

# 2022-UNAT-1260, Jules Yatte Beda

## UNAT Held or UNDT Pronouncements

Mr. Beda appealed. As a preliminary matter, UNAT dismissed Mr. Beda's motion seeking leave to file a rejoinder on grounds that there was no probative value to the rejoinder Mr. Beda sought to file, and there was nothing new in the Administration's answer that would require him to have an opportunity to provide a rebuttal or rejoinder. Turning to the merits, UNAT found that the UNDT had applied the correct legal standard in its Judgment - whether the facts had been established by clear and convincing evidence - and properly assessed the evidence and credibility of witness testimony, making the required findings of fact to support the allegations of misconduct. UNAT found that the UNDT did not err in finding that the facts on which the disciplinary measure was based had been established by clear and convincing evidence. UNAT was further satisfied that the UNDT did not err in finding that the established facts amounted to misconduct. The acceptance by Mr. Beda of the unlawful monies constituted misconduct pursuant to the Staff Regulations and Rules and as a result, Mr. Beda breached and violated his obligations as a staff member as set out in Staff Regulation 1.2 and Staff Rule 1.2. In addition, the acceptance of the monies amounted to corruption pursuant to sec. 3.8 of IOM No. 44/2013-FOM 044/2013 "Strategic Framework for the Prevention of Fraud and Corruption". UNAT also found that the disciplinary sanction was proportionate to the misconduct. The Dispute Tribunal appropriately assessed the proportionality of the disciplinary sanction of dismissal, in particular, the factors the High Commissioner considered in imposing the sanction. Finally, UNAT dismissed Mr. Beda's claim that both the investigator and the UNDT Judge were biased and violated his due process rights and that the Dispute Tribunal procedurally erred by refusing to hear all relevant witnesses. UNDT concluded that Mr. Beda's due process rights had been respected during the disciplinary proceedings. UNAT dismissed the appeal.

## Decision Contested or Judgment/Order Appealed

Mr. Beda, a former UNHCR staff member, challenged the decision to dismiss him from service for misconduct, following a disciplinary proceeding in which he was accused of corruption. In Judgment No. UNDT/2021/057, the UNDT dismissed his application in its entirety. The Dispute Tribunal found that the facts (the requesting and receiving of a bribe) had been established by clear and convincing evidence, that the established facts amounted to misconduct, that the disciplinary measure applied was proportionate to the conduct, and that Mr. Beda's due process rights had been respected during the investigation and the disciplinary process. Accordingly, the Dispute Tribunal dismissed the application in its entirety.

## Legal Principle(s)

In disciplinary cases, the Dispute Tribunal must establish: i) whether the facts on which the sanction is based have been established, ii) whether the established facts qualify as misconduct under the Staff Regulations and Rules, and iii) whether the sanction is proportionate to the offence. The appeals procedure is not an opportunity for a party to reargue their case. 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, which means that the truth of the facts asserted is highly probable. Clear and convincing evidence of misconduct, including serious misconduct, imports two high evidential standards: 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 Dispute Tribunal ordinarily should hear the evidence of the complainant and the other material witnesses, assess the credibility and reliability of the testimony under oath before it, determine the probable facts

and then render a decision as to whether the onus to establish the misconduct by clear and convincing evidence has been discharged on the evidence adduced. The trial judge is best placed to assess the nature and probative value of the evidence placed before them by the parties to justify their factual findings. 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. However, due deference must be shown to the Secretary-General's decision on sanction because Article 101(3) of the United Nations Charter requires the Secretary-General to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in this regard. The ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline. 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 the 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. The Administration has a broad discretion in disciplinary matters which will not be lightly interfered with on judicial review so long as the discretion is exercised lawfully and judiciously. It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it or to substitute its own decision for that of the Administration. Only substantial procedural irregularities can render a disciplinary sanction unlawful. The onus to show improper motive is on the party asserting it. The objective test for assessing bias (of a judge) is whether a reasonable person, fully informed of all relevant circumstances would apprehend that there was conscious or unconscious bias on the part of the judge because of which the judge could not decide the case fairly.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Jules Yatte Beda

Entity

UN Secretariat

Case Number(s)

2021-1583

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Aug 2022

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Dismissal/separation

Facts (establishment of) / evidence

Investigation (see category: Investigation)

Proportionality of sanction

Due process

Separation from service

Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2
- Regulation 1.2(b)
- Regulation 1.2(e)
- Regulation 1.2(f)
- Regulation 1.2(g)

Staff Rules

- Rule 1.2
- Rule 1.2(k)
- Rule 1.2(p)

UN Charter

- Article 101.3

UNAT RoP

- Article 31
- Article 18.1

Other UN issuances (guidelines, policies etc.)

- IOM/FOM/44/2013

UNDT RoP

- Article 17.6

Related Judgments and Orders

2018-UNAT-859

2010-UNAT-035

2019-UNAT-956

2015-UNAT-550

2020-UNAT-1033

2018-UNAT-819

2014-UNAT-467

2011-UNAT-123

2018-UNAT-890

2017-UNAT-781

2010-UNAT-084

2020-UNAT-978

2012-UNAT-201