

UNDT/2022/117, Ndambuki

UNAT Held or UNDT Pronouncements

On the due process prong, the Tribunal concluded that the Applicant's complaints about lack of due process were without merit. The Applicant did not establish that the Respondent failed to afford him due process in the investigation and disciplinary process. Accordingly, the Tribunal held that the Applicant's due process rights were guaranteed. On whether the facts were established by clear and convincing evidence, the Tribunal recalled that the Applicant was sanctioned for: (i) Misleading the UNHCR's Global Fleet Management ("GFM") regarding the extent of the damage to the UNHCR's vehicle; (ii) Using a falsified Toyota Kenya damage report to obtain a tax reduction from Kenya Revenue Authority ("KRA"); and (iii) Breach of confidentiality with respect to the Inspector General's Office ("IGO") investigation. On count one, the Tribunal held that the Respondent had established by clear and convincing evidence that the UNHCR's finding that the Applicant misled GFM regarding the extent of the damage to the vehicle was based on clear and convincing evidence.

On count two, the Tribunal concluded that there was clear and convincing evidence before the Respondent that the Applicant used the false report to obtain tax reduction from the KRA. On count three, the Tribunal noted that the Applicant admitted to have discussed the information relating to the investigation with other colleagues. Accordingly, the Tribunal concluded that the allegation of breach of confidentiality having been admitted by the Applicant was proven by clear and convincing evidence.

Regarding misconduct, the Tribunal concluded that the Applicant's proven actions in misleading GFM regarding the extent of vehicle damage and in using a falsified Toyota Kenya damage report to obtain tax reduction qualify as misconduct. Additionally, the Applicant's admitted breach of confidentiality of the investigation process amounted to misconduct as prohibited by para. 38 of UNHCR/AI/2019/15 (Administrative Instruction on Conducting Investigations at UNHCR). Accordingly, the Tribunal held that the established facts qualified as misconduct. On whether the sanction was proportionate to the offence, the Tribunal concluded that based on the facts of the case, the sanction of dismissal was not unreasonable, absurd or disproportionate.

Decision Contested or Judgment/Order Appealed

The Applicant contested the UNHCR's decision to impose on him the disciplinary measure of dismissal in accordance with staff rule 10.2(a)(ix).

Legal Principle(s)

Pursuant to the jurisprudence of the Tribunal, the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements: i. Whether the staff member's due process rights were guaranteed during the entire proceeding. ii. Whether the facts were established by clear and convincing evidence; iii. Whether facts amount to misconduct; and iv. Whether the sanction is proportionate to the gravity of the offence.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Ndambuki
Entity
UNHCR
Case Number(s)
UNDT/NBI/2022/031
Tribunal
UNDT
Registry
Nairobi
Date of Judgement
1 Nov 2022
Duty Judge
Judge Honeywell
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Disciplinary measure or sanction
Disciplinary matters / misconduct
Applicable Law
Administrative Instructions
Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(q)
- Rule 10.2(a)
- Rule 10.2(a)(ix)

Related Judgments and Orders

2018-UNAT-859
2010-UNAT-084
2014-UNAT-415
2015-UNAT-523
2010-UNAT-018
2010-UNAT-024
2017-UNAT-776
2018-UNAT-890
2014-UNAT-403
2011-UNAT-164
2013-UNAT-302