

UNDT/2023/037, Abdrabou

UNAT Held or UNDT Pronouncements

The Tribunal, based on the evidence on the record, established that the invoice and the medical report that the Applicant submitted to Cigna for reimbursement were not authentic. Despite the foregoing, the Applicant certified to Cigna that the information he was submitting was “correct and true” and was therefore, acknowledging that he was aware of the contents of the medical claim and attesting to its authenticity.

The Tribunal further concluded that no evidence was offered of the effectiveness of the medical treatment. Excluding the fake invoice and the fake medical report, no other documents or evidence were provided on the specific pathology suffered by the Applicant’s son and on the type and date of the surgery; no statements were provided from the medical practitioners or nurses or even the hospital’s other staff members; not even by the ex-wife of the Applicant and her brother, who were allegedly present at the intervention, nor by the Applicant’s son; and there was not any medical report generated after the alleged surgery.

The Tribunal, thus, concluded that there was clear and convincing evidence that the Applicant engaged in misconduct through his submission of a fraudulent medical claim for medical services that had not occurred.

Regarding misconduct, the Tribunal concluded that the Applicant committed fraud, prohibited conduct under the UNDP Policy against Fraud and other Corrupt practices approved in October 2018. The Fraud Policy also provides as an example of fraud as: “providing information in relation to a medical insurance claim or another entitlement that the claimant knows to be false.”

On the due process prong, the Tribunal concluded that the Applicant’s complaints about lack of due process were without merit. The Applicant did not establish that the Respondent failed to afford him due process in the investigation and disciplinary process. Accordingly, the Tribunal held that the Applicant’s due process rights were

guaranteed.

On whether the sanction was proportionate to the offence, the Tribunal concluded that the measure imposed was reasonable and not disproportionate. The practice of the Organization in cases involving staff submitting false claims for reimbursement of medical expenses is consistent in that disciplinary measures have been imposed at the strictest end of the spectrum, namely, separation from service or dismissal in accordance with staff rule 10.2(a).

Decision Contested or Judgment/Order Appealed

The Applicant contested the UNDP's decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice, pursuant to staff rules 10.1(a) and 10.2(a)(viii), and without termination indemnities.

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

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Abdrabou

Entity

UNDT

Case Number(s)

UNDT/NBI/2022/053

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 May 2023

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Disciplinary matters / misconduct

Applicable Law

Staff Rules

- Rule 10.2(a)(viii)

Related Judgments and Orders

2010-UNAT-084

2014-UNAT-415

2010-UNAT-018

2010-UNAT-024

2015-UNAT-523

2017-UNAT-776

2013-UNAT-295

2018-UNAT-890

2010-UNAT-098

2014-UNAT-403

UNDT/2021/064

2020-UNAT-982

2013-UNAT-302