

UNDT/2023/060, Millan

UNAT Held or UNDT Pronouncements

The Applicant was charged with two different counts of accusations:

- a. Permitting a female individual (“F01”), who was not a United Nations personnel and who did not receive prior authorization for United Nations transport, to be transported in the vehicle, enabling the behaviour of Mr. Antoine, the rear passenger of the United Nations vehicle, who held F01 closely to his body while she was seated on top of him and gyrating in a sexually suggestive manner, while Mr. Antoine held F01 with his hand on her buttock and while he pulled her genital area closer to his crotch. These events were captured in an 18-second video-clip that was widely disseminated, bringing the Organization into disrepute.
- b. Failure to cooperate with the OIOS investigations between May 2020 and August 2020.

On count one, the Tribunal recalled that the Applicant admitted that the vehicle was assigned to him and he also admitted that no liability waiver was signed on behalf of F01, thereby making her an authorized passenger in the United Nations vehicle. The Applicant, therefore, failed to use the United Nations vehicle for official purposes and to exercise reasonable care with it. The Tribunal, thus, concluded that the facts on which the disciplinary measure was based were established by clear and convincing evidence.

On count two, the Tribunal held that the Applicant failed in his duty to cooperate with the Office of Internal Oversight Services (“OIOS”) investigation, notably he did not acknowledge the obvious during his first interview with OIOS, *i.e.*, that he was the passenger seated in the front passenger seat shown in the video and his refusal to participate in a third subject interview by OIOS without any valid reason.

Regarding misconduct, the Tribunal noted that the use of the property and the assets of the Organization is allowed only for official purposes and that in this case, the Applicant failed to exercise reasonable care when utilizing the vehicle, in violation of staff regulation 1.2(q). Permitting a non-authorized female to be transported in the vehicle and enabling the behaviour of Mr. Antoine, which put the Organization into disrepute, the Applicant took a behaviour contrary to the standard of integrity required of an international official. Accordingly, the Tribunal held that the Applicant engaged in a misconduct.

On the due process prong, the Tribunal concluded that the Applicant’s due process rights were respected during the investigation and disciplinary process. In particular, the Applicant was provided with all supporting documentation, interviewed, informed of his right to seek the assistance of counsel and, in sum, he was given the opportunity to comment on the allegations against him and to contrast them.

On whether the sanction was proportionate to the offence, the Tribunal held that the Organization applied its discretionary disciplinary powers lawfully and the sanction imposed was proportionate.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision imposing on him the disciplinary measure of separation from service with compensation *in lieu* of notice and without termination indemnity.

Legal Principle(s)

Pursuant to the jurisprudence of the Tribunal, the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements:

- i. Whether the facts were established by clear and convincing evidence;
- ii. Whether facts amount to misconduct;
- iii. Whether the staff member's due process rights were guaranteed during the entire proceeding; and
- iv. Whether the sanction is proportionate to the gravity of the offence.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Millan

Entity

UNTSO

Case Number(s)

UNDT/NBI/2022/060

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

21 Jun 2023

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dismissal/separation

Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2(q)

Related Judgments and Orders

2010-UNAT-084

2014-UNAT-415

2015-UNAT-550

2014-UNAT-403

2011-UNAT-164

2013-UNAT-302

2020-UNAT-1024

2023-UNAT-1330
UNDT/2021/152