

# **2019-UNAT-913, Siddiqi**

## **UNAT Held or UNDT Pronouncements**

UNAT had before it an appeal by the Secretary-General. UNAT held that UNDT erred in law and fact leading to a manifestly unreasonable decision when it held that Mr Siddiqi had not threatened to kill identified staff members but only had made an unspecified threat to kill “some” staff members. UNAT held that the statements of the three witnesses rendered clear and convincing evidence that the Appellant did not only utter an unspecified threat but that he had threatened to kill identified staff members. UNAT held that UNDT also erred in law and fact when it concluded that threat was not serious. UNAT held that, under the circumstances, it was a lawful and reasonable presumption of the Secretary-General to consider that Mr. Siddiqi’s threat was serious. UNAT held that in a situation such as the circumstances of this case, where a staff member in Afghanistan threatened to kill other identified staff members, the Tribunals should grant the Secretary-General a broad discretion as to the question of whether a threat is serious or not. UNAT held that the sanction was not unreasonable, absurd or disproportionate, that it was a reasonable exercise of the Secretary-General’s discretion, and that dismissal was neither unfair nor disproportionate to the seriousness of the offence. UNAT held that UNDT erred in finding the sanction disproportionate and in substituting its opinion for that of the Administration. UNAT held that the key elements of Mr Siddiqi’s due process rights were respected. UNAT held that UNDT erred in criticising the investigation procedure used to collect the statements of the three key witnesses. UNAT granted the Secretary-General’s appeal and vacated the UNDT judgment.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested his dismissal for misconduct in the form of threatening to kill other staff members. UNDT rescinded the contested decision, providing in the alternative in-lieu compensation, and replaced the disciplinary measure of dismissal with suspension without pay for a three-month period.

## Legal Principle(s)

The degree of a disciplinary sanction is usually reserved for the Administration, which has the discretion to impose a measure that it considers adequate to the circumstances of the case and in light of the actions and behavior of the staff member involved. The Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate disciplinary sanction to impose.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Siddiqi

## Entity

UNICEF

## Case Number(s)

2018-1207

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Mar 2019

## President Judge

Judge Knierim

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Facts (establishment of) / evidence

## Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(g)
- Rule 10.1(a)

UNDT Statute

- Article 2.1(b)

UNICEF Executive Directives

- CF/EXD/2012-005

## Related Judgments and Orders

UNDT/2018/086