

2024-UNAT-1456, Surendra Bista

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT erroneously concluded that there was clear and convincing evidence of the former staff member's knowledge that he was in a prohibited family relationship with another staff member, Mr. S.R.B.

Moreover, the UNAT found that even if the information provided by the former staff member was false, he could not have intended to mislead the Organization by providing or omitting it. On the contrary, the evidence established that when he made his relevant applications, he did not know, and had no reason to know, that Mr. S.R.B. was employed by the United Nations. In particular, the UNAT highlighted the undisputed fact that the former staff member and Mr. S.R.B. never discussed the nature of each other's employment during their communication on only two occasions over approximately 30 years. Consequently, the UNAT concluded that it was clear that it had not been, and could not have been, demonstrated to a clear and convincing evidential standard that he had either the knowledge or the intent to mislead the Secretary-General about his family relationship status.

The UNAT also highlighted that the prohibited family relationships specified in the Staff Regulations and Rules do not include what are known in some western societies as a "half-brother". Additionally, the PHP question referring to "relatives" was deemed equivocal and inconsistent with the Staff Rules' more specific and thereby tighter definition of prohibited family relationships.

The UNAT granted the appeal, reversed the Judgment No. UNDT/2023/085, rescinded the contested decision and set the compensation in lieu of rescission at two years' net-base salary, plus interest thereon.

Decision Contested or Judgment/Order Appealed

A former staff member with the United Nations Support Mission in Libya (UNSMIL) contested the decision of the Administration to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity. The former staff member was found to have committed serious misconduct by failing to disclose in his Personal History Profile (PHP) forms that his half-brother, Mr. S.R.B., was employed by the United Nations.

In its Judgment No. UNDT/2023/085, the UNDT concluded that the contested decision was lawful and dismissed the former staff member's application.

Former staff member appealed.

Legal Principle(s)

The principle that a failure to correctly respond to a clear and relevant question on a PHP form amounts to providing a false answer, from which dishonesty may normally be inferred based on the surrounding context and circumstances, still allows for cases where the facts do not establish an element of deliberate falsity.

The mental element of alleged misconduct, as opposed to the physical act or omission which constitutes such misconduct, involves two sub-elements: i) the conscious choice or exercise of free will to do or not to do the act; and ii) the intention to attain a desired result of doing so, perhaps called the knowing intention.

The prohibited family relationships specified in Staff Rule 4.7 do not include what are commonly known in some western societies as a “half-brother”.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Surendra Bista

Entity

UNSMIL

Case Number(s)

2023-1854

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jul 2024

President Judge

Judge Colgan

Judge Sandhu

Judge Savage

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary

Fraud, misrepresentation and false certification

Oral hearings

Burden of proof

Disciplinary matters / misconduct

Procedure (first instance and UNAT)

Applicable Law

Staff Rules

- Rule 4.7

UNAT RoP

- Article 18

UNDT RoP

- Article 16

Related Judgments and Orders

UNDT/2023/085

2013-UNAT-362

2021-UNAT-1156

2022-UNAT-1301
2024-UNAT-1427