

UNDT/2023/145, Theunens

UNAT Held or UNDT Pronouncements

The Tribunal found that the sanction imposed was proportionate under all the relevant circumstances. Given the serious and protracted nature of the misconduct, and the Applicant's failure to correct his misconduct despite repeated input from others, it was clear that a non-disciplinary "administrative action" would not have achieved the required result. Following its detailed examination of the evidence on file and, particularly, the testimonies heard at the hearing on the merits, the Tribunal found that the sanction of demotion and deferred promotion eligibility was suitable to the facts and was balanced under all the circumstances. Consequently, the Tribunal decided to affirm the disciplinary decision imposed on the Applicant in all respects and to reject the application in its entirety.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to impose on him the disciplinary measure of demotion of one grade with a three-year deferment of eligibility for consideration for promotion, pursuant to staff rule 10.2 (a)(vii).

Legal Principle(s)

Under the established jurisprudence, the Secretary-General's discretion to sanction is limited by the proportionality principle "by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result. The essential elements of proportionality are balance, necessity and suitability.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Theunens

Entity

UNIFIL

Case Number(s)

UNDT/NBI/2023/016

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 Dec 2023

Duty Judge

Judge Wallace

Language of Judgment

English

Appeal Status

Appealed

Issuance Type

Judgment

Categories/Subcategories

Abuse of authority

Religion

Disciplinary matters / misconduct

Discrimination and other improper motives

Applicable Law

Secretary-General's bulletins

- SGB/2008/5

Former Staff Regulations

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

Staff Rules

Related Judgments and Orders

2015-UNAT-550

2023-UNAT-1370

2021-UNAT-1172

2022-UNAT-1194