

2022-UNAT-1261, Appellant

UNAT Held or UNDT Pronouncements

UNAT rejected Mr. Valme's claim that the allegation of sexual exploitation and abuse had not been established against him, on grounds that any consideration about the complaint of sexual abuse was beyond the scope of the case, because his application concerned other prohibited conduct that came to light during the investigation. UNAT found no merit in Mr. Valme's contention that the UNDT failed to consider the totality of the evidence and referred to it in a selective way, thereby displaying bias. UNAT found that it was inherent to the principle of judicial persuasion that courts and tribunals highlight elements of evidence which they consider the most relevant in the circumstances of each case under examination; and that by so doing, the UNDT does not display bias since this is an authentic exercise of the jurisdictional power. With respect to the conflict of interest, UNAT found that Mr. Valme undoubtedly violated his duty of transparency in the selection of Ms. FM. The fact that Mr. Valme had a romantic relationship with her should not have acted as a favourable element in her recruitment. Mr. Valme did not dispute the fact that he actively participated in her selection, even when she lacked the requisite work experience. UNAT also rejected Mr. Valme's claim that it had not been established by clear and convincing evidence that he had used his position of authority to influence the recruitment of Ms. YF. The UNDT relied on the testimonies of several people, including Mr. Valme's admissions that he had forwarded the questions for Ms. YF's interview to her in advance. As to Mr. Valme's claim that the UNDT erred in finding that he had interfered with the OIOS investigation into his conduct, UNAT found that his arguments were basically the same as those used at trial; and that a review of the evidence showed that Mr. Valme had used the google shared drive to direct his housemates' testimonies and therefore align statements, including before their OIOS interviews. Finally, UNAT found Mr. Valme's due process rights had been respected. UNAT dismissed the appeal.

Decision Contested or Judgment/Order Appealed

Mr. Valme contested before the UNDT the Secretary-General's decision to dismiss him from service for serious misconduct with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii). Mr. Valme had been found to have: i) used his position of authority as Chief of Communications and Information Technology (CITS) and Geospatial Information and Telecommunication Technologies Services (GITTS) at MINUSCA to unduly influence the continued employment of Ms. FM and Ms. YF; ii) failed to disclose a conflict of interest arising from his relationship with Ms. FM; and iii) attempted to interfere with the OIOS investigation into his conduct. By Judgment No. UNDT/2021/078, the UNDT dismissed the application. The UNDT found that the established facts constituted clear and convincing evidence of each of the allegations against Mr. Valme, that his actions amounted to misconduct, that the imposed disciplinary measure was proportionate to his misconduct, and that there were no due process violations in his case.

Legal Principle(s)

The standard of review in disciplinary matters: A judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. In this context, the UNDT is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct under the Staff Regulations and Rules, and 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. 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. The Appeals Tribunal is not an instance for a party

to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. In the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, the UNAT will not lightly interfere with the findings of the UNDT.

Outcome

Dismissed on merits

Outcome Extra Text

The appeal is dismissed and Judgment UNDT No. UNDT/2021/078 is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Appellant

Entity

UN Secretariat

Case Number(s)

2021-1599

Tribunal

UNAT

Registry

New York

Date of Judgement

17 Aug 2022

President Judge

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Breach of duties of independence, neutrality, and impartiality

Dismissal/separation

Facts (establishment of) / evidence

Disciplinary sanction

Investigation

Disciplinary matters / misconduct

Termination (of appointment)

Applicable Law

Staff Regulations

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

Staff Rules

- Rule 1.2(c)
- Rule 10.2(a)(viii)
- Rule 1.2(d)
- Rule 1.2(h)

UNAT Statute

- Article 2.1(e)

Related Judgments and Orders

2021-UNAT-1136

2019-UNAT-956

2017-UNAT-718

2016-UNAT-700

2015-UNAT-550

2013-UNAT-302

2017-UNAT-711

2015-UNAT-540

2013-UNAT-346