

UNDT/2023/116, Sheralov

UNAT Held or UNDT Pronouncements

While regrettably there is neither an eyewitness to the physical assault in question nor any security camera that could have captured the assault on video, the complainant provided, under oath, a detailed and coherent account of the physical assault in question, the circumstances leading to it and its aftermath. His account of the physical assault and subsequent events is corroborated by other witnesses' testimonies, the documentary evidence and/or the Applicant's contemporaneous behaviour, i.e., his attempt to bring some soft drinks to the complainant a few hours after the physical assault. There is no inconsistency that could have undermined the complainant's credibility and reliability.

The inconsistencies between the Applicant's testimony and the prevailing evidence on record, on the one hand, and the internal contradictions between his interview record and his comments on the allegations of misconduct, on the other hand, suggest that he may have made false statements to cover up his misbehaviour. The Applicant's allegation of fabrication of the accusation, which is made in furtherance of his collusion argument, further undermines his credibility.

Thus, the Administration has established the facts by clear and convincing evidence.

The Applicant failed to establish any substantial procedural irregularities. Even if established, the irregularities identified by the Applicant are of no consequence given the kind and amount of evidence proving his misconduct.

Decision Contested or Judgment/Order Appealed

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

Legal Principle(s)

When the disciplinary process results in separation from service, the alleged misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. 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).

Where key facts are disputed, the Tribunal is required to "make explicit findings pertaining to the credibility and reliability of the evidence and provide a clear indication of which disputed version it prefers and explain why" (see AAC 2023-UNAT-1370, para. 47).

Striking another person is a serious affront to his or her dignity and personal worth. Physical assault is also prohibited by staff rule 1.2(f) and is contrary to the aims and principles of the Organization as enshrined in the Preamble to the Charter of the United Nations (see Halidou 2020- UNAT-1070, para. 28).

The Administration has broad discretion when it comes to the choice of a disciplinary sanction. Due deference must be shown to the Secretary-General's decision on sanction.

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

Sheralov

Entity

DSS

Case Number(s)

UNDT/GVA/2022/037

Tribunal

UNDT

Registry

Geneva

Date of Judgement

31 Oct 2023

Duty Judge

Judge Sun

Language of Judgment

English

Appeal Number

2013-UNAT-302

2010-UNAT-024

2015-UNAT-537

2019-UNAT-956

2020-UNAT-1024

2011-UNAT-164

2017-UNAT-776

2022-UNAT-1187

2020-UNAT-1033

2019-UNAT-918

2023-UNAT-1370

2020-UNAT-1070

2023-UNAT-1340

2022-UNAT-1216

2022-UNAT-1260

2017-UNAT-781

2023-UNAT-1318

2020-UNAT-1024

2019-UNAT-956

2018-UNAT-889

2020-UNAT-1061

2017-UNAT-782

UNDT/2021/127

UNDT/2023/066

2016-UNAT-699

2014-UNAT-470

2017-UNAT-733

UNDT/2022/074

2017-UNAT-761

Issuance Type

Judgment

Categories/Subcategories

Termination of appointment

Standard of review (judicial)

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Staff Rules

- Rule 1.2(f)
- Rule 10.1(a)
- Rule 10.3
- Rule 1.2(b)

Staff Regulations

- Regulation 1.2(a)

UN Charter

- Article 101.3