

# UNDT/2024/022, Fultang

## UNAT Held or UNDT Pronouncements

The Tribunal observed that the facts of this case were very clear from the testimony and record. The Applicant admitted that the hotel receipts he provided to the Organization were false. The Tribunal, thus, held that the Respondent had proven by overwhelming evidence, beyond all possible doubt, that the Applicant submitted false receipts for reimbursement and that, as a result, he was paid USD18,519.12. The Tribunal, further, established that there was clear and convincing evidence that the Applicant owed the Organization at least USD17,213.

Regarding misconduct, the Tribunal concluded that the Applicant committed fraud, a prohibited conduct and, therefore, his actions amounted to misconduct.

On the due process prong, the Tribunal rejected the Applicant's argument that his due process rights were violated. The Tribunal rather concluded that his rights were respected during the investigation and disciplinary process.

On whether the sanction was proportionate to the offence, the Tribunal noted that the Applicant did not specifically submit any argument on the issue of proportionality. However, based on the governing legal framework and the practice of the Organization, the Tribunal found that the sanctions imposed on the Applicant for his misconduct were proportionate to the offenses he committed.

## Decision Contested or Judgment/Order Appealed

The Applicant contested decisions of UNISFA to: a. Impose on him the disciplinary measure of dismissal in accordance with staff rule 10.2(a)(ix); b. Require him to reimburse the Organization for its financial loss up to the amount of USD17,213.00 in accordance with staff rules 10.1(b) and 10.2(b)(ii); and c. Recover said amount (USD17,213.00), to the extent possible, from his final entitlements or emoluments, in accordance with staff rule 3.18(c)(ii).

## Legal Principle(s)

The role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements: i. Whether the facts on which the disciplinary measure was based were established by clear and convincing evidence; ii. Whether the facts established amount to misconduct; iii. Whether the staff member's due process rights were guaranteed during the entire proceeding; and iv. Whether the sanction is proportionate to the gravity of the offence.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Fultang

## Entity

UNISFA

## Case Number(s)

UNDT/NBI/2023/010

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

24 Apr 2024

## Duty Judge

Judge Wallace

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters/ misconduct

## Applicable Law

Staff Rules

- Rule 10.1(b)
- Rule 10.2(a)(ix)
- Rule 10.2(b)(iii)
- Rule 3.18(c)(iii)

## Related Judgments and Orders

2023-UNAT-1370

2015-UNAT-550

2010-UNAT-084

2020-UNAT-1033

2022-UNAT-1220

2023-UNAT-1330

2010-UNAT-063

2023-UNAT-1403

2020-UNAT-1024