

# UNDT/2023/085, Bista

## UNAT Held or UNDT Pronouncements

While Nepalese law and custom may be relevant based on the Applicant's reluctance to culturally accept this designation of half-brother as applicable to him, Nepalese law cannot be deemed the applicable law of the United Nations when referring to employment matters within the Organization. The applicable law of the United Nations is seen and accepted as is promulgated in the Staff Regulations and Rules of the United Nations. The latter applies to employment matters.

While the Applicant wanted to raise his preferred belief that the law of Nepal should apply because he is Nepalese and so is his half-brother SRB, it would not be possible to call upon staff members of the United Nations to adhere to the rules of the Organization if they were permitted to argue that the law of their respective country of birth was different.

The Tribunal held the applicable law in the cases before the Tribunal is the law of the United Nations. The law of the United Nations includes brother and half-brother as subsumed under the definition of "relatives" who should be disclosed on PHP forms if they happen to be employed by the United Nations.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the disciplinary measure imposed on him of separation from service with compensation *in lieu* of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii).

The Applicant argued that he should not have been separated from service for making a false declaration in his PHP form. He states that he has a brother, SRB, who joined the Organization with BINUCA in 2011.

## Legal Principle(s)

In disciplinary cases, the Tribunal is called upon to examine the following: (i) whether the facts on which the disciplinary measure is based have been established (ii) whether the established facts amount to misconduct; (iii) whether the staff member's due process rights were respected and (iv) whether the sanction is proportionate to the offence.

The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. Where termination is the possible outcome such as in this case, the standard of proof of clear and convincing evidence meaning that the probability that the misconduct occurred is very high.

Where there is undisputed evidence that a staff member has responded untruthfully to a screening question in the PHP and then certified the truthfulness of the PHP, then the evidentiary standard of clear and convincing evidence is met, and serious misconduct is established.

The Administration is under no obligation to establish the intent of a staff member - a staff member may be held responsible for providing false information when there is negligence.

## Outcome

Dismissed on merits

## Outcome Extra Text

In light of the facts that emerged from the submissions of the parties and the applicable law, the Tribunal was unable to find a reason to deem the disciplinary measure imposed of dismissal unlawful. The dismissal was proportionate, fair and by no means irregular in the circumstances.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Bista

## Entity

UNSMIL

## Case Number(s)

UNDT/NBI/2022/119

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

14 Aug 2023

## Duty Judge

Judge Belle

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary sanction

Termination (of appointment)

## Applicable Law

## Former Staff Regulations

- Regulation 1.2(b)

## Staff Rules

- Rule 1.5
- Rule 4.7

## Related Judgments and Orders

2020-UNAT-1006

2019-UNAT-918

2019-UNAT-913

2015-UNAT-550

2013-UNAT-302

2011-UNAT-164

2019-UNAT-955

2013-UNAT-362

2021-UNAT-1156