

2021-UNAT-1167, Secretary-General

UNAT Held or UNDT Pronouncements

UNAT disagreed and distinguished the case at hand with the two cases cited by the UNDT. UNAT explained that in the case at hand, the staff member's actions could have a substantial reputational impact on the Organization and could also adversely affect the relationship between the Organization, Member States and the Host Country. The Tribunal emphasized that the actions of the staff member went beyond the mere internal affairs of the Organization and in fact the fraudulent act was used as an instrument to avoid legal proceedings in the Host Country. As such, UNAT concluded that the misconduct was of a grave and serious nature and the sanction of dismissal, though harsh in relation to the circumstances of the case, was not disproportionate and manifestly abusive. Consequently, UNAT found that the UNDT erred when it rescinded the Secretary-General's decision to dismiss the staff member and ordered that the Administration replace such sanction with another one with less severe consequences: separation with compensation in lieu of notice and without termination indemnity. UNAT thus vacated the UNDT Judgment and affirmed the administrative decision to dismiss the staff member.

Decision Contested or Judgment/Order Appealed

A staff member forged the signature of the MONUSCO Chief of Staff in an official document and transmitted it to the authorities of the DRC in order to avoid criminal prosecution. A prosecutor in the DRC had initially requested a waiver of the privileges and immunities of the staff member so that the latter could be prosecuted. When the Administration found out about the forged document, it initiated an investigation, and the staff member confirmed that he had indeed signed the document out of fear for his life. At the conclusion of the investigation, and having given the staff member an opportunity to respond to the allegations against him, the Administration decided to dismiss the staff member in accordance with Staff Rule 10.2(a)(ix). The staff member appealed to the UNDT on the basis that the sanction imposed on him, i.e. dismissal, was disproportionate to the offense he had committed. The staff member agreed that his actions constituted misconduct and that his due process rights were respected. The only issue before the UNDT was whether the sanction was proportionate to the offense. The UNDT found that there were other two other instances in which the administrative sanction for forging a document was not dismissal but separation from service with compensation in lieu of notice and without termination indemnity. The tribunal found that there was no justification to apply a harsher disciplinary measure in the case at hand. The UNDT also reasoned that the Administration did not consider certain mitigating factors in the case. As such, the tribunal held that the Secretary-General should replace the original disciplinary sanction, dismissal, with a less-severe sanction: separation from service with compensation in lieu of notice and without termination indemnity.

Legal Principle(s)

The matter of the degree of a sanction is usually reserved for the Administration, which has discretion to impose a measure that it considers adequate in the circumstances of a case and for the specific actions and conduct of the staff member involved. Dismissal is not a disproportionate disciplinary measure if the misconduct of a staff member go beyond the internal affairs of the Organization and in instances when such misconduct can also hurt the relationship and trust between the Organization and Member States and/or a Host Country.

Outcome

Appeal granted

Outcome Extra Text

Secretary-General's appeal is granted. UNDT/2020/139/Corr.1 is vacated in its entirety. Administrative decision to dismiss the staff member is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Secretary-General

Entity

MONUSCO

Case Number(s)

2020-1466

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Fraud, misrepresentation and false certification

Misuse of official documents

Proportionality of sanction

Termination (of appointment)

Disciplinary sanction

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 10.2(a)
- Rule 10.3(b)

Related Judgments and Orders

UNDT/2020/139/corr.1