

UNDT/2024/078, Ammar

UNAT Held or UNDT Pronouncements

The Tribunal found that the Respondent was not able to demonstrate that the facts on which the disciplinary measure was based were established by clear and convincing evidence, as otherwise required by the Appeals Tribunal in its jurisprudence.

Having found that the facts on which the disciplinary measure was based had not been established by clear and convincing evidence, the Tribunal also found that there was no established misconduct by the Applicant.

Given the finding of absence of misconduct by the Applicant, the Tribunal also rescinded the sanction imposed on him.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate him from service with compensation *in lieu* of notice, and with half termination indemnity, pursuant to staff rule 10.2(a)(vii).

Legal Principle(s)

According to the Appeals Tribunal, once the parties agree on certain facts the Tribunal must accept them as settled. There would therefore be no need to further review such facts (see *Ogorodnikov* 2015-UNAT-549, para. 28).

Pursuant to art. 9.4 of the Statute of the Dispute Tribunal, and in keeping with established jurisprudence (see, for instance, AAC 2023-UNAT-1370, para. 38; *Nyawa* 2020-UNAT-1024, para. 48; *Mizyed* 2015-UNAT-550, para. 18; *Maslamani* 2010-UNAT-028, para. 20), the Tribunal's role in reviewing disciplinary cases is to

determine: a) Whether the facts on which the disciplinary measure was based have been established; b) whether the established facts legally amount to misconduct under the applicable Regulations and Rules; c) whether the disciplinary measure applied is proportionate to the offence; and d) whether the staff member's due process rights were respected during the investigation and disciplinary process.

The Appeals Tribunal has stated that in a disciplinary proceeding, "when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of evidence but less than proof beyond reasonable doubt—it means the truth of the facts asserted is highly probable" (*Abdrabou* 2024-UNAT-1460, para. 54. See also *Stefan* 2023-UNAT-1375, para. 63; *Bamba* 2022-UNAT-1259, para. 37; and many other judgments).

In *Soobrayan* 2024-UNAT-1469, para. 66, the Appeals Tribunal, citing *Kennedy* 2021-UNAT-1184, defined "clear and convincing evidence".

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Since the decision to separate the Applicant from service was not based on clear and convincing evidence, the Tribunal granted his request for an order of rescission, and ordered that the Applicant be reinstated in service.

In the event that the Applicant could not be reinstated in service, the Tribunal ordered that he be paid two years' net base salary with full indemnity *in lieu* thereof.

The Tribunal also ordered the reimbursement of USD500 to the Applicant for the cost of obtaining a forensics expert's services and expungement of the disciplinary measure from the Applicant's personnel file.

Full judgment

[Full judgment](#)

Applicants/Appellants

Ammar

Entity

UNHCR

Case Number(s)

UNDT/NY/2023/028

Tribunal

UNDT

Registry

New York

Date of Judgement

10 Oct 2024

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

In-lieu compensation

Disciplinary measure or sanction

Due process

Separation from service
Judicial review (general)
Disciplinary sanction
Compensation
Disciplinary matters / misconduct
Investigation
Standard of review (judicial)
Termination (of appointment)

Applicable Law

Staff Rules

- Rule 10.2(a)(vii)

UNDT Statute

- Article 9.4

Related Judgments and Orders

2015-UNAT-549
2023-UNAT-1370
2020-UNAT-1024
2015-UNAT-550
2010-UNAT-028
2024-UNAT-1460
2023-UNAT-1375
2022-UNAT-1259
2024-UNAT-1469