

2021-UNAT-1184, Timothy Kennedy

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by Mr. Kennedy. UNAT found that the sanction letter and record provided inadequate reasons for judicial review leading to the finding that no rational connection or relationship between the evidence and the objective of the disciplinary action has been established. As a result, UNAT was unable to assess the proportionality and lawfulness of the imposition of the disciplinary sanctions.

Decision Contested or Judgment/Order Appealed

The Appellant, a Security Officer at DSS, contested the Administration's decisions that found misconduct in his mishandling of printed e-mail communications that had become public, and in his failure to report the incident, and that imposed resulting disciplinary sanctions against him. In Judgment No. UNDT/2020/209, the UNDT dismissed his application.

Legal Principle(s)

What factors are relevant considerations in determining a disciplinary sanction will necessarily depend on the circumstances and nature of the misconduct. Some considerations can include: a) the staff member's intent or whether the action was accidental, careless, reckless or deliberate. Factors relevant to this are whether the staff member made full, timely disclosure to a direct or indirect supervisor, the staff member's self-awareness of the conduct, whether the staff member followed operational procedures in connection with the misconduct, whether the staff member engaged in the misconduct despite prior warning, whether the misconduct was fraudulent, manipulative or deceptive, whether the staff member acted alone or with others resulting in differing degrees of knowledge, participation and responsibility, whether the staff member organized and planned the conduct or whether it was the result of a rash action or temporary lapse of judgment, and whether the staff member concealed or attempted to conceal the misconduct or otherwise deceive or mislead the employer from discovering the misconduct; b) the nature of the misconduct or whether the misconduct was minor or technical, or substantive or severe. Factors relevant to this are whether the conduct involves a minor misstep or honest mistake or is the result of a lack of expertise or experience, whether the conduct involves a single act or numerous acts and/or a pattern of misconduct, whether the misconduct is over an extended period of time, whether the conduct involves multiple violations, either related or unrelated to each other, whether the conduct involves the staff member directing another individual in the misconduct, whether the conduct involves fraudulent, deceptive or manipulative acts or statements, and whether the conduct is contrary to express or implied duties and obligations of the staff member; c) the harm or damage to the Organization, employer, colleagues and other staff members, and clients and the public, which can range from none to significant. Factors relevant to this are whether there was actual harm that can be tangible or intangible, the number of persons harmed, whether the harm affected the Organization's operations and productivity, whether the harm includes loss of finances, loss of trust or integrity in the Organization; d) the disciplinary history or future of the staff member, namely whether the staff member has a history of disciplinary violations or other misconducts and sanctions. Factors relevant to this are whether the misconduct in question is the first violation or part of a history or pattern of violations and the nature of the prior violations, whether there are mitigating factors present in the staff member's employment history, and whether the staff member has committed to taking steps to ensure there will be no repetition or continuation of the misconduct.

Outcome

Appeal granted in part

Outcome Extra Text

The Appellant's appeal is partially allowed and the contested administrative decision selecting the disciplinary sanctions is vacated. It is open to the Administration to issue a new administrative decision on disciplinary sanctions with adequate reasons.

Full judgment

[Full judgment](#)

Applicants/Appellants

Timothy Kennedy

Entity

UN Secretariat

Case Number(s)

2021-1515

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Proportionality of sanction

Applicable Law

Staff Rules

- Rule 10.1(a)
- Rule 10.1(c)

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(i)
- Regulation 1.2(q)

Secretary-General's bulletins

- ST/SGB/2004/15

UNAT Statute

- Article 9

Related Judgments and Orders

2017-UNAT-781

2014-UNAT-431