

UNDT/2022/036, TESFAYE

UNAT Held or UNDT Pronouncements

The Tribunal agreed with the Respondent that the Applicant was reckless in his failure to report a fraud which he was aware of. He chose to conceal and abet the perpetration of a fraud. The facts were established to the requisite standard by the Applicant's own admissions and the evidence on record. The Tribunal held that the established facts clearly constituted misconduct as charged. The elements of the charge of abetting and concealing fraud were established through the evidence. The Applicant who had possession of important knowledge about fraudulent document passing through his office under his supervision failed to report it as was expected of him. He chose to remain silent until the matter became public knowledge. In failing to report, he committed the misconduct of concealing and in the process abetted the fraud. As Team Leader, a senior position, and an international civil servant, he behaved recklessly by abdicating from his obligations in allowing fraud to take place and to be facilitated by his direct supervisee.

Decision Contested or Judgment/Order Appealed

The Applicant contested the disciplinary measure imposed on him of a loss of two steps in grade and deferral for two years of eligibility for salary increment for concealing and abetting fraud in that he failed to report the preparation of a backdated Memorandum of Understanding ("MOU") pursuant to staff regulation 10.1(a) and staff rules 10.2(a)(ii) and (iii).

Legal Principle(s)

In disciplinary cases, the Tribunal is called upon to examine the following: (i) whether the facts on which the disciplinary measure is based have been established (ii) whether the established facts amount to misconduct; (iii) whether the staff member's due process rights were respected and (iv) whether the sanction is proportionate to the offence. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred.

Outcome

Dismissed on merits

Outcome Extra Text

The Applicant failed to satisfy the Tribunal that the Administration acted unlawfully in sanctioning him for misconduct. The Tribunal held that the Applicant failed to comply with standards of conduct expected from him as an international civil servant and dismissed the application.

Full judgment

[Full judgment](#)

Applicants/Appellants

TESFAYE

Entity

UNDP

Case Number(s)

UNDT/NBI/2019/41

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

14 Apr 2022

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Failure to report misconduct

Applicable Law

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

- Standards of Conduct for the International Civil Service

Staff Regulations

- Regulation 10.1

Staff Rules

- Rule 10.1(a)
- Rule 10.2(a)(ii)