

# **UNDT/2022/002, Buyoya**

## UNAT Held or UNDT Pronouncements

The Tribunal agreed with the Respondent that the Applicant failed to uphold the highest standard of integrity. She was in a position of influence and authority by way of her position with the Organization, and she played a significant role in the awarding of the contract to a vendor, and by repeatedly suggesting and inquiring about the possibility of hiring her brother and her other candidates, she placed undue pressure on the vendor to accede to her requests.

The Tribunal held that the Applicant, on several occasions before and after completion of contractual arrangements with a vendor, suggested and requested the vendor to consider hiring one or more individuals, including her brother, in connection with the vendor meeting its obligations under the contract; that through her conduct, the Applicant violated staff regulations 1.2(b), 1.2(g), and 1.2(m), and staff rule 1.2(k), constituting misconduct and warranting the disciplinary sanction imposed on her.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the Under-Secretary-General for Management, Strategy, Policy and Compliance's ("USG/DMPSC") decision to impose on her the disciplinary measures of written censure and demotion of one grade with deferment for two years for eligibility for consideration for promotion in accordance with staff rule 10.2 (a)(i) and (vii).

## Legal Principle(s)

In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and

procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. Due deference is always shown to the decision-maker, who in this case is the Secretary-General. There are four essential elements that the Tribunal must evaluate during the judicial review of a disciplinary case.

These are: (i) whether the facts on which the disciplinary measure is based have been established (where termination is the sanction imposed, the facts must be established by clear and convincing evidence; in all other cases preponderance of the evidence is sufficient); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether the staff member's due process rights were respected. In a disciplinary matter where the sanction is not separation from service the standard of proof is one on a preponderance of the evidence. The Tribunal must ask itself whether it is more probable than not that the staff member committed the alleged acts of misconduct.<sup>6</sup> This standard is lower than the standard of clear and convincing evidence required in disciplinary matters that result in separation from service.

## Outcome

Dismissed on merits

## Outcome Extra Text

The Tribunal held that the Applicant had a duty to show that the exercise of discretion was exercised unlawfully leading to a violation of her employment rights and found that the discretion was exercised lawfully. The application was dismissed.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Buyoya

## Entity

UNISFA

## Case Number(s)

UNDT/NBI/2019/170

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

10 Jan 2022

## Duty Judge

Judge Sikwese

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Misuse of office

## Applicable Law

## Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(g)
- Regulation 1.2(m)

## Staff Rules

- Rule 1.2(k)