

# UNDT/2022/013, Sidibe

## UNAT Held or UNDT Pronouncements

The Tribunal found that documentary evidence, including at least two instances of consecutive transactions for materially impossible refueling on 16 February 2017 and on 17 May 2017, confirmed the Applicant's participation in the fraudulent fuel scheme and his submission of falsified documents. The Tribunal thus concluded that the Respondent had substantiated with clear and convincing evidence the factual basis of the contested decision. Regarding misconduct, the Tribunal agreed with the Respondent that the Applicant improperly used United Nations property for his personal gain in a matter affecting the financial interests of the Organization. Accordingly, the Tribunal found that the Applicant's acts constituted a misconduct. On whether the sanction was proportionate to the offence, the Tribunal found that the sanction letter dated 14 October 2019 demonstrated a proper consideration of the nature of the Applicant's actions as well as the mitigating and aggravating factors. The Tribunal concurred that retaining the Applicant in service would be irreconcilable with the values of the Organization. The practice in the past cases was consistent in that disciplinary measures had been imposed at the strictest end of the spectrum, namely, separation from service or dismissal in accordance with staff rule 10.2(a). Therefore, the Tribunal found that the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity in accordance with staff rule 10.2(a)(viii) was proportionate to the offence committed. On the due process prong, the Applicant had faulted the conduct of the investigation on the basis that the investigation was conducted under an obsolete administrative instruction ("AI"), that is ST/AI/371 Amend.1 (Revised disciplinary measures and procedures), whereas it had been abolished and replaced by ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) on 26 October 2017. The Applicant had argued that the only exception when the investigation could be done under the obsolete ST/AI/371 was when investigations and disciplinary process were initiated prior to 26 October 2017. In the present case, OIOS commenced investigations in 2018 and the disciplinary process was initiated in 2019. The Tribunal concluded that the controlling date was when the Special Investigations Unit (SIU) commenced investigations in May 2017; hence, in accordance with section 13.2 of ST/AI/2017/1, the case fell properly under the regime of ST/AI/371 Amend.1. In any event, the Applicant had not alleged what procedural right would have been infringed and what impact the procedural regime might have had on the findings of the investigation. His argument was, therefore, rejected. Consequently, the application was dismissed.

## Decision Contested or Judgment/Order Appealed

The Applicant contested a disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity in accordance with staff rule 10.2(a)(viii).

## Legal Principle(s)

Pursuant to the jurisprudence, the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements: i. Whether the facts were established by clear and convincing evidence; ii. Whether facts amount to misconduct; iii. Whether the sanction is proportionate to the gravity of the offence; and iv. if the staff member's due process rights were guaranteed during the entire proceeding. i. Whether the facts were established by clear and convincing evidence; ii. Whether facts amount to misconduct; iii. Whether the sanction is proportionate to the gravity of the offence; and iv. if the staff member's due process rights were guaranteed during the entire proceeding.

## Outcome

Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Sidibe

Entity

MINUSMA

Case Number(s)

UNDT/NBI/2020/1

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

15 Feb 2022

Duty Judge

Judge Milart

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Applicable Law

Staff Regulations

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

Staff Rules

- Rule 1.2(i)