

2023-UNAT-1335, Vijay Neekhra

UNAT Held or UNDT Pronouncements

The UNAT found no errors in the UNRWA DT Judgment and dismissed the appeal. The UNAT found that the UNRWA DT correctly held that Mr. Neekhra's due process rights were not violated by an undue delay in the investigation proceedings; that Mr. Neekhra's actions to copy-paste excerpts from internal/external sources without proper citation was a violation of the Agency's regulatory framework and constituted misconduct; and that the disciplinary measures of a written censure and deferment of eligibility for consideration for promotion were proportionate to the offense. The UNAT dismissed the Comissioner-General's request for an award of costs stating that while Mr. Neekhra did not succeed in his appeal, his attempt to have the disciplinary sanction rescinded on appeal was not frivolous.

Decision Contested or Judgment/Order Appealed

Before the UNRWA DT, Mr. Neekhra contested the decision to impose on him the disciplinary measures of a written censure and deferment of eligibility for consideration for promotion on grounds that he had plagiarized in a large part of his answers in the written test for the post of D/DUO/G. By Judgment No. UNRWA/DT/2021/065, the UNRWA DT dismissed the application. The UNRWA DT dismissed Mr. Neekhra's contention that the conclusion of the investigation had been delayed. The UNRWA DT noted various deadlines during the investigative process, but found that they were of recommendatory nature. In addition, from the date of the allegations until the conclusion of the Investigation Report there was a nine-month interval which the UNRWA DT concluded was not excessive to the extent that it would violate Mr. Neekhra's due process rights. The UNRWA DT next concluded that the facts based on which Mr. Neekhra had been admonished were established. Mr. Neekhra had admitted that he did not make use of citations/quotations when he copied excerpts from official reports that were available to him as an UNRWA staff member. The UNRWA DT was also satisfied that the established facts qualified as misconduct. The UNRWA DT considered that Mr.

Neekhra, in his role as Senior Urban Planning Officer, as a candidate for the post of D/DUO/G as well as in view of his experience within the Agency, should have been aware of the notion of plagiarism and the basic principles of citations/quotations in the context of a written test. Such an awareness was part of his integrity, regardless of his intention when he copied excerpts from official reports into his answers, the difficulty in providing the citations/quotations and his unpersuasive allegations of “non-clarity on the test instructions”. Accordingly, the UNRWA DT held that Mr. Neekhra’s action to copy-paste excerpts from internal/external sources without proper citation was a violation of the Agency’s regulatory framework and that Mr. Neekhra did not conduct himself in a manner befitting his status as a staff member of the Agency. Finally, the UNRWA DT held that the disciplinary measures imposed on Mr. Neekhra were proportionate to the nature and gravity of his misconduct. Mr. Neekhra appealed.

Legal Principle(s)

In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (where termination is the sanction imposed, the facts must be established by clear and convincing evidence; in all other cases preponderance of the evidence is sufficient); (ii) whether the established facts amount to misconduct; (iii) whether the sanction is proportionate to the offence; and (iv) whether the staff member’s due process rights were respected. Strict liability defines the circumstances in which an offender is held liable for wrongful conduct regardless of his or her mental state. As statutory or contractual instruments rarely expressly mention mens rea (a blameworthy state of mind) as an element of prohibited conduct, the existence of such a requirement is ordinarily a matter of interpretation. Courts and tribunals usually presume that misconduct can consist of both intent or negligence, unless there are clear and convincing indications to the contrary. With regard to a written exam in the context of a selection process for a promotion, any kind of plagiarism, whether intentional or negligent, will be considered a violation of the principle of integrity, as the candidate puts himself/herself into an advantage over other candidates. An intentional act of plagiarism already occurs when a staff member knows that he or she is required to properly cite and quote external sources in a written exam but does not do so. Whether the motivation will be to pretend authorship/ownership of the text or merely to save time or any other reason is not relevant.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Vijay Neekhra

Entity

UNRWA

Case Number(s)

2022-1661

Tribunal

UNAT

Registry

New York

Date of Judgement

2 May 2023

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Proportionality of sanction

Due process

Abuse of process before UNDT/UNAT

Disciplinary matters / misconduct

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNRWA Investigation Policy (DIOS Technical Instruction 02/2016)

UNAT Statute

- Article 9.2

UNRWA International Staff Regulations

Related Judgments and Orders

2020-UNAT-1006

2022-UNAT-1216