

2023-UNAT-1318, Benedictine Desbois

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT did not err in concluding that there was clear and convincing evidence that the Appellant physically assaulted another staff member and that the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity, was proportionate to the nature and gravity of the Appellant's misconduct. Importantly, the Appellant did not establish a degree of provocation that mitigated her retaliation which was also excessive and beyond the bounds of any permissible defense in the altercation.

The findings of the UNDT that the assault was established in accordance with the clear and convincing evidence standard were based correctly on the evidence adduced before it and not exclusively on the findings of the OIOS report. While there were admittedly inconsistencies in some of the statements, what remained consistently certain is that three witnesses had knowledge and experience of the assault, which was not convincingly controverted or shown to be fabricated by ill motive.

The UNAT held that the procedural irregularities in the OIOS investigation were cured by the thorough judicial trial the UNDT conducted. Therefore, the UNAT concluded that the UNDT did not err in holding that procedural shortcomings in the investigation process were not of any consequence.

The UNAT also held that it was entirely appropriate for the UNDT to have deferred to management's exercise of discretion with respect to the disciplinary sanction in this instance.

Decision Contested or Judgment/Order Appealed

The Appellant, a former staff member of the United Nations Environment Programme (UNEP), contested the decision to impose on her the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity, for physical assault. In its Judgment No. UNDT/2022/014, the UNDT concluded that there was clear and convincing evidence that the Appellant slapped another staff member at a farewell party and dismissed her application.

Legal Principle(s)

The UNDT is the best placed to assess the credibility of witnesses who testified before it and the inherent probabilities that a physical assault in fact occurred as it has the opportunity to observe the witnesses and to assess their calibre on the basis of their performance in the witness box.

The Organization imposes a high standard of conduct on staff members. Accordingly, the physical assault of another staff member is a fundamental violation of the ethos of the Organization and it falls within the managerial prerogative of the Administration to take a strict approach in the interest of ensuring that staff members conduct themselves in a manner befitting their status as international civil servants.

Procedural irregularities in the OIOS investigation will invariably be inconsequential when a judicial determination establishes misconduct highly probable, in accordance with the clear and convincing evidence standard.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Benedictine Desbois

Entity

UNEP

Case Number(s)

2022-1686

Tribunal

UNAT

Registry

New York

Date of Judgement

11 Apr 2023

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Assault (verbal and physical)

Disciplinary measure or sanction

Dismissal/separation

Facts (establishment of) / evidence

Credibility assessment

Due process

Disciplinary cases

Separation from service

Disciplinary matters / misconduct

Evidence

Investigation

Standard of proof

Applicable Law

Staff Regulations

- Regulation 1.2(f)

Related Judgments and Orders

2020-UNAT-1070

UNDT/2022/014