

2024-UNAT-1455, Berhane Taklu-Nagga

UNAT Held or UNDT Pronouncements

The UNAT noted that the staff member's involvement in rental subsidy fraud by two claimants had been established by clear and convincing evidence: the Administration had demonstrated that the actual amount paid to the staff member in monthly rent was not the amount shown on the lease. In addition, the UNAT found that the UNDT had correctly determined that he had instigated one of the claimants to submit a fraudulent claim for the subsidy for real estate agent's fees.

The UNAT held that even if the staff member had not benefitted personally or directly from the fraudulent subsidies, the claimants had. The UNAT was satisfied that the UNDT had established the existence of the mental element of his act and correctly determined that his behaviour constituted misconduct.

The UNAT found that the UNDT had concurred with the Administration in its analysis which had taken into consideration the mitigating and aggravating factors in imposing the sanction of separation from service.

The UNAT held that the Organization had respected the principle of presumption of innocence. The UNAT found that the investigator's words and behaviour were far from amounting to substantial procedural irregularities.

The UNAT dismissed the appeal and affirmed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

A former staff member contested the disciplinary decision to dismiss him from service for three counts of fraud for his involvement, as a landlord, in making fraudulent claims for rental subsidy.

In Judgment No. UNDT/2023/035, the UNDT dismissed the application.

The staff member appealed.

Legal Principle(s)

The appeals process is not an arena to rediscuss factual issues, which have already been settled by the first instance tribunal. In the absence of a compelling argument that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision, the Appeals Tribunal will not lightly interfere with the findings of the UNDT.

Whether the established facts constitute misconduct is a question of law which calls for a careful assessment of the facts from the perspective of the applicable legal framework.

Fraud is serious misconduct which significantly damages the trust between the Organization and staff members. Honesty and integrity are core values expected of international civil servants.

The principle of presumption of innocence should be upheld in disciplinary cases.

Only substantial procedural irregularities can render a disciplinary sanction unlawful. Procedural fairness is a highly variable concept and is context-specific.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Berhane Taklu-Nagga

Entity

UNHCR

Case Number(s)

2023-1830

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jul 2024

President Judge

Judge Gao

Judge Sandhu

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Facts (establishment of) / evidence

Fraud, misrepresentation and false certification

Proportionality of sanction

Discretionary authority

Due process

Disciplinary matters / misconduct

Investigation

Applicable Law

Laws of other entities (rules, regulations etc.)

- UNHCR/AI/2018/18 (Administrative Instruction on Misconduct and the Disciplinary Process)

Other UN issuances (guidelines, policies etc.)

- IOM/FOM/44/2013

UNAT Statute

- Article 2.1(e)

UNHCR Administrative Instruction

- UNHCR/AI/2019/15

Related Judgments and Orders

UNDT/2023/035

2010-UNAT-084

2024-UNAT-1431

2015-UNAT-511

2010-UNAT-087

2021-UNAT-1167

2021-UNAT-1156

2015-UNAT-549

2019-UNAT-918

2017-UNAT-761

2010-UNAT-095

2015-UNAT-518/Corr.1