

2019-UNAT-942, El Shaer

UNAT Held or UNDT Pronouncements

UNAT held that the staff member had not voluntarily absented himself from duty. Rather, he reported for duty throughout at the office he had been re-assigned to, his whereabouts were known to the Agency and he clearly did not intend to abandon his position. As to the staff member's refusal to report to his original position as instructed, UNAT held that his conduct might have been a performance or conduct issue open to censure or discipline. However, UNAT held that the Agency failed to determine if the conduct constituted insubordination and, if so, a proportional sanction. Instead, UNAT held that the staff member had abandoned his post and separated him from service. UNAT held that Area Staff Rule 109.4 on the abandonment of post had no application, it was inappropriate for the Agency to have relied upon it and the staff member's separation from service was unlawful. UNAT rescinded the decision to separate the staff member from service and ordered his reinstatement on similar terms and conditions of employment with effect from the date of his unlawful separation. In the alternative to reinstatement, UNAT ordered payment of an amount of compensation equal to 12 months' net base salary.

Decision Contested or Judgment/Order Appealed

Following allegations of misconduct, the staff member was temporarily reassigned to a different position, pending investigations. He was subsequently cleared of the allegations and requested to return to his original position which, out of fear of retaliation, he declined to do. Instead, he kept reporting to the position he had been re-assigned to. He was subsequently separated from service for abandonment of post. UNRWA DT dismissed the staff member's application contesting the decision to separate him from service pursuant to Area Staff Rule 109.4, finding that, despite several reminders and requests by the Administration, he had never resumed his duties of his original position and he had been absent from duty on three or more consecutive days. UNRWA DT concluded that the staff member had failed to demonstrate by convincing evidence that the decision to separate him from service

for abandonment of post was unlawful.

Legal Principle(s)

A staff member who has failed to report for duty but demonstrates that he or she did not intend to abandon his or her post, may be open for censure or discipline, but may not be separated for abandonment of post.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

El Shaer

Entity

UNRWA

Case Number(s)

2019-1238

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2019

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Abandonment of post

Applicable Law

UNAT Statute

- Article 9

UNRWA Area Staff Rules

- Rule 109.4

UNRWA Personnel Directives

- PD A/9/Rev.10