

UNDT/2023/056, Rizqy

UNAT Held or UNDT Pronouncements

Receivability

The Respondent challenged the receivability of the application.

The Tribunal noted that the application filed on 2 March 2022 via email was essentially the same as that filed on 16 April 2022 via the eFiling portal. Consequently, in line with Practice Direction No. 4, para. 11, the Tribunal found that the present application was receivable.

Merits

In the present case, this Tribunal examined the following issues:

a. Whether the facts on which the disciplinary measure was based have been established according to the applicable standard.

The Tribunal examined the evidence on record, including the investigation report and found that the facts on which the disciplinary measure was based had been established through clear and convincing evidence. The evidence showed that, on 6 June 2018, the Applicant submitted three false invoices for reimbursement to CIGNA.

b. Whether the established facts legally amount to misconduct under the Staff Regulations and Rules.

The Tribunal found that the Applicant's behaviour as per the established facts amounted to misconduct.

The Tribunal agreed with the Respondent in that by submitting false invoices, the accuracy of which she certified, in order to obtain reimbursement for medical expenses from Cigna, the Applicant violated staff regulations 1.2(b) and 1.2(q), and section 10.1 of ST/AI/2015/3 (Medical insurance plan for locally recruited staff at designated duty stations away from Headquarters).

Therefore, the Tribunal considered that the Applicant failed to uphold the highest standards of integrity and failed to exercise reasonable care in utilizing the MIP, a property and asset of the Organization.

c. Whether the disciplinary measure applied is proportionate to the offence.

The Tribunal consulted the Compendium of Disciplinary Measures from 1 July 2009 and 31 December 2021 and noted that in similar cases involving the submission of false medical insurance claims, staff members were often separated from service without termination indemnity whereas the Applicant received termination indemnity as her past long service was properly considered as a mitigating factor.

Therefore, the Tribunal considered that the disciplinary measure imposed on the Applicant was proportionate to the offence committed

d. Whether the Applicant's due process rights were respected during the investigation and the disciplinary process.

The Tribunal found that the Applicant's allegations of procedural irregularities were unsubstantiated and that her due process rights were respected during the investigation and the disciplinary process.

Consequently, the Tribunal found that the contested decision was lawful.

Decision Contested or Judgment/Order Appealed

The decision to impose on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity.

Legal Principle(s)

The Appeals Tribunal has held that judicial review is focused on how the decision-maker reached the impugned decision, and not on the merits of the decision (*Sanwidi* 2010-UNAT-084 and *Santos* 2014 UNAT 415).

According to the jurisprudence of the Appeals Tribunal, when the disciplinary sanction results in separation from service, the alleged misconduct must be established by clear and convincing evidence. This standard of proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. In other words, it means that the truth of the facts asserted is highly probable (*Molari* 2011-UNAT-164).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Rizqy

Entity

MINURSO

Case Number(s)

UNDT/NY/2022/022

Tribunal

UNDT

Registry

New York

Date of Judgement

14 Jun 2023

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 11.4(b)

UNDT Statute

- Article 8.1(ii)

Related Judgments and Orders

2010-UNAT-084

2014-UNAT-415

2010-UNAT-018

2010-UNAT-024

2011-UNAT-164

2013-UNAT-280

2010-UNAT-040

2017-UNAT-781
2021-UNAT-1156
2013-UNAT-336
2013-UNAT-295