

2022-UNAT-1301, Koffi Gilles Wilfried Amani

UNAT Held or UNDT Pronouncements

The UNAT held that because the possible error in the assessment of the facts by the UNDT had no bearing on the outcome of the case, the Secretary-General's cross-appeal could not be received.

The UNAT found that although an Ivorian Court judgment, finding the staff member guilty of fraud, had not been cited in the sanction letter, this was inconsequential because it was clear from the record that he had been aware of the judgment when he applied for the position and completed the PHP specifying "no" to the question whether he had "ever been indicted, fined or imprisoned for the violation of any law (excluding minor traffic violations)?" The UNAT was of the view that his dispute against the nature of the Ivorian Court documents and the validity of its judgment was without merit and that the UNDT had been correct in determining that his failure to disclose relevant information amounted to misconduct.

The UNAT noted that his arguments on the disproportionality of the sanction were not receivable as they had not been raised before UNDT.

The UNAT dismissed the appeal and the cross-appeal and affirmed Judgment No. UNDT/2021/137.

Decision Contested or Judgment/Order Appealed

A former staff member contested the decision to separate him from service on disciplinary grounds with compensation in lieu of notice and termination indemnity.

In Judgment No. UNDT/2021/137, the UNDT dismissed the application. The UNDT found that the decision to dismiss the staff member from service was justified by

clear and convincing evidence on the ground of submitting false information in his personal history profile (PHP), namely, a negative answer with regard to prior indictments.

The staff member appealed and the Secretary-General cross-appealed.

Legal Principle(s)

The rule that a party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds is not absolute. Before an appeal may be allowed, the judgment of the UNDT must entail a concrete and final decision which generates the harm that constitutes the condition *sine qua non* of any appeal.

If there are reasons for a finding of consequential procedural errors in a judgment of a national court, it is not for the UNDT to pronounce on the issue. Rather, it would be incumbent upon the party suffering the adverse effects of such a judgment to request its modification or annulment in the national court system. When it comes to administrative disciplinary sanctions based on decisions by national courts, the role of the UNDT and of the UNAT is limited to assessing whether the disciplinary sanction based on the national court was lawful.

As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal. Dishonest conduct by definition implies an element of intent or some element of deception. A false answer in an application form is *prima facie* proof of dishonesty, shifting the evidentiary burden to the maker of the false statement to adduce sufficient evidence of innocence.

Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Koffi Gilles Wilfried Amani

Entity

MINUSMA

Case Number(s)

2022-1653

Tribunal

UNAT

Registry

New York

Date of Judgement

23 Dec 2022

President Judge

Judge Knierim

Judge Raikos

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Dismissal/separation

Fraud, misrepresentation and false certification

Proportionality of sanction

Discretionary authority
Jurisdiction / receivability (UNAT)
Jurisdiction / receivability (UNDT or first instance)
Disciplinary matters / misconduct

Applicable Law

Other UN issuances (guidelines, policies etc.)

- ICSC Standards of Conduct for the International Civil Service

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(b)
- Regulation 1.2(c)

UNDT RoP

- Article 19

Related Judgments and Orders

2010-UNAT-048
2013-UNAT-361
2014-UNAT-466
UNDT/2021/137
2017-UNAT-781
2021-UNAT-1156