

UNDT/2023/125, Shaban

UNAT Held or UNDT Pronouncements

A lack of cooperation is not always a relevant circumstance in every case to be taken as aggravating factor. Sometimes, if the lack of cooperation is not serious, it may not be taken as an aggravating circumstance. However, the nature of the case may affect how lack of cooperation during an investigation is viewed. Being dishonest and misleading during the investigation may be considered serious and be taken as a ground of aggravation. Therefore, it cannot be concluded that a lack of cooperation can never be considered as an aggravating circumstance.

While the Appeals Tribunal has repeatedly found that the proportionality of a sanction is usually within the discretion of the Administration, this discretion is not absolute, and, in particular circumstances, a sanction may be changed after judicial review by the Dispute Tribunal. The Administration has an obligation to act in good faith and comply with applicable laws.

The Applicant argued that the imposed sanction is disproportionate to the offense. He claimed that the practice of the High Commissioner in similar cases shows that “no one else ever” was separated for similar conduct.

The Tribunal found that the High Commissioner did not err when he based his sanction on the past practice of the Secretary-General. The Secretary-General's practice demonstrates that separation from service was not an excessive sanction for cheating in a competitive recruitment exercise setting.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's decision to separate him from service with compensation in lieu of notice and the payment of half his termination indemnity pursuant to staff rule 10.2(a)(viii). This disciplinary measure was imposed on him following a finding of misconduct for having cheated in a written test that was administered as part of a selection exercise.

Legal Principle(s)

Staff rule 10.2(a) offers many options of disciplinary measures. The best measure for each case is decided by the Administration, which enjoys considerable discretion in this respect. The Administration considers the merits of the case and its specifics, as well as any aggravating or mitigating circumstances.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Shaban

Entity

UNHCR

Case Number(s)

UNDT/NBI/2023/045

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

15 Nov 2023

Duty Judge

Judge Waktolla

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Inappropriate or disruptive behaviour

Proportionality of sanction

Dismissal/separation

Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(g)

Staff Rules

- Rule 1.5(a)
- Rule 10.2(a)(viii)

Related Judgments and Orders

2023-UNAT-1332

UNDT/2011/061

2023-UNAT-1335

2019-UNAT-918

2010-UNAT-084

2018-UNAT-859

2015-UNAT-523
2022-UNAT-1239
2017-UNAT-781