

2019-UNAT-976, Ganbold

UNAT Held or UNDT Pronouncements

UNAT held that UNDT had committed various errors of law, fact, and procedure. UNAT held that the whole reasoning of UNDT was misconstrued and UNDT did not properly examine the lawfulness of the disciplinary sanction. UNAT held that there was clear and convincing evidence that the Appellant awarded and signed a contract on behalf of UNFPA, that she did not conduct any market research or consider other suppliers before doing so, that she had no authority to sign the contract and that she was involved in procurement activities in relation to another UNFPA vendor. Further, UNAT held that there was clear and convincing evidence that the Appellant did not inform the UNFPA Representative of her association with the UNFPA vendors, that the Appellant was financially advantaged, and that the Appellant gave false statements in her Financial Disclosure Forms, misrepresenting her husband's association with a vendor. Due to contradictions in the Appellant's statements before UNDT and the fact she was not an objective witness, UNAT rejected her testimony before UNDT and held her to her statements during the investigation process. UNAT held that the Appellant's actions amounted to misconduct on multiple counts. UNAT held that the Secretary-General's original disciplinary sanction was not excessive, abusive, discriminatory, or absurd, noting that the Secretary-General had considered aggravating and mitigating factors. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested her separation from service with compensation in lieu of notice and without termination indemnity as a disciplinary measure for several misconduct violations related to the procurement of property that was owned by her relatives. Following a de novo review, UNDT ordered the rescission of her disciplinary measure on the grounds that it was disproportionate and replaced it with a loss of one step in grade and a written censure or in lieu compensation of 24 months' net base salary.

Legal Principle(s)

Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory, or absurd in its severity.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Ganbold

Entity

UNFPA

Case Number(s)

2019-1245

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Fraud, misrepresentation and false certification

Procurement irregularities

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service
- Internal Control Framework (2009)
- UNFPA Policies and Procedures Manual
- UNFPA Procurement Procedures (2008)
- UNFPA Procurement Procedures (2012)

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(g)

Staff Rules

- Rule 1.2(p)
- Rule 1.2(q)
- Rule 1.2(r)
- Rule 101.2(p)

- Rule 101.2(b)

UNAT Statute

- Article 2.1

UNFPA Financial Regulations and Rules

- Regulation 14.7
- Regulation 14.8
- Regulation 15.2
- Rule 114.12

Related Judgments and Orders

UNDT/2019/015