

# UNDT/2023/040, Mihyar

## UNAT Held or UNDT Pronouncements

Whether the sanction imposed was consistent with past practice.

The Applicant failed to demonstrate that the sanction imposed was inconsistent with past practice for the following reasons:

First, it is within the Administration's discretion to identify comparable previous cases. Indeed, it is neither for the Tribunal nor for the Applicant to "pick and choose" what precedents the Administration should take into consideration in determining the appropriate sanction. Second, after a careful analysis of the 2022 Sanction Letter, the Tribunal finds that the Administration has properly considered previous cases involving misconduct that were comparable with that of the Applicant. Third, it fails to see how alleged recruitment irregularities that might have occurred in another duty station are comparable to the Applicant's conduct or could have had any bearing on the determination of the sanction in his case. Finally, disciplinary action is a dynamic tool that may develop over time according to policy changes, evolving jurisprudence, and deterrence needs.

Whether the Administration properly considered aggravating and mitigating factors

The Administration's consideration of certain factors as mitigating factors does not automatically result in a less severe sanction because the decision-maker must weigh and balance all the circumstances of the case and all the relevant factors when choosing the appropriate sanction. Moreover, one should not conflate the reasoning in relation to a mitigating/aggravating factor with the factor itself. Accordingly, the Applicant's arguments in this respect must fail.

Thus, the Applicant failed to demonstrate that the disciplinary measure reimposed was disproportionate to the offence.

## Decision Contested or Judgment/Order Appealed

By application filed on 13 January 2023, the Applicant contests the decision to reimpose on him the disciplinary measures of written censure and loss of two steps in grade.

## Legal Principle(s)

“The Administration has a broad discretion in determining the disciplinary measure imposed on staff members because of wrongdoing. It is best suited to select an adequate sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing” (see, e.g., Iram, para. 87; Conteh 2021-UNAT-1171, para. 50).

Moreover, “due deference must be shown to the Secretary-General’s decision on sanction because Article 101.3 of the United Nations Charter requires the Secretary-General to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in this regard” (see, e.g., Beda 2022-UNAT-1260, para. 57).

As such, the Tribunal will only interfere and rescind or modify a sanction imposed by the Administration “where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity” (see Fararjeh 2021-UNAT-1136, para. 33), which is not the case here.

The Secretary-General “has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose” (see, e.g., Nyawa 2020-UNAT-1024, para. 89; Ladu 2019- UNAT-956, para. 40).

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mihyar

## Entity

DSS

## Case Number(s)

UNDT/GVA/2023/002

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

30 May 2023

## Duty Judge

Judge Bravo

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary measure or sanction  
Disciplinary matters / misconduct

## Applicable Law

## Staff Rules

- Chapter X

## UN Charter

- Article 101.3

## Related Judgments and Orders

2013-UNAT-302

2010-UNAT-024

2015-UNAT-537

2019-UNAT-956

2020-UNAT-1024

UNDT/2022/085

2023-UNAT-1340

2022-UNAT-1216

2022-UNAT-1260

2021-UNAT-1171

2010-UNAT-100

2015-UNAT-505

2021-UNAT-1167

2021-UNAT-1184

2015-UNAT-523

2021-UNAT-1136