

2024-UNAT-1448, Ray Steven Millan

UNAT Held or UNDT Pronouncements

The UNAT noted that the staff member allowed an unauthorized female individual to board a United Nations vehicle assigned to him and to publicly commit acts of a sexual nature in the rear seat, bringing disrepute to the Organization and difficulties with the host country.

The UNAT found that the case was not one where the issues required the UNDT's determination of the credibility of contradicting testimonies of parties or witnesses and the lack of a UNDT hearing had not affected its decision. The UNDT appropriately considered the former staff member's admissions, as well as the video clip depicting the events in question.

The UNAT agreed with the UNDT that the lawfulness of the investigation had already been considered and determined by the UNDT in an earlier judgment.

The UNAT was of the view that the staff member had not discharged his burden to rebut the presumption of integrity and impartiality of the UNDT Judge.

The UNAT held that the staff member had failed to provide any corroborating medical evidence to support his contention that he was so ill that he could not have the mental capacity to commit the prohibited conduct.

The UNAT observed that the UNDT might not have addressed the staff member's criticism of a UNDT judge in the impugned Judgment because it was irrelevant to this matter as that judge had not been involved in the present case.

The UNAT found that the Secretary-General had considered all the relevant factors (aggravating and mitigating) and that the disciplinary measure imposed was consistent with prior precedent and proportionate to the offence, i.e. neither excessive nor unreasonable. The UNAT agreed with the UNDT that the staff member's conduct could not be tolerated given the "unprecedented" damage to the Organization's reputation.

The UNAT dismissed the appeal and affirmed the UNDT's Judgment.

Decision Contested or Judgment/Order Appealed

A former staff member contested the disciplinary decision to separate him from service with compensation in lieu of notice and without termination indemnity for permitting a female individual, external to the United Nations, to be transported unauthorized in a United Nations vehicle assigned to him, and who also publicly engaged in sexually suggestive behaviour in the vehicle.

In Judgment No. UNDT/2023/060, the UNDT dismissed the application.

The staff member appealed.

Legal Principle(s)

As a factual finding of misconduct is of serious import, the determination of misconduct should preferably be done in an oral hearing.

The burden to rebut the presumption of integrity and impartiality of the judge is not discharged by simply pointing out paragraphs and bullet points that have the same format, wording and syntax, including punctuation, as another judgment. The entire judgment must be reviewed to consider whether the presumption has been rebutted.

Only substantial procedural irregularities in the disciplinary investigation will render a disciplinary measure unlawful.

The Secretary-General has broad discretion in determining the appropriate disciplinary measure for the established misconduct and the Tribunal will only overturn a measure if it finds that it is excessive or unreasonable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ray Steven Millan

Entity

UNTSO

Case Number(s)

2023-1843

Tribunal

UNAT

Registry

New York

Date of Judgement

23 Jul 2024

President Judge

Judge Sandhu

Judge Colgan

Judge Gao

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Conduct

Dismissal/separation

Facts (establishment of) / evidence

Misuse of or failure to exercise reasonable care in relation to UN property or assets

Proportionality of sanction

Discretionary authority

Right to a hearing

Due process

Oral hearings

Disciplinary cases

Disciplinary cases

Disciplinary matters / misconduct

Due process

Investigation

Procedure (first instance and UNAT)

Standard of proof

Standard of review (judicial)

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(q)

Staff Rules

- Rule 10.2(a)(viii)
- Rule 10.3(b)

UNAT Statute

- Article 2

UNDT RoP

- Article 16.2

Related Judgments and Orders

UNDT/2023/060
UNDT/2023/059
UNDT/2021/152
2018-UNAT-819
2022-UNAT-1187
2023-UNAT-1384
2022-UNAT-1195
2022-UNAT-1308
2024-UNAT-1412
2022-UNAT-1259
2011-UNAT-164
UNDT/2021/145
2024-UNAT-1427
2018-UNAT-889
2015-UNAT-523
2024-UNAT-1449