

UNDT/2021/163, Di Mario

UNAT Held or UNDT Pronouncements

No new evidence is to be filed by the parties with their closing submission and pursuant to the principle of equality of arms, both parties must have the opportunity to test the evidence on record. Disciplinary proceedings within the Organization do not amount to criminal procedures. Use of video footage from an external entity during the investigation is not illegal as UNHC rules provide that investigators may avail themselves of external supporting evidence. Sick leave requests must be approved by a staff member's service/Human Resources section or the respective Medical Service. The submission of a medical certificate does not amount to placement on certified sick leave. Based on the evidence on file, the Tribunal found that a) the facts on which the disciplinary measure was based were established according to the applicable standard; b) the established facts legally amounted to misconduct under the Staff Regulations and Rules; c) the disciplinary measure applied was proportionate to the offence; and d) the Applicant's due process rights were respected during the investigation and the disciplinary process. Consequently, the Tribunal rejected the application in its entirety.

Decision Contested or Judgment/Order Appealed

Separation from service with compensation in lieu of notice and with half the termination indemnity.

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 Presiding Judge has the power to assess the evidence on record and how it was gathered. Investigators have broad discretionary power to determine the relevance of evidence gathered during the investigation. Full due process rights come into effect only during formal disciplinary proceedings, whereas limited due process rights apply during the investigation stage. Staff members have a duty to cooperate during investigations and must share all information/evidence in their possession when interviewed. Consequently, confessions do not violate due process rights.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Di Mario

Entity

UNHCR

Case Number(s)

UNDT/GVA/2019/66

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Dec 2021

Duty Judge

Judge Bravo

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

Applicable Law

Other UN issuances (guidelines, policies etc.)

- A/70/253
- A/71/186
- A/72/209
- A/73/71
- UNHCR IOM/044-FOM/044/2013
- A/74/64

Related Judgments and Orders

2010-UNAT-084

2014-UNAT-415

2010-UNAT-018

2010-UNAT-024

2011-UNAT-164

UNDT/2021/057

2013-UNAT-280

2010-UNAT-040

2017-UNAT-781

2013-UNAT-336

2013-UNAT-295

UNDT/2019/118