

UNDT/2022/037, Van de Graaf

UNAT Held or UNDT Pronouncements

The burden of proving the provenance and authenticity of the footage is on the Respondent. The Tribunal found that the challenge as to the evidentiary value of the video can properly be dismissed, given the type of document (a video file), its content (a continuous show of people interacting with no discrepancies) and the comments on it by the Applicant (as mentioned). The Tribunal found that a forensic examination of the files was not necessary and that the anonymity of the sources did not undermine its clear and objective content. In this case, the Applicant was not simply careless to have intervened with the aim to stop the party, but committed misconduct, for his totally impolite and unlawful behavior. However, The damage to UNICEF's reputation following the echoes of the incidents on media was not attributable to the Applicant, and therefore not misconduct under staff rule 1.2(g). The incident in this case carried no substantial effect towards the victims apart from being a nuisance; it did not impact the trust by the employer in the staff member and his future performance and respect of the international civil servants' duties, and it did not render intolerable the continuation of the employment relationship. The Tribunal took the view that the economic damage or moral harm suffered by the Applicant cannot be compensated. The damage to his reputation arising from the defamation campaign was not caused by nor could it be prevented by the Administration. The Tribunal found, and ordered, that the sanction imposed should be replaced by the disciplinary measure of demotion by one level with two years deferment of eligibility for consideration for promotion.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's finding of misconduct and decision to separate him from service of the Organization with compensation in lieu of notice and termination indemnity, following an altercation.

Legal Principle(s)

The Appeals Tribunal has held that judicial review is focused on how the decision-maker reached the impugned decision. The Appeals Tribunal has also determined what the role of this Tribunal is when reviewing disciplinary cases. The discretion of the Administration is not unfettered since it is bound to exercise its discretionary authority in a manner consistent with the due process principle and the principle of proportionality.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Van de Graaf

Entity

UNICEF

Case Number(s)

UNDT/NBI/2021/31

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

22 Apr 2022

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Conduct

Disciplinary matters / misconduct

Assault (verbal and physical)

Proportionality of sanction

Investigation

Separation from service

Applicable Law

Other UN issuances (guidelines, policies etc.)

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 1.2(g)
- Rule 10.2(a)
- Rule 10.3

UNICEF Executive Directives