

2020-UNAT-1057, Nsengiyumva

UNAT Held or UNDT Pronouncements

On the Appellant's claim that the UNDT Judge was biased, UNAT held that the Appellant's specific allegations were not made out and any missteps in the conduct of the hearing did not warrant interference with the result. On the Appellant's claim that his supervisor harassed him to the extent that his actions were mitigated substantially, UNAT held that even if the Appellant established that there was a dysfunctional relationship between him and his supervisor, this could not have had the effect of mitigating his actions significantly, such were the scale and duration of his misconduct. UNAT rejected the Appellant's claim that UNDT erred factually by concluding that the Appellant did not cooperate with the Organisation's investigation and that he withdrew his earlier admission of misconduct on the basis that there was evidence supporting these conclusions. UNAT held that evidence before UNDT that the Appellant had been formally warned twice for similar conduct was a relevant consideration for UNDT to consider in assessing the proportionality of the Organisation's sanction. UNAT dismissed the appeal and upheld the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate him from service with payment in lieu of notice but without termination indemnity for serious misconduct. UNDT held that the facts established that his actions, which included public drunkenness, becoming embroiled in a bar fight, and being detained for drunkenness, were unbecoming of an international civil servant, in violation of Staff Regulation 1. 2(f) and thereby amounted to misconduct; and that the Applicant also violated Staff Regulation 1. 2(q) through his failure to operate his vehicle with reasonable care, and Staff Rule 1. 2(a) through his failure to follow the instructions issued on behalf of the Secretary-General as communicated to him by his supervisors. UNDT found that the disciplinary consequences were a proportionate response to the seriousness of the misconduct and concluded that there were no procedural or substantive irregularities that would vitiate the outcome. UNDT dismissed the application.

Legal Principle(s)

In assessing the proportionality of a sanction imposed upon a staff member, evidence regarding the record of service of the staff member is a relevant consideration for UNDT.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nsengiyumva

Entity

MINUSCA

Case Number(s)

2020-1356

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge
Judge Colgan
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Disciplinary matters / misconduct
Disciplinary measure or sanction
Dismissal/separation
Separation from service
Termination of appointment (see also, Termination of appointment)
Termination (of appointment)
Disciplinary sanction
Applicable Law
Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(f)
- Regulation 1.2(q)

Related Judgments and Orders
UNDT/2020/006
2015-UNAT-523
2010-UNAT-028