2019-UNAT-955, Turkey

UNAT Held or UNDT Pronouncements

The UNDT judgment was appealed by the Secretary-General. UNAT held that UNDT did not exceed the scope of judicial review by reviewing the facts and concluding that there was sufficient evidence of inebriation but concluding there was a lower level of alcohol consumed based on the breathalyzer result. UNAT held that UNDT correctly balanced the competing considerations and concluded reasonably that the imposition of the sanction of separation from service with compensation in lieu of notice and termination indemnity was disproportionate to the misconduct. UNAT held that the fact that the consumption of alcohol was less, and the level of inebriation was lower, than suggested by the disciplinary decision, was a relevant consideration to which UNDT attached appropriate weight. UNAT held that the UNDT did not misdirect itself in accepting, as mitigating factors, the absence of prior misconduct, Mr. Turkey's length of service, the fact that the misconduct itself took place for a very short time, and the circumstance that Mr Turkey had not intended to drive the vehicle outside of the Camp. UNAT held that the constitutive elements of an offence must be considered separately from mitigating and aggravating factors. UNAT held that UNDT did not err in law in considering that the 'zero alcohol standard did not preclude a less severe sanction than separation from service. UNAT held that the Secretary-General failed to establish that UNDT made an error of law or fact in its review of the disciplinary measure imposed on Mr Turkey. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

Mr Turkey contested his separation from service for driving under the influence of alcohol, following a road traffic accident. UNDT found that Mr Turkey had committed the misconduct of driving under the influence of alcohol, but that the disciplinary measure of separation from service which was imposed on him was disproportionate. UNDT discounted the Administration's interpretation of the breathalyzer result (more than five times the UNIFIL limit), considering it more

plausible that he was around twice the Lebanese legal limit, which meant that Mr Turkey’s conduct was still misconduct. UNDT rescinded the sanction of separation from service with compensation in lieu of notice and termination indemnity and imposed the sanctions of demotion by one grade with deferment of eligibility for promotion for two years and withdrawal of Mr Turkey’s driving permit for one year.

Legal Principle(s)

Judicial review of a disciplinary case requires UNDT to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offense. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. 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 dismissed on merits

Full judgment

Full judgment

Applicants/Appellants

Turkey

Entity

UNFIL

Case Number(s)

2019-1253

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Neven

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Disciplinary measure or sanction
Separation from service
Termination of appointment (see also, Termination of appointment)
Termination (of appointment)
Disciplinary sanction

Applicable Law

Administrative Instructions

- ST/AI/2010/6

Other UN issuances (guidelines, policies etc.)

- UNIFIL HOM POL 12-06 Amdt 2