

2024-UNAT-1471, Fouzia Rizqy

UNAT Held or UNDT Pronouncements

The UNAT found no error in the UNDT's reliance on the communication between the staff member and her attorney when it established that she had submitted false information in her claims for reimbursement for medical expenses. The UNAT noted that her attorney had voluntarily submitted the privileged document as an attachment to her application. The UNAT observed that she had not imposed any limitations or reservations on the UNDT's use of the document and had referred to it on multiple occasions in the course of the proceedings. The UNAT agreed that she had waived her right to confidentiality and had consented to the disclosure of the document. The UNAT concluded that the document had formed an integral part of the case file.

In view of the established dishonest behavior of the staff member, the UNAT held that the UNDT had not erred by not considering the amount in the false invoices as a significant mitigating factor.

The UNAT found that the staff member's argument of discrimination was not convincing.

The UNAT noted that, considering the latitude it normally gives to unrepresented appellants, it addressed the substance of the staff member's arguments on the proper grounds of appeal despite their incorrect characterization as a jurisdictional error.

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 separate her from service, with compensation in lieu of notice and with termination indemnity, for

having submitted false information with respect to her claims for reimbursement for medical expenses.

In Judgment No. UNDT/2023/056, the UNDT dismissed the application.

The staff member appealed.

Legal Principle(s)

As a matter of principle, confidential records, including privileged communication between lawyer and client, enjoy legal protection. However, when the party in whose interests the privilege exists makes a clear waiver or clearly consents to the disclosure of privileged communication, such records form part of the evidence on which Tribunals may rely.

Mitigating factors may, in some cases, have less weight, and shall not necessarily disturb the proportionality of the disciplinary sanction.

The test of proportionality not only relies on intrinsic aspects, related to the nature of the misconduct, its gravity, and all surrounding circumstances, but also entails another extrinsic aspect, that is the equality of treatment of staff members. This means that similar cases should, to the extent possible, be treated in a similar fashion, resulting in consistency in administrative practice.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Fouzia Rizqy

Entity

MINURSO

Case Number(s)

2023-1838

Tribunal

UNAT

Registry

New York

Date of Judgement

13 Aug 2024

President Judge

Judge Sheha

Judge Colgan

Judge Ziadé

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Fraud, misrepresentation and false certification

Discretionary authority

Discrimination and other improper motives

Proportionality of sanction

Admissibility of evidence

Disciplinary matters / misconduct

Procedure (first instance and UNAT)

Applicable Law

None

Related Judgments and Orders

UNDT/2023/056

2024-UNAT-1427

2022-UNAT-1202

2010-UNAT-084

2022-UNAT-1259

2017-UNAT-781

2021-UNAT-1156

2022-UNAT-1239

2023-UNAT-1311