

UNDT/2023/124, Arnold

UNAT Held or UNDT Pronouncements

The undisputed facts are unambiguous and leave little room for different interpretations. An apology does not invalidate or undo the misconduct. The fact that the Applicant was not made aware of the negative impact of her practice has no relevance for the factual determination. As such, the Administration has established the facts underlying the disciplinary measure in question by preponderance of evidence.

The Applicant using expletives towards her subordinates and widely addressing her colleagues by nicknames in the workplace were compounded by her ignoring personal and professional boundaries by gifting a sex toy to one of her subordinates. These actions, taken together, cause concern to the Organization and undermine its confidence placed in the Applicant as a D-1 level senior manager. It is irrelevant whether the Applicant's conduct caused offence to a particular individual. By engaging in the actions in question, the Applicant violated staff regulations 1.2(a) and 1.2(f) as well as sec. 42 of the ICSC Standards of Conduct for the International Civil Service, and contravened the standards expected of a senior leader reflected therein. As such, the established facts legally amount to misconduct.

Having weighed all factors involved, the Tribunal cannot but conclude that the written censure was neither unlawful nor arbitrary, and fell within the range of reasonable disciplinary options.

The alleged irregularities are of no consequence on the factual determination.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to impose on her the disciplinary measure of written censure, in accordance with staff rule 10.2(a)(i), together with the managerial action of managerial coaching for one year.

Legal Principle(s)

In determining whether the standard of proof has been met, the Tribunal “is not allowed to investigate facts on which the disciplinary sanction has not been based and may not substitute its own judgment for that of the Secretary General”. (see Nadasan 2019-UNAT-918, para. 40).

The judicial review of decisions of whether misconduct has been established dictates that due deference be given to the Secretary-General in the exercise of its rule-making discretion. “The Administration is best placed to understand the nature of the work, the circumstances of the work environment and what rules are warranted by its operational requirements” (see AAD 2022-UNAT-1267, para. 62; Nadasan, para. 41).

The Tribunal “will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity” (see, e.g., Iram 2023-UNAT-1340, para. 86; Appellant 2022-UNAT-1216, para. 45).

Not every violation of an applicant’s rights would render the disciplinary sanction unlawful. “[O]nly substantial procedural irregularities will render a disciplinary measure unlawful” (see Sall 2018-UNAT-889, para. 33)

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Arnold

Entity

UNMIK

Case Number(s)

UNDT/GVA/2022/040

Tribunal

UNDT

Registry

Geneva

Date of Judgement

7 Nov 2023

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Inappropriate or disruptive behaviour
Disciplinary matters / misconduct

Applicable Law

Staff Rules

- Rule 10.1(a)
- Rule 10.2(a)(i)
- Rule 10.3(a)

- Rule 10.3(b)

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(f)

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/8

Other UN issuances (guidelines, policies etc.)

- Standards of Conduct for the International Civil Service

UN Charter

- Article 101.3

Related Judgments and Orders

2013-UNAT-302

2010-UNAT-024

2015-UNAT-537

2019-UNAT-956

2020-UNAT-1024

2020-UNAT-1006

2019-UNAT-918

UNDT/2022/135

UNDT/2021/065

2022-UNAT-1267

2023-UNAT-1333

UNDT/2020/189

2021-UNAT-1171

2023-UNAT-1340

2022-UNAT-1216

2022-UNAT-1260

UNDT/2023/040
2018-UNAT-889
2020-UNAT-1061
2017-UNAT-782
UNDT/2021/127
UNDT/2023/066
2017-UNAT-761