

2020-UNAT-1033, Negussie

UNAT Held or UNDT Pronouncements

UNAT held that UNDT was correct not to conclude that the Appellant had initiated the physical fight. UNAT held that UNDT was entitled to conclude the evidence of a witness was not clear and convincing, given inconsistencies. UNAT held that UNDT determined correctly that a prior altercation could not provide propensity evidence to corroborate witnesses' accounts of the physical fight because the prior altercation was not investigated properly. UNAT held that UNDT committed an error in concluding that the Appellant had been unduly influenced into signing the settlement agreement, but that UNDT was correct to conclude that the settlement agreement did not amount to clear and convincing evidence of guilt. With one exception that was not decisive of the appeal, UNAT held that UNDT did not err in fact or law. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate him from service (on notice) for his involvement in a physical fight with a contractor on the Organisation's premises. UNDT rescinded the decision to separate the Applicant from service and awarded in-lieu compensation.

Legal Principle(s)

The standard to which the allegations of serious misconduct must be established before UNDT is that of clear and convincing evidence. Clear and convincing evidence of misconduct, including serious misconduct, imports two high evidential standards: the first ("clear") is that the evidence of misconduct must be unequivocal and manifest; the second ("convincing") requires that this clear evidence must be persuasive to a high standard appropriate to the gravity of the allegation against the staff member and in light of the severity of the consequence of its acceptance.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Negussie

Entity

WFP

Case Number(s)

2019-1308

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jun 2020

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Assault (verbal and physical)

Dismissal/separation

Evidence

Corroboration/hearsay

Separation from service

Termination of appointment (see also, Termination of appointment)

Standard of proof

Termination (of appointment)

Disciplinary sanction

Related Judgments and Orders

UNDT/2019/109