

# UNDT/2022/127, Nimusiima

## UNAT Held or UNDT Pronouncements

In all the circumstances, the Respondent failed to prove by clear and convincing evidence the basis for the finding of misconduct that led to the Applicant's dismissal. There was no clear and convincing evidence of any factual basis for a finding that the Applicant committed the actions as alleged. The Tribunal found that due process was observed. However, the failure to interview appropriate witnesses adversely detracted from the standard of proof of misconduct achieved by the Respondent. That standard did not reach the level of a clear and convincing case. Of the remedies sought by the Applicant, only her claim for rescission of the dismissal decision and clearing of her record are applicable within the Organization's Internal Justice System. Accordingly, the Applicant will be granted the relief of rescission of the decision or compensation in lieu thereof pursuant to arts. 10.5(a) and (b) of the UNDT Statute. The decision to impose the sanction of dismissal from service on the Applicant was rescinded. The Tribunal held that the evident unfairness of the termination in this case justified payment of the maximum compensation in lieu equivalent of two years' net base salary. The Respondent was ordered to remove the sanction letter and all references to it from the Applicant's Official Status File.

## Decision Contested or Judgment/Order Appealed

The Applicant was contesting the disciplinary measure on her of dismissal from service pursuant to staff rule 10.2(a)(ix).

## Legal Principle(s)

The role of the Tribunal in judicial review of disciplinary decisions is "to ascertain whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence". The Administration bears the burden of establishing that the misconduct has occurred, and in cases where termination of employment is a possible outcome the misconduct must be established by clear and convincing evidence. The clear and convincing standard of proof is codified by section 8.1(a) of UNHCR/AI/2018/18 (Misconduct and the Disciplinary Process).

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Nimusiima

Entity

UNHCR

Case Number(s)

UNDT/NBI/2022/012

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

2 Dec 2022

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dismissal/separation

Fraud, misrepresentation and false certification

Investigation (see category: Investigation)

Misuse of office

Disciplinary matters / misconduct

Applicable Law

Laws of other entities (rules, regulations etc.)

Related Judgments and Orders

2010-UNAT-018

2010-UNAT-024

2010-UNAT-098

2015-UNAT-523

2017-UNAT-776

2018-UNAT-890

2014-UNAT-403

2010-UNAT-084