

2022-UNAT-1254, Francoise Xavier Nsabimana

UNAT Held or UNDT Pronouncements

As a preliminary matter, UNAT held that the Joint Appeals Board (JAB) had provided a decision as required by Article 2(10) of the UNAT Statute and therefore UNAT had jurisdiction to hear the appeal. Further, UNAT held that an oral hearing would not assist with the expeditious and fair disposal of the case as required by Article 18(1) of the UNAT Rules of Procedure and therefore denied the request for an oral hearing. UNAT held that there was no error in the JAB's decision affirming the contested decision of wrongdoing following the Appellant's failure to report to work and holding of simultaneous employment at two entities, while at IFAD, without disclosing this or obtaining appropriate authorisation from IFAD; and his failure to consult the Ethics Office about his NGO affiliations. UNAT held that it had not detected any error in the JAB ruling on the proportionality of the sanction to the misconduct. UNAT held that, although it did not always agree with the language used by the JAB in its decision, there was no error in the JAB conclusion which affirmed the contested disciplinary measure of summary dismissal imposed on the Appellant. UNAT dismissed the appeal and affirmed the JAB decision.

Decision Contested or Judgment/Order Appealed

The Appellant contested the decision to dismiss him from service for misconduct in the form of failing to report to work and holding of simultaneous employment at two entities; and failure to consult the Ethics Office about his outside activities, essentially NGO affiliations.

Legal Principle(s)

UNAT cannot conduct a review without a decision from a neutral first instance process. In disciplinary cases, the tribunals will examine: whether the facts on which the disciplinary measure is based have been ascertained by a preponderance of evidence (or where termination is a possible sanction, the facts must be established by clear and convincing evidence); whether the established facts amount to misconduct; whether the sanction is proportionate to the offence; and whether the staff member's due process rights were respected.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Francoise Xavier Nsabimana

Entity

IFAD

Case Number(s)

2021-1596

Tribunal

UNAT

Registry

New York

Date of Judgement

12 Aug 2022

President Judge

Judge Knierim

Judge Raikos

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Unauthorised outside activities and conflict of interest

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

Disciplinary sanction

Applicable Law

Agreements, conventions, treaties (etc.)

IFAD Staff Regulations and Rules

Laws of other entities (rules, regulations etc.)

Other UN issuances (guidelines, policies etc.)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2.10

Related Judgments and Orders

2019-UNAT-957