

# 2024-UNAT-1441, AAR

## UNAT Held or UNDT Pronouncements

The Appeals Tribunal concluded that the UNDT did not err in finding that the Administration had established that AAR had unlawfully disclosed confidential information and had unlawfully failed to disclose a conflict of interest and recuse himself.

The Appeals Tribunal was also satisfied that the administrative measure imposed on AAR was proportionate to his misconduct, and that the UNDT did not commit any error in awarding moral damages for the harm AAR incurred due to the undue delay in completing the disciplinary process.

The Appeals Tribunal therefore dismissed the appeals.

## Decision Contested or Judgment/Order Appealed

AAR, a P-3 Security Coordination Officer with the United Nations Department of Safety and Security in Somalia contested before the UNDT the decision to issue a written reprimand and to place it in his Official Status File (contested decision).

In Judgment No. UNDT/2022/133, the UNDT found that the Administration had established that AAR had unlawfully disclosed confidential information and had unlawfully failed to disclose a conflict of interest and recuse himself. The UNDT was also satisfied that the administrative measure imposed was proportionate to AAR's misconduct. The UNDT therefore affirmed the contested decision.

The UNDT, however, found that a delay of almost two and a half years to finalize the disciplinary process was unjustified. The UNDT stated that it is the responsibility of the Organization to conduct disciplinary matters in a timely manner to avoid a breach of the staff member's due process rights and to avoid keeping a staff member in "limbo" as to the outcome of a disciplinary process. After assessing AAR's alleged harm and evidence, the UNDT found a causal link between the undue delay in completing the disciplinary process and the deterioration of AAR's mental health and well-being. On this basis, the UNDT awarded AAR USD 5,000 for moral harm.

AAR and the Secretary-General both appealed.

## Legal Principle(s)

Although a reprimand is not a disciplinary measure but an administrative one, because of its adverse impact on the concerned staff member's career, it must be warranted on the basis of reliable facts, established to the requisite standard of proof, namely that of preponderance of evidence, and be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure the protection of individuals, which otherwise would be compromised.

Unlike disciplinary sanctions, administrative measures are not intended to be punitive in nature but are aimed at efficiency and performance management in the interests of the Organization. Accordingly, the requirement of proportionality in the exercise of discretion in issuing administrative measures is not similar to those in disciplinary measures.

The administrative action should not be more excessive than is necessary for obtaining the desired result. If there is a rational connection between the purpose of the decision to impose the administrative measures, the information upon which the decision is based and the reasons for the decision, then the exercise of discretion will pass the test of rationality and will be lawful.

For a delay to warrant compensation, the staff member's due process rights must have been violated by the delay and the staff member must have been harmed or prejudiced by the violation of his or her due process rights.

The presence of certain circumstances may lead to injury—the application of the doctrine of *res ipsa loquitur* whereby the nature of the breach speaks for itself, and the harm can be established by the operation of the evidentiary presumption of law.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

AAR

Entity

UNMIK

Case Number(s)

2023-1786

Tribunal

UNAT

Registry

New York

Date of Judgement

29 May 2024

President Judge

Judge Forbang

Judge Colgan

Judge Ziadé

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-pecuniary (moral) damages

Breach of duties of independence, neutrality, and impartiality

Facts (establishment of) / evidence

Misuse of official documents

Non-disciplinary/administrative measures

Proportionality of sanction

Due process

Confidentiality

Compensation

Disciplinary matters / misconduct

Investigation

Procedure (first instance and UNAT)

Applicable Law

## Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2016/9

## Staff Regulations

- Regulation 1.2(m)

## Staff Rules

- Rule 1.2(c)
- Rule 10.2(b)

## UNAT Practice Direction No.1

- Section II.C

## UNDT Statute

- Article 10.5(b)

## Related Judgments and Orders

2023-UNAT-1400

2010-UNAT-084

2022-UNAT-1268

2018-UNAT-874

2013-UNAT-292

2017-UNAT-742

2015-UNAT-514

2023-UNAT-1372

UNDT/2022/133