

2020-UNAT-1070, Halidou

UNAT Held or UNDT Pronouncements

UNAT held that UNDT erred in attaching no weight to the medical evidence and in finding that the disciplinary measure imposed was based on an incorrect determination of the nature and gravity of the assault. UNAT held that there were other more important factors to consider, including the fact that the Appellant was a staff member in charge of local security and that his conduct was an abuse of authority and oppressive of a local inhabitant. UNAT recalled that the test of proportionality required a comparison between the misconduct and the sanction, not the investigation and disciplinary process and the sanction. UNAT held that UNDT erred in taking procedural irregularities into account in finding that the disciplinary measure was disproportionate. UNAT held that assaulting another human being was a fundamental violation of the values of the Organisation, which directly contravened the obligation of all staff to uphold and respect the principles set out in the UN Charter. UNAT held that separation from service was not arbitrary and fell within the range of reasonable disciplinary options. UNAT held that UNDT erred in finding that the termination of the Appellant's employment was not proportionate. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT held that there was clear and convincing evidence that the Applicant had slapped the victim in the face and that the established facts legally amounted to misconduct. However, UNDT found that the disciplinary measure imposed was disproportionate to the Applicant's conduct on the basis of various factual findings: the evidence did not clearly and convincingly establish that the victim fell to the ground after being slapped; it was not shown on clear and convincing evidence that the victim had suffered a perforated eardrum as a result of the assault, and the extent of the injury was not established as serious. UNDT considered that there were various mitigating factors. UNDT rescinded the decision to separate the Applicant from service and modified the sanction imposed to demotion with deferment for three years of eligibility for consideration for promotion and provided an alternative payment of compensation in lieu of rescission.

Legal Principle(s)

When a staff member physically assaults another person without justification, a decision to separate the staff member will normally fall within the bounds of reasonableness and proportionality. Assaulting another human being is a fundamental violation of the values of the Organisation, which directly contravenes the obligation of all staff to uphold and respect the principles set out in the UN Charter. The test of proportionality requires a comparison between the misconduct and the sanction, not the investigation and disciplinary process and the sanction.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Halidou

Entity

MINUSCA

Case Number(s)

2020-1362

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Assault (verbal and physical)

Disciplinary measure or sanction

Dismissal/separation

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(f)

Related Judgments and Orders

UNDT/2019/172