

# 2024-UNAT-1440, Gheorghe Catalin RADU

## UNAT Held or UNDT Pronouncements

As a preliminary matter, the Appeals Tribunal found that Mr. Radu had failed to demonstrate exceptional circumstances to support his request for anonymity and accordingly dismissed his request.

The Appeals Board dismissed Mr. Radu's appeal in relation to Appeals Board Decision No. 1. The Appeals Tribunal found that even if the Staff Rule was to be interpreted as to require consultation with the Medical Clinic at that time, the Organization's failure to abide by the Staff Rule would not render the decision void ab initio.

Turning to the appeal against Appeals Board Decision No. 2 to uphold the disciplinary sanction, the Appeals Tribunal found that the Appeals Board committed various errors. In particular, the Appeals Board stated that Mr. Radu had been sworn in and had given testimony when this was inexplicably not the case. Assuming erroneously that Mr. Radu had given evidence before it, the Appeals Board concluded therefrom that it disbelieved him and found the evidence of two complainants, who had not given evidence before it, credible. The Appeals Tribunal found that the Appeals Board failed to ensure that, in adopting an inquisitorial approach to proceedings, it approached and evaluated the evidence in a balanced and fair manner in accordance with both its Rules and accepted legal norms.

The Appeals Tribunal granted the appeal, in part, reversed Appeals Board Decision No. 2 and remanded the matter to the Appeals Board for re-hearing, without delay, before a differently constituted panel.

## Decision Contested or Judgment/Order Appealed

Mr. Radu, a former D-1 staff member with the International Civil Aviation Organization, contested before the ICAO Appeals Board via two separate applications the administrative decision to separate him from service with immediate effect for misconduct.

The first application challenged the decision on purely procedural grounds. It argued that he should not have been separated while on certified sick leave when the Administration had failed to consult, in accordance with the Staff Rules, the Medical Clinic at the relevant time. The second application contested the merits of the decision, i.e. the actual disciplinary measure of discharge from his employment with ICAO on the ground of misconduct.

By Decision No. ICAO/2022/006 (Appeals Board Decision No. 1) and Decision No. ICAO/2023/001 (Appeals Board Decision No. 2), the Appeals Board dismissed Mr. Radu's applications.

Mr. Radu appealed both Decisions to the Appeals Tribunal.

## Legal Principle(s)

The names of litigants are routinely included in judgments and personal embarrassment and discomfort are alone not sufficient grounds to grant confidentiality. Names should be redacted "in only the most sensitive of cases".

Where the request of anonymity is raised for the first time before the UNAT, the requirement of "exceptional circumstances and for good cause" should be met. In other words, the presumption of publication of parties' names in the UNAT judgments can only be reversed in exceptional (abnormal) circumstances with sufficient grounds to warrant the departure from this general principle.

Judges need to strike a delicate balance between competing interests, protecting personal privacy on the one hand and deterring potential perpetrators and maintaining the transparent operation of the Tribunals on the other hand.

The first step of the interpretation of any kind of rules, worldwide, consists of paying attention to the literal terms of the norm. When the language used in the respective

disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further investigation. If the text is not specifically inconsistent with other rules set out in the same context or higher norms in the hierarchy, it must be respected, whatever technical opinion the interpreter may have to the contrary, or else the interpreter would be the author.

The interpretation of a staff rule begins with the literal reading of the rule, but it also should be done in the context and structure where the rule is placed. The interpretation of a rule is made within the context of the hierarchy in which the rule appears.

## Outcome

Appeal granted in part

## Outcome Extra Text

Mr. Radu's appeal against Appeal Board Decision No. 1 is dismissed.

Mr. Radu's appeal against Appeals Board Decision No. 2 is granted, by Majority (Judges Savage and Colgan), Judge Gao dissenting, with the allegations in respect of complainants V01 and V04 being remanded to a differently-constituted ICAO Appeals Board for re-hearing.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Gheorghe Catalin RADU

## Entity

ICAO

## Case Number(s)

2023-1804

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

24 May 2024

## President Judge

Judge Gao

Judge Colgan

Judge Savage

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Evidence

Confidentiality

Disciplinary sanction

Procedure (first instance and UNAT)

Termination (of appointment)

## Applicable Law

## ICAO Appeals Board Rules

- Rule 24
- Rule 36
- Rule 42
- Rule 50(d)

## ICAO Staff Regulations

- Regulation 11

## ICAO Staff Rules

- Rule 110.1(11)

## UNAT Practice Direction No.1

- Section II.C

## UNAT RoP

- Article 20.2

## UNAT Statute

- Article 10.9

## Related Judgments and Orders

2016-UNAT-639

2017-UNAT-741

2023-UNAT-1332

2012-UNAT-225

2018-UNAT-847

2019-UNAT-957

2021-UNAT-1148

2023-UNAT-1341