

2022-UNAT-1298, Specker

UNAT Held or UNDT Pronouncements

Ms. Specker appealed. The UNAT held that the essential question is whether the sanction imposed was proportionate. The principle of proportionality requires that a disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct. The UNAT noted that Ms. Specker's main argument was that the sanction imposed upon her displayed an element of historical inconsistency in that lesser sanctions for similar misconduct had been imposed in other cases. The implication of her submission is that the failure to impose separation for this kind of offence in the past may have created an impression that a lesser sanction could be expected for such a contravention and that similar offences should attract similar sanctions. However, the UNAT noted that inconsistency may be justifiable where a contravention is of a particularly serious nature. The UNDT dealt fully with the issue of consistency and concluded that the offence in question was of a particularly serious nature and thus separation was the appropriate sanction. Past practice revealed that the disciplinary measures imposed for cheating, or for aiding another person in cheating, varied but included in some instances separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity. The UNAT found that dishonesty of this order, and Ms. Specker's use of her position and knowledge to improperly advance the interests of an intimate partner, fatally compromised the necessary relationship of trust between the employer and employee. Ms. Specker's conduct on two separate occasions undermined the integrity of two recruitment processes. The deliberate, intentional and repeated nature of the misconduct by a senior staff member for such a venal purpose revealed a level of unreliability that contaminated the trust relationship to a degree that rendered the continuation of the employment relationship intolerable. Separation from service was the most suitable and necessary means by which the legitimate aim of integrity and probity could be assured within the Organization in accordance with the requirements of Staff Regulation 1.2(b) in the circumstances of this case. The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2021/105.

Decision Contested or Judgment/Order Appealed

Ms. Specker contested a decision of the Administration to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity equivalent to four months' salary. By Judgment No. UNDT/2021/105, the UNDT dismissed the application and upheld the decision.

Legal Principle(s)

In disciplinary cases, the UNDT is required to ascertain: (a) whether the facts on which the disciplinary measure was based have been established; (b) whether the established facts legally amount to misconduct; and (c) whether the disciplinary measure applied was proportionate to the offence. The misconduct must be established by clear and convincing evidence, meaning that the facts must be established as highly probable. Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. Staff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets. The principle of proportionality requires that a disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct. The Administration has discretion to impose a disciplinary measure that it considers adequate to the circumstances of a case, and the Tribunal should not interfere with administrative discretion unless it is tainted by irrationality or is arbitrary.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Specker

Entity

UNDP

Case Number(s)

2021-1628

Tribunal

UNAT

Registry

New York

Date of Judgement

23 Dec 2022

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dismissal/separation

Fraud, misrepresentation and false certification

Misuse of information and communication technology resources

Proportionality of sanction

Disciplinary sanction

Disciplinary matters / misconduct

Termination (of appointment)

Applicable Law

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(q)

Related Judgments and Orders

2015-UNAT-537

2015-UNAT-523

2010-UNAT-024

2010-UNAT-022

2017-UNAT-776

2011-UNAT-164