT held that UNDT erred in finding that the disciplinary decision was unlawful and, accordingly, that there could neither be rescission nor reinstatement. UNAT held that given the kind and degree of misconduct, namely severe and repeated physical assault involving a sexual element, if not sexual assault, inflicted upon a former UNV, separation from service lay within the discretion of the Secretary-General and was not disproportionate. UNAT held that UNDT erred in awarding the Appellant compensation for material damages because there was no illegality under Article 10(5)(b) of the UNDT Statute. UNAT held that the Appellant was not entitled to compensation for moral damages because he did not request compensation for moral damages before the UNDT or present evidence of alleged harm. UNAT held that the impugned administrative decision was lawful. UNAT dismissed the appeal, upheld the cross-appeal, reversed the UNDT judgment to the extent that it ordered rescission, in-lieu compensation, and compensation for material damages, and affirmed the UNDT judgment to the extent that it rejected the Appellant's request for reinstatement.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose on him the disciplinary measure of separation from service, asserting that he was denied due process. UNDT held that the Applicant's separation from service was unlawful because it occurred before the investigation was finalised. UNDT noted that no exculpatory evidence had been taken into consideration. UNDT ordered rescission of the decision to separate the Applicant from service, compensation in lieu of recession, and an award of material damages to the Applicant. UNDT rejected the Applicant's request for reinstatement because his appointment was set to expire just over a month later and there is no expectancy of renewal under a fixed-term appointment.

## Legal Principle(s)

The matter of the degree of a sanction is usually reserved for the Administration, who has the discretion to impose the measure that it considers adequate to the circumstances of the case and to the conduct of the staff member. The general standard of judicial review in disciplinary cases requires the UNDT to ascertain whether the facts on which a sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offense. When termination is a possible outcome, the misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.

## Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Sall

Entity

UNAMID

Case Number(s)

2018-1182

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Sexual exploitation and abuse

Due process

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

UNAT RoP

- Article 18.1
- Article 9.4

UNAT Statute

- Article 8.3
- Article 9.1(b)

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2018/056