

# **UNDT/2024/045, Yaker**

## **UNAT Held or UNDT Pronouncements**

Having considered the case record, the Tribunal found that the Applicant did not contest the facts upon which the disciplinary measure was based. He did not contest either that his actions legally amounted to misconduct or that his due process rights were observed. Accordingly, the main issue in the present case was whether the disciplinary measure imposed was proportionate to the offense committed. However, as the proportionality of the sanction cannot be reviewed in isolation, the Tribunal deemed it appropriate to refer to the established facts and the misconduct as per the sanction letter.

The Tribunal then turned to examine the proportionality of the sanction. According to the Sanction Letter, the USG/DMSPC considered in his assessment of the proportionality of the disciplinary measure, mitigating and aggravating factors as well as the Organization's past practice in comparable matters involving political activities and unauthorized outside activities. As mitigating factors, the USG/DMSPC considered the Applicant's i) early admission; ii) expression of remorse; and iii) long service and positive performance. As aggravating factors, the USG/DMSPC considered i) the Applicant's repeated engagement in misconduct over an extended period; ii) his unauthorized outside activities involved multiple associations; iii) his conduct violated multiple Staff Regulations and Rules; and iv) his engagement in political activities had exposed the Organization to reputational risk. The Applicant challenged the proportionality of the sanction on several grounds. He mainly claimed that the Administration failed to properly consider the issues below as mitigating circumstances.

The Applicant's cooperation with OIOS:

The Applicant alleged that he fully cooperated with OIOS and immediately ceased to engage further in the alleged misconduct. The Tribunal found that the Applicant's argument was misconceived as he was legally obliged to cooperate with the investigation as per staff rule 1.2 (c) and as such, this was not a mitigating factor.

Similarly, the fact that he cut ties with the associations when he was notified of the allegations against him does not change the Applicant's misconduct, which had already occurred, and it is not a mitigating factor either as refraining from misconduct is the minimum requirement expected from every staff member.

#### The Applicant's involvement in Associations:

The Tribunal found that given the nature of his activities, the Applicant's active involvement in several Associations went far beyond the scope of para. 5.1 of ST/AI/2000/13. Likewise, the Applicant should have sought and obtained the Secretary-General's prior approval to engage in outside activities and ensure that his activities were compatible with his status as an international civil servant. He failed to do so. Furthermore, in representing the interests of these Associations, rather than the interests of the Organization, in his dealings with entities of the UN Member States, he placed himself in a situation of conflict of interest and breached his duty, as a staff member, to remain impartial and independent.

#### The Applicant's involvement in political activities:

The Tribunal found that the Organization was correct in determining that the Applicant's engagement in political activities had exposed the Organization to reputational risk, which was properly considered as an aggravating factor in assessing the proportionality of the sanction imposed.

#### The Applicant's disciplinary record and dedication:

The Tribunal noted that the Organization properly considered the Applicant's long service and positive performance as a mitigating factor. However, the fact that the Applicant had a clear disciplinary record is irrelevant as this was expected of each staff member, and as such, the Organization did not fail in not considering it as a mitigating factor.

#### The Organization's past practice in comparable matters:

The Tribunal determined that the Applicant's choice of precedents was immaterial as the cases he referred to were not comparable to his misconduct. The Applicant engaged in multiple instances of political activities and extensive unauthorized activities in four Associations that he led and managed for a period almost comprising his entire employment with the Organization (13 years). All these activities reflected negatively on his impartiality and independence and resulted in a

conflict of interest. Considering the above, the Tribunal found that the applicable sanction was not excessive to the nature and gravity of the Applicant's misconduct. The sanction imposed was not the most severe (dismissal) showing that the Administration was quite lenient towards the Applicant. Accordingly, the Tribunal found that the disciplinary measure imposed on the Applicant was proportionate to the grave offences committed.

## Decision Contested or Judgment/Order Appealed

The disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, imposed pursuant to staff rule 10.2(a)(viii).

## Legal Principle(s)

The Administration has broad discretion when it comes to the choice of a disciplinary sanction (see Iram 2023-UNAT-1340, para. 86), and the Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity (see Appellant 2022 UNAT-1216, para. 45; Iram, para. 86).

Due deference must be shown to the Secretary-General's decision on sanction because [art.] 101(3) of the United Nations Charter requires the Secretary-General to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in this regard" (see Beda 2022-UNAT-1260, para. 57).

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Yaker

## Entity

UNEP

## Case Number(s)

UNDT/GVA/2023/029

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

29 Jul 2024

## Duty Judge

Judge Sun

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

## Applicable Law

## Administrative Instructions

- ST/AI/2000/13

## Other UN issuances (guidelines, policies etc.)

- Practice of the Secretary-General in disciplinary matters and cases of criminal (Compendium 1 July 2009 to 31 December 2020)
- Standards of Conduct for the International Civil Service

## Staff Rules

- Rule 1.2(c)
- Rule 10.2(a)(viii)
- Rule 10.3(b)

## Related Judgments and Orders

2023-UNAT-1340

2022-UNAT-1216

2022-UNAT-1260

2017-UNAT-781

2023-UNAT-1311

2016-UNAT-699

UNDT/2023/040