

2023-UNAT-1357, Elmira Ela Banaj

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the staff member.

The UNAT found that the UNDT had reviewed the disciplinary decision thoroughly and methodically; the UNDT had not erred in fact or law in conducting the proportionality analysis and there had been no irregularity in the investigation and disciplinary process, warranting intervention.

The UNAT agreed that the obligation not to disclose internal information is not limited to confidential information. The UNAT found that even if the staff member had liaison functions with member states, it did not give her the right to communicate internal information to some member states without authorization. Moreover, when a report is under a strict embargo against dissemination, the staff member did not have a right to share it with member states without authorization, even if the member states might have received it by other means. Where it was unambiguously proven that the staff member had shared personal criticism of UNODC with government officials, the Administration did not have to prove that this caused any harm in order to impose disciplinary measures on her. Lastly, it may also be considered an aggravating factor if the staff member under investigation refuses to turn over a UNODC-issued mobile phone and a personal phone for which she received reimbursement for official calls.

The UNAT noted that as illegality was absent from the contested decision, there could not be compensation.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/060.

Decision Contested or Judgment/Order Appealed

A staff member contested the decision to impose on her the disciplinary measure of demotion of one grade with deferment, for one year, of eligibility for consideration for promotion.

In Judgment No. UNDT/2022/060, the UNDT dismissed the application. The UNDT found that the facts on which the disciplinary measure was based (the staff member, on several occasions, intentionally disclosed internal information to officials of member states without prior authorization and shared personal criticism about the activities and policy decisions of UNODC with officials of member states) had been established. The UNDT noted that the Administration had duly considered relevant factors in determining the proportionality of the sanction.

Legal Principle(s)

The UNAT is not a forum for a party to reargue their case without demonstrating on which grounds an impugned UNDT judgment is erroneous. Mere disagreement with the UNDT's conclusion is not a justification for the UNAT to interfere with the findings of the UNDT.

Being a working document does not necessarily disqualify such a document as internal information. Internal information is not required to be labeled or watermarked as a draft or as confidential, or for internal use only.

The Administration bears the burden to prove that the facts underlying the disciplinary measure have been established and the staff member bears the burden to provide sufficient and credible evidence to substantiate her allegations adduced in her defense. It is a principle in evidence law that the burden of proof lies with the party who presents a claim.

The Administration is best suited to select a sanction able to adequately fulfil its general purpose within the limits stated by the respective norms, i.e., a measure sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance.

Procedural fairness is a highly variable concept and is context specific.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Elmira Ela Banaj

Entity

UNODC

Case Number(s)

2022-1723

Tribunal

UNAT

Registry

New York

Date of Judgement

17 Jul 2023

President Judge

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Facts (establishment of) / evidence

Misuse of information and communication technology resources

Due process

Misuse of official documents

Disciplinary matters / misconduct

Applicable Law

Secretary-General's bulletins

- ST/SGB/2007/6

Staff Regulations

- Regulation 1.1(e)
- Regulation 1.2(f)

Staff Rules

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

Related Judgments and Orders

UNDT/2022/060

2020-UNAT-1024

2019-UNAT-956

2020-UNAT-1000

2022-UNAT-1256

2019-UNAT-918

2010-UNAT-084

2018-UNAT-859

2020-UNAT-1061

2022-UNAT-1216

2021-UNAT-1184

2017-UNAT-781

2019-UNAT-900

2017-UNAT-761

2022-UNAT-1280

2012-UNAT-277

2018-UNAT-874