

UNDT/2023/123, Reilly

UNAT Held or UNDT Pronouncements

It was established by the evidence on record that the Applicant engaged in unauthorized contacts with Member States and the EU, media outlets and social media. It was also undisputed that said external communications included allegations that the UN and its officials were involved in serious acts of misconduct and crimes of international law, including complicity in genocide.

What was left to be determined was whether the Applicant had a lawful justification for her conduct under the Protection Against Retaliation (PAR) Policy, and whether said conduct legally amounted to misconduct.

With respect to a right to speak and engage with the media and social media in the context of the Applicant's actions, the Tribunal found that her conduct could not be legally justified and constituted serious misconduct.

With respect to a right to externally report misconduct through letters sent by the Applicant to Member States and the EU, the Tribunal accepted that the Applicant's intention was indeed to report what she considered misconduct to an external party connected to the issues. Having met the three cumulative criteria under sec. 4 of the PAR Policy, the Applicant's conduct in this respect was protected and did not constitute misconduct.

Based on the gravity of the Applicant's public campaign against the Organization and some of its officials, which continued defiantly even after she was formally advised to cease, the Tribunal found her conduct to be fundamentally incompatible and irreconcilable with the proper discharge of her duties as an international civil servant. The established facts legally amounted to misconduct and the sanction was proportionate to the offence.

Decision Contested or Judgment/Order Appealed

The Applicant contests the disciplinary sanction of separation from service with compensation in lieu of notice and half 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.

It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him, nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General. 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

Reilly

Entity

OHCHR

Case Number(s)
UNDT/GVA/2022/006
Tribunal
UNDT
Registry
Geneva
Date of Judgement
7 Nov 2023
Duty Judge
Judge Tibulya
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Disciplinary measure or sanction
Unauthorised outside activities and conflict of interest
Disciplinary matters / misconduct
Applicable Law
Staff Rules

- Rule 1.2(a)
- Rule 1.2(j)
- Rule 1.2(t)

ISA Staff Regulations and Rules

- Rule 10.1

Former Staff Rules

- Rule 10.2

Former Staff Regulations

- Regulation 1.2(f)
- Regulation 1.2(i)

Staff Regulations

- Regulation 1.2(g)
- Regulation 10.1

Administrative Instructions

- ST/AI/2000/13
- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2017/2/Rev.1

Agreements, conventions, treaties (etc.)

- Standards of Conduct for the International Civil Service

Related Judgments and Orders

2011-UNAT-164

2021-UNAT-1167

2012-UNAT-254

UNDT/2014/102