

2024-UNAT-1462, Firas Mihyar

UNAT Held or UNDT Pronouncements

The UNAT first observed that the staff member dedicated parts of his appeal brief to challenging the findings of fact in an earlier UNDT judgment concerning his disciplinary case. The UNAT held that he was estopped from doing so because he did not appeal this earlier UNDT judgment.

The UNAT was satisfied that when the UNDT reviewed the disciplinary sanction imposed, the UNDT properly considered previous cases involving comparable misconduct, as well as aggravating and mitigating factors. The mitigating factors raised by the staff member were considered by the Administration, but they simply could not reduce the severity of the sanction. The UNAT held that by illegally interfering with a recruitment process, and failing to report the misconduct of his supervisor, the staff member had violated his fundamental obligations of integrity and honesty under the UN Charter and the Staff Regulations and Rules, and also undermined the credibility of the Organization.

The UNAT held that the Administration should not have considered the staff member's long service as "inapplicable", but this did not affect the outcome of the case. Likewise, the UNAT disagreed with the Administration considering the staff member's statements at a case management discussion in the disciplinary sanction letter. But the UNAT held that this also did not disturb the ultimate outcome.

The UNAT held that there is a high bar for interfering with the Administration's disciplinary decision and found that the imposed sanction was within a reasonable range.

The appeal was dismissed, and the UNDT Judgment affirmed.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2023/040, the United Nations Dispute Tribunal dismissed the staff member's application challenging the disciplinary sanction of written censure and loss of two steps in grade. This sanction had been re-imposed following the Dispute Tribunal's prior rescission of the disciplinary measure and remand for redetermination by the Administration in an earlier UNDT Judgment.

The staff member appealed.

Legal Principle(s)

A staff member cannot bring the same case twice before the UNDT.

Deference is given to the broad discretion of the Administration when it comes to the choice of disciplinary sanction; however, the discretionary authority of the Administration is not unfettered.

A decision on the appropriate sanction for misconduct involves a value-judgment and the consideration of a range of factors.

The Administration's consideration of certain factors as mitigating factors does not automatically result in a less severe sanction.

As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant a disciplinary sanction or even a dismissal, if necessary.

As complex factual circumstances vary in different cases and the ranking of values to which the Organization attaches importance may change over time, it is well within the discretion of the Administration to reach different conclusions from case to case since it is the Administration who carries out every specific administrative action and deals with the staff members.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Firas Mihyar

Entity

UNAMI

Case Number(s)

2023-1827

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Aug 2024

President Judge

Judge Gao

Judge Colgan

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Appeals of final judgments

Oral hearings

Disciplinary matters / misconduct

Judgment-related matters

Procedure (first instance and UNAT)

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 10.3(b)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 8.3

UNDT Statute

- Article 11.3

Related Judgments and Orders

UNDT/2023/040

2018-UNAT-859

2022-UNAT-1234

2010-UNAT-051

2017-UNAT-781

2023-UNAT-1339

2015-UNAT-523

2023-UNAT-1320