

2022-UNAT-1239, Hassan Saleh

UNAT Held or UNDT Pronouncements

UNAT held that Mr. Saleh's complaints of procedural unfairness were unsustainable for the reasons stated by the UNDT and he had not discharged the burden incumbent upon him to satisfy the Appeals Tribunal that the UNDT Judgment was defective in that regard. He merely repeated the untenable submissions he made before the UNDT.

UNAT took note that Mr. Saleh admitted to two counts of fraud. UNAT then held that Mr. Saleh's conduct unquestionably damaged the trust relationship and the UNDT was correct to defer to the reasonable conclusion of the Administration that the damage was irreparable and outweighed the other mitigating considerations that the USG/DMSPC properly identified and took into account. As the Secretary-General correctly argued, retaining Mr. Saleh in service would be irreconcilable with the values of the Organization. The imposed sanction of separation from service without termination indemnity is explicitly provided for in Staff Rule 10.2(a)(viii), is in line with the past cases involving similar misconduct and is manifestly proportionate. In light of his fraudulent misconduct, Mr. Saleh had no right to receive a termination indemnity.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2021/069, the Dispute Tribunal found that the charges against Mr. Saleh for claiming medical insurance reimbursement for certain treatments that he did not receive were established by clear and convincing evidence, namely by his own admission. The UNDT determined that the established facts amounted to misconduct and the imposed disciplinary measure was in line with measures imposed in past similar cases. The UNDT further found that Mr. Saleh's due process rights were respected as he had been properly informed of the subject and purpose of the investigative interview and afforded sufficient notice during the investigation.

Legal Principle(s)

Fraud and dishonesty are serious misconduct. Any form of dishonest conduct, deception or fraud compromises the necessary relationship of trust between the Organisation and a staff member and will generally warrant the termination of employment. While the decision to terminate employment necessarily involves the consideration and weighing of a number of factors, both mitigating and aggravating, in instances of dishonesty the severity of the misconduct tends to outweigh other mitigating considerations such as length of service, a clean disciplinary record, difficult personal circumstances, expressions of remorse and the like. The reason for that is dishonesty by a staff member invariably seriously damages or destroys the relationship of mutual trust and confidence in a way that renders the continuation of a quasi-fiduciary employment relationship untenable or even intolerable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Hassan Saleh

Entity

UN Secretariat

Case Number(s)

2021-1593

Tribunal

UNAT

Registry

New York

Date of Judgement

13 Jul 2022

President Judge

Judge Murphy

Judge Colgan

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

Applicable Law

UNAT Statute