

UNDT/2023/110, O'Brien

UNAT Held or UNDT Pronouncements

The allegations that the Applicant improperly used his UNDP-issued laptop to access websites that contained pornography and other sexually explicit material and advertised escort services, has been established by clear and convincing evidence based on the investigations forensic report of his computer, the Applicant's partial admittance and several contradictions. There is also clear and convincing evidence that the Applicant engaged in three instances of unauthorised outside activities by being the Director and major shareholder of a company, and engaging in other business ventures in conjunction with said company and others. By engaging in unauthorised outside activities, especially in a field of work that overlaps with the Applicant's position in UNDP, the Applicant's conduct also gave rise to potential conflict of interest. Each of the Applicant's actions constitutes misconduct. The disciplinary measure is proportionate to the offence and in line with established jurisprudence and past Tribunal practice.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to impose on him the disciplinary sanction of separation from service with compensation in lieu of notice and without termination indemnity.

Legal Principle(s)

When termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing evidence requires more than a preponderance of evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable.

The role of the Dispute Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as

misconduct, and whether the sanction is proportionate to the offence.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

O'Brien

Entity

UNDP

Case Number(s)

UNDT/GVA/2022/021

Tribunal

UNDT

Registry

Geneva

Date of Judgement

2 Oct 2023

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Misuse of or failure to exercise reasonable care in relation to UN property or assets

Unauthorised outside activities and conflict of interest

Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 1.2
- Rule 10.1(a)

Laws of other entities (rules, regulations etc.)

- UNDP ICT Policy
- UNDP Legal Framework

Other UN issuances (guidelines, policies etc.)

- Standards of Conduct for the International Civil Service

Related Judgments and Orders

2011-UNAT-164

2021-UNAT-1167

2018-UNAT-859

2023-UNAT-1311

2019-UNAT-976

2019-UNAT-935

2018-UNAT-888

2017-UNAT-781

2015-UNAT-545

2013-UNAT-336