

# **UNDT/2022/011, REITERER**

## **UNAT Held or UNDT Pronouncements**

The facts in support of both counts leveled against the Applicant (count 1: creating a hostile, offensive and humiliating work environment for one staff member and count 2: abuse of authority concerning the recruitment and employment of a consultant) have been established in the case at hand not only by preponderance of evidence, the applicable threshold, but also by clear and convincing evidence. The established facts were in violation of the applicable legal framework, namely ST/SGB/2008/5 and ST/AI/2013/4. Cases involving the creation of a hostile and offensive work environment have resulted in sanctions ranging from censure to demotion. Concerning cases involving conflict of interest in the context of or interference with a recruitment process, sanctions ranged from a fine plus censure to demotion. The Tribunal finds no grounds to review the level of the sanction imposed on the Applicant and concludes that it is proportionate even if it had only been applied to either of the two counts leveled against him. Having carefully examined the investigation and disciplinary process followed and considered the complexity of the facts to investigate, the number of witnesses interviewed as well as the reports drafted, the Tribunal finds justified the time taken to reach the imposition of disciplinary measures on the Applicant. The Tribunal is also satisfied that the Applicant's due process rights were respected all along the investigation and the disciplinary process as the Applicant was informed in writing of the allegations/charges against him and he had the opportunity to respond to the allegations/charges orally (interviewed thrice) and in writing.

## **Decision Contested or Judgment/Order Appealed**

Imposition of disciplinary measure of demotion by one grade with a one-year deferment of eligibility for consideration for promotion and threatened reassignment.

## Legal Principle(s)

Judicial review in disciplinary matters is focused on how the decision-maker reached the impugned decision and not on the merits of the decision. The role of the Tribunal when reviewing disciplinary cases is to examine the following issues: a) Whether the facts on which the disciplinary measure was based have been established according to the applicable standard; b) Whether the established facts legally amount to misconduct under the Staff Regulations and Rules; c) Whether the disciplinary measure applied is proportionate to the offence; and d) Whether the Applicant's due process rights were respected during the investigation and the disciplinary process. When the disciplinary sanction results in separation from service, the alleged misconduct must be established by clear and convincing evidence. This standard of proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. In other words, it means that the truth of the facts asserted is highly probable. The disciplinary sanction imposed in this matter was not termination but demotion by one grade with deferment, for one year, of eligibility for consideration for promotion, the standard of proof required is preponderance of evidence.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

REITERER

## Entity

OCHA

## Case Number(s)

UNDT/GVA/2019/51

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

11 Feb 2022

## Duty Judge

Judge Buffa

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

## Applicable Law

Administrative Instructions

- ST/AI/2013/4

Other UN issuances (guidelines, policies etc.)

- Practice of the Secretary-General in disciplinary matters and cases of criminal (Compendium 1 July 2009 to 31 December 2020)

Secretary-General's bulletins

- ST/SGB/2008/5

## Staff Regulations

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

## Staff Rules

- Rule 1.2(f)
- Rule 10.2(a)(vii)

## Related Judgments and Orders

2010-UNAT-084

2014-UNAT-415

2010-UNAT-018

2010-UNAT-024

2011-UNAT-164

2020-UNAT-1006

2013-UNAT-280

2010-UNAT-040

2013-UNAT-336

2013-UNAT-295