

2024-UNAT-1510, Mohamed Elmenshawy

UNAT Held or UNDT Pronouncements

The UNAT held that although the former staff member did not receive the full investigation report until after the disciplinary process was concluded, there was no due process violation because the opportunity to respond letter was detailed, and he received the full investigation report early in the Dispute Tribunal proceedings.

The UNAT held that the Dispute Tribunal had appropriately heard live testimony from numerous witnesses, all of whom were subject to cross-examination, and had admitted certain hearsay statements using established methods of corroboration. The UNAT held that the Dispute Tribunal had applied the UNAT's framework for resolving factual disputes in disciplinary cases. The UNAT found no reason to overturn the UNRWA DT's determination that there was clear and convincing evidence to support the determination that the former staff member had engaged in abuse of authority and harassment. The UNAT deferred to the UNRWA DT's credibility assessments of the various witnesses who gave oral evidence.

Lastly, the UNAT held that given the egregiousness of the former staff member's actions, that he had spread a rumor that his manager was an Israeli spy, acted aggressively towards colleagues, and created a hostile work environment, the sanction of termination was not disproportionate.

The UNAT dismissed the appeal and affirmed Judgment No. UNRWA/DT/2023/034.

Decision Contested or Judgment/Order Appealed

Mr. Elmenshawy, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), contested the Agency's decision to impose on him the disciplinary measure of separation from service with

compensation in lieu of notice and with termination indemnity. The disciplinary measure was imposed for findings of harassment and abuse of authority. The UNRWA Dispute Tribunal dismissed his application.

The former staff member appealed.

Legal Principle(s)

In all cases of due process failures, it is necessary to weigh the significance of the failure against what would have been the outcome had the failure(s) not occurred.

It is a fundamental precept of natural justice and fair process that before a staff member may be sanctioned for misconduct which has been investigated and decided upon (including potentially by the staff member's loss of employment), that staff member is entitled to know what was found and why.

To provide due process and a basis for appellate review in disciplinary cases, the Dispute Tribunal must provide express written findings regarding witness credibility and an explanation as to why it weighed disputed evidence in the way it did, as well as explain whether and why the clear and convincing standard of proof has been met in a particular case.

The clear and convincing standard of proof requires unequivocal evidence of misconduct, which is highly persuasive, particularly in the context of a termination decision.

An appellate tribunal is not generally in a position to assess credibility based on solely a written record.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mohamed Elmenshawy

Entity

UNRWA

Case Number(s)

2023-1866

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Dec 2024

President Judge

Ziade

Judge Sandhu

Judge Forbang

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Abuse of authority

Harassment (non-sexual)

Proportionality of sanction

Right to comment/respond

Disciplinary matters / misconduct

Due process

Applicable Law

UNRWA International Staff Rules

- Rule 1.2

UNRWA Personnel Directives

- IPD 1/10

Related Judgments and Orders

2023-UNAT-1332

2021-UNAT-1076

2017-UNAT-781

2022-UNAT-1194

2022-UNAT-1195

2022-UNAT-1259

2022-UNAT-1242

2023-UNAT-1370