

2020-UNAT-1024, Nyawa

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General and a cross-appeal by Mr. Nyawa. UNAT held that there was clear and convincing evidence that Mr. Nyawa committed the disciplinary offenses attributed to him. UNAT held that the established facts amounted to misconduct on the part of Mr. Nyawa. UNAT disagreed with UNDT that a written censure was subsumed by the sanction of deferment for eligibility for promotion, however, UNAT found that UNDT's holding that the deferment for eligibility for promotion was sufficient sanction was not a manifestly unreasonable decision warranting UNAT intervention. UNDT did not err on any question of law or fact permitting interference by UNAT. UNAT dismissed the appeal and the cross-appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Administration's decision that his conduct, of failing to report a serious incident to which he had responded or to take appropriate action, amounted to misconduct and the subsequent imposition of disciplinary measures. UNDT found that the sanction of deferment for eligibility for consideration for promotion for 2 years and the administrative measure requiring the staff member to attend a course on gender sensitivity was both reasonable and not disproportionate. UNDT found that there was no purpose in combining the disciplinary measure of deferment for eligibility for promotion with a written censure, as the latter was subsumed by the former. UNDT upheld the disciplinary measure of deferment of promotion for two years but dismissed the charge that the Applicant had instructed other staff members to provide false information. UNDT ordered rescission of the decision to impose the disciplinary measure of written censure.

Legal Principle(s)

UNDT has a broad discretion under Article 18(1) of UNDT RoP to determine the admissibility of any evidence and the weight to be attached to such evidence. Some degree of deference must be given to the factual findings of UNDT as the court of the first instance, particularly where oral evidence is given. The Tribunals will only intervene 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. The Secretary-General has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nyawa

Entity

UNON

Case Number(s)

2019-1338

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jun 2020

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Facts (establishment of) / evidence

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(c)
- Rule 10.1

UNAT Statute

- Article 18.1
- Article 2.1(e)

UNDT RoP

Related Judgments and Orders

UNDT/2019/149

2018-UNAT-873

2019-UNAT-915
2010-UNAT-084
2018-UNAT-859
2019-UNAT-956
2018-UNAT-889
2019-UNAT-976
2017-UNAT-718