

# **2022-UNAT-1259, Maguy Bamba**

## **UNAT Held or UNDT Pronouncements**

UNAT held that the Appellant merely repeated arguments raised before UNDT regarding the evidence. UNAT accepted UNDT's finding that there was clear and convincing evidence to establish the facts underlying the allegations of misconduct. UNAT held that UNDT applied the appropriate legal standard, namely clear and convincing evidence. UNAT held that UNDT heard the evidence of the complainant, other material witnesses, assessed the credibility and reliability of the testimony under oath before it, determined the probable facts and then rendered a decision as to whether the onus to establish the misconduct by clear and convincing evidence had been discharged on the evidence adduced. UNAT held that it was unable to find that UNDT erred in its findings of fact or that any factual errors led to a manifestly unreasonable decision. UNAT held that while the Appellant may have been depressed and even suffering from trauma at the time, that alone was insufficient to support a finding that she did not have the requisite mental capacity to commit fraud. UNAT held that there was evidence that the Appellant acted deliberately and with planning by obtaining the medical certificate, making application for maternity leave and benefits from her employer, receiving approval, and arranging for someone to replace her while on that leave. UNAT held that the Appellant's actions showed not only intent but a degree of premeditation and planning, and clearly and convincingly supported the finding that, in making the misrepresentation of being pregnant, she had the requisite intent to defraud or deceive. UNAT held that any error in the factual findings had not resulted in a manifestly unreasonable decision as required by Article 2(e) of the UNAT Statute. UNAT held that UNDT correctly found that there was clear and convincing evidence establishing the facts underlying the misconduct. UNAT held that committing fraud and receiving unlawful benefits from an employer seriously and fatally damages the relationship of trust between an employer and employee. UNAT held that in the circumstances, the damage was irreparable and justified separation. UNAT held that there was no evidence that the disciplinary sanction imposed against the Appellant was blatantly illegal, arbitrary, or excessive, but rather it had a rational connection to the nature of the misconduct.

and rationale of the discipline as imposed. On the question of due process, UNAT held that there was no evidence that the Appellant's right to procedural fairness was breached during the investigation or disciplinary process. UNAT dismissed the appeal and affirmed the UNDT Judgment.

## Decision Contested or Judgment/Order Appealed

The Appellant contested the decision to dismiss her from service with compensation in lieu of notice and without termination indemnity for misconduct in the form of applying for maternity leave on the basis of fraudulently obtained medical certification without being pregnant and taking said maternity leave. UNDT dismissed the application.

## Legal Principle(s)

The appeals procedure is not an opportunity for a party to reargue their case. The trial judge is best placed to assess the nature and probative value of the evidence placed before them by the parties. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear requires that the evidence of misconduct must be unequivocal and manifest and convincing requires that this clear evidence must be persuasive to a high standard appropriate to the gravity of the allegation against the staff member and in light of the severity of the consequence of its acceptance. The Secretary-General has wide discretion in applying disciplinary sanctions for misconduct but the disciplinary measure must be proportionate to the misconduct as proven by appropriate evidentiary methods. An excessive sanction will be arbitrary and irrational, and thus disproportionate and illegal, if the sanction bears no rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline. The most important factors to be taken into account in assessing proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency. Only substantial procedural irregularities can render a disciplinary sanction unlawful. Fraud consists in the unlawful making, with the intent to defraud or deceive, of a misrepresentation which

causes actual prejudice, or which is potentially prejudicial, to another. Committing fraud and receiving unlawful benefits from an employer seriously and fatally damages the relationship of trust between an employer and employee.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Maguy Bamba

## Entity

UN Secretariat

## Case Number(s)

2021-1574

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

16 Aug 2022

## President Judge

Judge Sandhu

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Fraud, misrepresentation and false certification

Proportionality of sanction

Disciplinary matters / misconduct

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- MONUSCO Code of Conduct

Staff Regulations

- Regulation 1.2

UN Charter

- Article 101.3

UNAT Statute

- Article 2.1(e)

## Related Judgments and Orders

2017-UNAT-781

2018-UNAT-859

2010-UNAT-035

2017-UNAT-793

2010-UNAT-096

2010-UNAT-097

2019-UNAT-956  
2015-UNAT-550  
2013-UNAT-302  
2020-UNAT-1033  
2018-UNAT-819  
2020-UNAT-982  
2020-UNAT-1024  
2014-UNAT-467  
2011-UNAT-123  
2013-UNAT-379  
UNDT/2017/051  
2016-UNAT-700  
2010-UNAT-084  
2017-UNAT-782