

2023-UNAT-1376, Samuel Bwalya

UNAT Held or UNDT Pronouncements

Mr. Bwalya appealed.

The UNAT found that Mr. Bwalya had not demonstrated that the UNDT erred in finding that it had been established by clear and convincing evidence that he had committed misconduct by instructing a UNDP staff member to forge a backdated Memorandum of Understanding between the Ethiopian Ministry of Agriculture and the private firm Digata and to make a misrepresentation in a second document, intentionally acting to avoid or deviate from UNDP's Financial Regulations, Rules and Procedures through the creation of these documents, and demonstrating favouritism in the award of a one-million dollar contract.

The UNAT further found that the UNDT did not commit any errors in its assessment of the credibility of witness testimony. Finally, the UNDT dismissed Mr. Bwalya's allegations that there were irregularities in the investigation and that there was a "conspiracy" against him and that the charges against him were "invalid".

The UNAT thus dismissed the appeal and affirmed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Bwalya contested the disciplinary measure imposed on him of separation from service with compensation in lieu of notice and without termination indemnity.

The UNDT found that it had been established by clear and convincing evidence that Mr. Bwalya committed misconduct by instructing a UNDP staff member to forge a backdated Memorandum of Understanding between the Ethiopian Ministry of Agriculture and the private firm Digata and to make a misrepresentation in a second document, intentionally acting to avoid or deviate from UNDP's Financial Regulations, Rules and Procedures through the creation of these documents, and demonstrating favouritism in the award of a one-million dollar contract.

The UNDT found that these established facts amounted to misconduct.

The UNDT was further satisfied that Mr. Bwalya's due process rights had been respected, and that the sanction imposed by the Administration was proportionate to the offence.

The UNDT therefore dismissed the application.

Legal Principle(s)

The oral hearing before the UNAT does not aim to provide any further oral evidence or otherwise, but to discuss elements of fact and of law which are already on the record.

In disciplinary cases, the Dispute Tribunal must establish whether the facts on which the sanction is based have been established by clear and convincing evidence when termination is a possible outcome. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; it means that the truth of the facts asserted is highly probable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Samuel Bwalya

Entity

UNDP

Case Number(s)

2022-1710

Tribunal

UNAT

Registry

New York

Date of Judgement

7 Aug 2023

President Judge

Judge Knierim

Judge Murphy

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dismissal/separation

Procurement irregularities

Oral hearings

Referral for accountability

Disciplinary matters / misconduct

Procedure (first instance and UNAT)

Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.2
- Article 8.3

UNRWA DT Statute

- Article 10.8

UNDT RoP

- Article 18.1

UNDT Statute

Related Judgments and Orders

2022-UNAT-1235

2019-UNAT-915