# **UNDT/2024/079, Moroldo**

#### **UNAT Held or UNDT Pronouncements**

The UNDT held that imposition of a sanction is not just a mechanical exercise, since the sanction should not be "more excessive than is necessary for obtaining the desired result.

A written censure would have been a suitably "meaningful consequence" and sufficient to impress upon the Applicant the error of his actions. The record indicates that he acknowledged that he should have sought authorisation before registering his company.

The Tribunal therefore finds that the sanction in this case was disproportionate to the misconduct by adding to the written censure an additional, unnecessary, arbitrary and excessive penalty of a two-year deferment of an increment to his salary

### Decision Contested or Judgment/Order Appealed

Applicant challenges the Administration's decision to impose on him the disciplinary measure of written censure and deferment for two years of eligibility for salary increment, based on misconduct pursuant to Staff Rule 10.2(a)(i) and (iii)

#### Legal Principle(s)

In determining that the sanction was disproportionate to the offense, the Tribunal considered that there was allegation of misuse of IT resources involving downloading or viewing of pornographic material, no financial gain to the Applicant or financial loss to the Organization, and no degree of deceit on the part of the Applicant, and no aggravating factors.

#### Outcome

Judgment entered for Applicant in full or in part

#### **Outcome Extra Text**

The Application is GRANTED in part: The Tribunal rescinds the decision to defer the Applicant's eligibility for salary increment by two years. In all other respects, the Respondent's decision is affirmed and the Applicant's prayers refused.

The Tribunal found that the sanction in this case was disproportionate to the misconduct by adding to the written censure an additional, unnecessary, arbitrary and excessive penalty of a two-year deferment of an increment to his salary.

#### Full judgment

Full judgment

Applicants/Appellants

Moroldo

Entity

**UNTSO** 

Case Number(s)

UNDT/NBI/2023/056

**Tribunal** 

**UNDT** 

Registry

Nairobi

Date of Judgement

### **Duty Judge**

Judge Wallace

# Language of Judgment

English

### **Appeal Status**

**Appealed** 

# **Issuance Type**

Judgment

# Categories/Subcategories

Unauthorised outside activities and conflict of interest Disciplinary matters / misconduct

# **Applicable Law**

Administrative Instructions

• ST/AI/2017/1

**UNDT Statute** 

• Article 9.4

# Related Judgments and Orders

2019-UNAT-955

2013-UNAT-336

2013-UNAT-292

2013-UNAT-280

2018-UNAT-859

2010-UNAT-084

2020-UNAT-1024

2015-UNAT-550

2023-UNAT-1370

2015-UNAT-523

2015-UNAT-545