

# 2024-UNAT-1491, Djekosse Miantoloum

## UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT did not err in finding that the disciplinary measure imposed was lawful.

The UNAT rejected the former staff member's argument that the decision of Doctors Without Borders (DWB) prohibiting him from collaborating with the association in the future, could not be characterized as a disciplinary measure, since it was communicated to him after he was no longer employed by the association. The UNAT held that this argument was not admissible, as it had already been presented before the UNDT.

In any event, the UNAT determined that the decision from DWB constituted a disciplinary measure that had to be declared in the former staff member's recruitment forms, even though it was sent to him after his contract of employment with DWB had been terminated. In this respect, the UNAT held that it was irrelevant whether the former staff member answered the questions on the recruitment forms to the best of his knowledge or whether he intentionally sought to conceal the existence of this disciplinary measure.

The UNAT held that the former staff member had no right to be represented by counsel during the investigation phase.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2023/078.

## Decision Contested or Judgment/Order Appealed

A former staff member contested the decision of the United Nations Children's Fund (UNICEF) to impose on him the disciplinary measure of separation from service, with

compensation in lieu of notice and with termination indemnity. The former staff member was found to have committed serious misconduct by failing to declare, in his recruitment forms, that he had previously been subject to a disciplinary measure.

In its Judgment No. UNDT/2023/078, the UNDT concluded that the contested decision was lawful and dismissed the former staff member's application.

Former staff member appealed.

## Legal Principle(s)

The UNAT may receive additional documentary evidence in exceptional circumstances, if it is in the interest of justice and the efficient and expeditious resolution of the proceedings, provided that such evidence was unknown to the party seeking to submit it, which was therefore unable to introduce it to the UNDT in a timely manner.

The UNAT is not an instance for a party to reargue the case without identifying the defects in the impugned UNDT judgment.

The UNDT does not have to respond to each and every claim made by a party, especially when a claim has no merit.

Staff members shall be held personally accountable for the accuracy and completeness of the information they provide during the recruitment process.

Any measure that notifies a staff member of breaches related to his or her contract of employment and seeks to sanction them qualifies as a disciplinary measure. Consequently, it is irrelevant whether this measure was taken during the employment of the staff member or after their termination, as long as the purpose of the measure is to sanction conduct that occurred during the period of employment.

Not all due process rights can apply during the investigation process because they would hinder it. Staff members have no right to be represented by counsel during the investigation stage.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Djekosse Miantoloum

## Entity

UNICEF

## Case Number(s)

2024-1858

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

3 Dec 2024

## President Judge

Judge Ziadé

Judge Forbang

Judge Sheha

## Language of Judgment

French

## Issuance Type

Judgment

## Categories/Subcategories

Fraud, misrepresentation and false certification

Production of evidence

Admissibility of evidence

Due process

Separation from service

Oral hearings

Disciplinary matters / misconduct

Evidence

Procedure (first instance and UNAT)

Investigation

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNICEF Policy on the Disciplinary Process and Measures

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.5

UN Charter

- Article 101.3

UNAT RoP

- Article 10.1

UNAT Statute

- Article 2.1
- Article 2.5
- Article 8.3

## Related Judgments and Orders

UNDT/2023/078