

2024-UNAT-1453, Timothy Kennedy

UNAT Held or UNDT Pronouncements

The UNAT held that the Administration provided a thorough and detailed analysis of the factors required to be considered in the disciplinary context. This included : the past practice of the Organization in comparable matters, the seriousness of the misconduct; whether the conduct was accidental, careless, reckless, or deliberate; whether the staff member followed procedures and was self-aware of the conduct; whether, given the staff member's experience, the misconduct was minor, substantive, or severe; the risk of damage to the Organization and staff; as well as any mitigating factors.

The UNAT highlighted that the staff member, an experienced professional with a long history of security-sensitive responsibility, not only made a significant error of judgment that exposed sensitive material to unauthorized persons, resulting in public disclosure but also failed to timely report his error. The UNAT found that his conduct posed a significant risk to the Organization and staff members.

Therefore, the UNAT concluded that the disciplinary measures imposed were well within the range of sanctions contemplated by Staff Rule 10.2(a), were not arbitrary, excessive, nor disproportionate, and were far from being the most extreme sanction available to the Administration. On the contrary, it held that the sanctions were appropriate to obtain the desired result of imposing a meaningful consequence for a serious violation of the Staff Regulations and Rules.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2023/072.

Decision Contested or Judgment/Order Appealed

A staff member with the Department of Safety and Security (DSS) contested the decision of the Administration of 22 February 2022 to impose on him the disciplinary measures of written censure with loss of four steps in grade (contested decision). These measures were imposed due to mishandling e-mail communications that became public and for failing to report the loss. They followed the issuance of Judgment No. 2021-UNAT-1184, which partially granted the staff member's appeal challenging the disciplinary measure imposed on him in October 2018. Those measures included a written censure, loss of four steps in grade, and deferment, for two years, of eligibility for consideration for promotion for the same misconduct.

In its Judgment No. 2021-UNAT-1184, the UNAT found that the UNDT erred by concluding that the sanctions imposed on the staff member were not proportionate, as they had not been adequately explained or justified by the Administration. Therefore, the UNAT rescinded the October 2018 decision and concluded that it was open to the Administration to issue a new administrative decision on disciplinary sanctions with adequate reasons, which it did on 22 February 2022.

In its Judgment No. UNDT/2023/072, the UNDT dismissed the staff member's application, concluding that the contested decision was proportionate to his misconduct and that the Administration had provided sufficient reasoning in its support.

Former staff member appealed.

Legal Principle(s)

The proportionality inquiry under Staff Rule 10.3(b) seeks to ensure that a disciplinary measure is reasonable and not more excessive than necessary to obtain the desired result. This analysis respects the need for decision-makers to balance legitimate concerns and respond to individual facts, while also meeting the obligation to treat staff members fairly and rationally.

It is necessary to consider, among other factors, the seriousness of the offence, the employment history of the staff member, the aggravating or mitigating factors, the context of the violation and whether similar violations have resulted in similar disciplinary measures.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Timothy Kennedy

Entity

DSS

Case Number(s)

2023-1847

Tribunal

UNAT

Registry

New York

Date of Judgement

23 Jul 2024

President Judge

Judge Ziadé

Judge Colgan

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Proportionality of sanction

Disciplinary matters / misconduct

Applicable Law

Secretary-General's bulletins

- ST/SGB/2004/15

Staff Regulations

Staff Rules

- Rule 10.1(a)
- Rule 10.2(a)
- Rule 10.3(b)
- Rule 1.2

Related Judgments and Orders

UNDT/2020/209

2021-UNAT-1184

UNDT/2023/072

2018-UNAT-859

2023-UNAT-1394

2023-UNAT-1311

2023-UNAT-1333

2010-UNAT-084

2021-UNAT-1136

2022-UNAT-1267

UNDT/2021/066