

UNDT/2024/075, Okello

UNAT Held or UNDT Pronouncements

The Tribunal observed that the facts of this case were very clear from the testimony and record. The Tribunal further noted that the Applicant had admitted his wrongdoing during his interview by the investigator. Accordingly, the Tribunal found by clear and convincing evidence that the Applicant had committed fraud, a prohibited conduct.

Regarding misconduct, the Tribunal concluded that the Applicant committed fraud. Therefore, his actions amounted to serious misconduct.

On the due process prong, the Tribunal rejected the Applicant's argument that his due process rights were violated because the investigator had failed to interview two crucial witnesses. The Tribunal recalled that during the hearing the Applicant did not call any of those people to testify nor did he explain how interviewing them would have helped his case. The Tribunal, thus, held that the Organization did not violate any of the Applicant's rights by failing to interview those two witnesses.

On whether the sanction was proportionate to the offence, the Tribunal noted that the Applicant's fraudulent conduct made it clear that he could not be trusted to continue working with the Organization any longer. As such, termination was neither excessive nor unreasonable. Accordingly, the Tribunal found that the sanction imposed in this case was proportionate.

Decision Contested or Judgment/Order Appealed

The Applicant contested a decision of 2 August 2023 to separate him from service with compensation *in lieu* of notice and without termination indemnity, pursuant to staff rule 10.2(a)(viii).

Legal Principle(s)

Pursuant to the jurisprudence of the Tribunal, the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements:

- i. Whether the facts on which the disciplinary measure was based were established by clear and convincing evidence;
- ii. Whether the facts established amount to misconduct;
- iii. Whether the staff member's due process rights were guaranteed during the entire proceeding; and
- iv. Whether the sanction is proportionate to the gravity of the offence.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Okello

Entity

UNHCR

Case Number(s)

UNDT/NBI/2023/080

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

9 Oct 2024

Duty Judge

Judge Wallace

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction
Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2(b)
- Regulation 1.2(g)

Staff Rules

- Rule 1.7
- Rule 10.2(a)(viii)

Related Judgments and Orders

2023-UNAT-1370

2015-UNAT-550

2020-UNAT-1024

2010-UNAT-084

2020-UNAT-1033

2018-UNAT-859

2015-UNAT-523

2010-UNAT-040