

2023-UNAT-1339, Marina Mancinelli

UNAT Held or UNDT Pronouncements

The UNAT held that the staff member's argument that the UNDT applied the incorrect standard of proof is unsubstantiated, as the main facts of the case were undisputed by both parties. She had admitted having used UN Women's UPS account to send two private shipments abroad, without mentioning any prior authorization. The aggravating and mitigating elements reviewed by the UNDT were by nature peripheral to the sanction imposed. The UNAT found that even if it was not appropriate for the Administration to use a prior act of possible misconduct as an aggravating factor (as it was not previously properly investigated), this fact alone did not render the sanction arbitrary, as other elements existed which could justify the same sanction. Furthermore, she never expressed regret or remorse for her actions. The value of her debt could not be taken into account as a mitigating (and peripheral) circumstance to her benefit. The UNAT held that the UNDT committed an error of law when it improperly interfered with the Administration's choice of sanction. The UNAT noted that if the decision taken was not considered by the UNDT to be reasonable, the outcome should have been rescission of the sanction (so that the Administration would have had another opportunity to accurately exercise its discretion given all the circumstances of the case), rather than adjustment of the sanction by the UNDT itself. The UNAT dismissed the staff member's appeal, granted the Secretary-General's appeal, reversed Judgment No. UNDT/2022/035 and dismissed the staff member's application in its entirety.

Decision Contested or Judgment/Order Appealed

A former staff member contested the decision imposing on her of the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity. Ms. Mancinelli had used UN Women's official UPS account to ship personal packages internationally and billed those charges to UN Women's corporate account, rather than paying for them herself. In Judgment No. UNDT/2022/035, the UNDT allowed the application in part, ordering that the staff

member be paid a termination indemnity, and dismissed the application in all other respects. The Secretary-General and the staff member each appealed.

Legal Principle(s)

The Administration is best placed to assess the entirety of the situation underlying an administrative decision, and the tribunals have limited scope to interfere, namely only in extreme situations where abuse or excess occur. The discretionary authority of the Administration is not unfettered. The Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith. The first instance tribunal is not conducting a merit-based review but a judicial review. 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. A mediation process involving a pedagogical approach can often resolve issues with a positive outcome for both parties in the interest of the Organization.

Outcome

Appeal dismissed on merits; Appeal granted

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Marina Mancinelli

Entity

UN Women

Case Number(s)

2022-1699

Tribunal

UNAT

Registry

New York

Date of Judgement

5 May 2023

President Judge

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

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

Proportionality of sanction

Standard of proof

Termination of appointment

Disciplinary sanction

Discretionary authority

Disciplinary matters / misconduct

Standard of review (judicial)

Termination (of appointment)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

Staff Regulations

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

Staff Rules

- Rule 10.1(a)
- Rule 10.2(a)
- Rule 10.3(b)

Related Judgments and Orders

UNDT/2022/035

2019-UNAT-955

2019-UNAT-918

2021-UNAT-1181

2022-UNAT-1216

2020-UNAT-1024

2018-UNAT-859

2022-UNAT-1298

2017-UNAT-781