

2023-UNAT-1331, Osvaldo Di Mario

UNAT Held or UNDT Pronouncements

UNAT denied the Appellant's request for an oral hearing and held that it would not assist in the expeditious and fair disposal of the case, as required by Article 18(1) of the UNAT Rules of Procedure. UNAT held that the UNDT did not err in striking the evidence filed with the Appellant's closing submissions or in refusing to hear the Appellant's supervisors as witnesses. UNAT held that there was clear and convincing evidence that the Appellant used the UNHCR VAT exemption card and credit card for his personal use and that the disciplinary measure was proportionate to the nature and gravity of the Appellant's misconduct. Further, UNAT concluded that the Appellant's argument that he was compensating himself for the use of his personal vehicle and the personal expenses incurred during the performance of his functions was taken into account as mitigating circumstances. However, UNAT held that Appellant's argument that he was acting in compliance with the common practice at UNHCR and under the orders of his superiors who were not applying the Policy on the Use of Vehicles in UNHCR was not a valid excuse for misconduct.

Accountability referral: UNAT referred the case to the High Commissioner for possible action to enforce accountability by the Appellant's supervisors who, in breach of the UNHCR Policy on the Use of Vehicles, authorized the regular use of private cars by staff members for official purposes compensated for by the reimbursement of gasoline expenses.

Decision Contested or Judgment/Order Appealed

The Appellant, a former staff member of UNHCR, contested the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and with half of the termination indemnity for misconduct. In its Judgment No. UNDT/2021/163, the UNDT concluded that there was clear and convincing evidence that the Appellant used the UNHCR VAT exemption card and credit card for his personal use and dismissed his application.

Legal Principle(s)

It is not illegal to impose a disciplinary measure on a staff member who is on sick leave. In disciplinary cases, the UNDT must establish: i) whether the facts on which the sanction is based have been established, ii) whether the established facts qualify as misconduct under the Staff Regulations and Rules, and iii) whether the sanction is proportionate to the offence. The Administration bears the burden of establishing the alleged misconduct by clear and convincing evidence. It is not sufficient for the Appellant merely to repeat the arguments submitted before the UNDT. He must show how the UNDT erred in its analysis. Ignorance of the law is not a valid defense.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Osvaldo Di Mario

Entity

UNHCR

Case Number(s)

2022-1672

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Apr 2023

President Judge

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Fraud, misrepresentation and false certification

Misuse of or failure to exercise reasonable care in relation to UN property or assets

Production of evidence

Oral hearings

Disciplinary cases

Investigation

Referral for accountability

Disciplinary matters / misconduct

Evidence

Procedure (first instance and UNAT)

Standard of proof

Applicable Law

Other UN issuances (guidelines, policies etc.)

- IOM/FOM/44/2013

Staff Regulations

- Regulation 1.2
- Regulation 1.2(b)
- Regulation 1.2(e)
- Regulation 1.2(g)
- Regulation 1.2(q)

Staff Rules

- Rule 1.2
- Rule 1.2(b)
- Rule 1.7
- Rule 10.1
- Rule 10.3(b)
- Rule 10.4

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.1
- Article 2.1(d)
- Article 8.2
- Article 9.5

UNDT RoP

- Article 17.6
- Article 18.5

Related Judgments and Orders

2022-UNAT-1234

UNDT/2021/163

2021-UNAT-1169

2012-UNAT-209

2015-UNAT-597

2022-UNAT-1260

2014-UNAT-458

2015-UNAT-550

2013-UNAT-334