

2025-UNAT-1552, Catalin Gicu Tomeci

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT correctly concluded that the former staff member committed misconduct by repeatedly violating, over more than a year and a half, the rules prohibiting his wife from staying overnight with him in the UNMISS compound of a non-family duty station, without authorization or payment of the required accommodation fees, despite multiple warnings and a prior reprimand.

The UNAT also confirmed that, during a counselling session, the former staff member threatened to kill his wife and any staff member to protect their marriage and his perceived right to cohabitation. It agreed with the UNDT's credibility assessment, particularly its finding that the Stress Counselor's statements were credible, due to her lack of motive to lie, the significant professional risk she took in breaching counselling confidentiality to report the threats and her active participation in the counselling session where the threats were made. Conversely, the UNAT found the testimonies and statements of the former staff member and his wife not to be credible and contradicted by contemporaneous evidence.

The UNAT further affirmed the UNDT's finding that the former staff member threatened his colleague, F.B., in 2017, considering this incident alongside the threat to kill, as part of a broader pattern of behaviour.

Finally, the UNAT found that the sanction imposed was proportionate and that the former staff member's due process rights were respected. It rejected the former staff member's claim that several potential witnesses were not called to testify at the hearing, highlighting that the parties agreed that he would file written witness statements.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2024/064.

Decision Contested or Judgment/Order Appealed

A former staff member of the United Nations Mission in South Sudan (UNMISS) contested the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, for serious misconduct.

In its Judgment No. UNDT/2024/064, the UNDT dismissed the staff member's application, finding that the contested decision was lawful.

Former staff member appealed.

Legal Principle(s)

In disciplinary cases, the UNDT will examine the following: i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected.

Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt – it means that the truth of the facts asserted is highly probable. Evidence can be direct

evidence of events, or may be of evidential inferences that can be properly drawn from other direct evidence.

If a party wishes to call a witness, it must make an explicit request to the UNDT, which shall then decide whether the personal appearance of the witness is required. The attendance of a witness can be dispensed with so long as the Tribunal is satisfied that the staff member accused of misconduct is given a fair and legitimate opportunity to defend his or her position. Indeed, the UNDT has no obligation to call every witness to testify or to rehear all statements made to the Office of Internal Oversight Services (OIOS). Written statements taken under oath can be sufficient to establish by clear and convincing evidence the facts underlying the charges of misconduct.

Compensation shall be supported by three elements: the harm, an illegality, and a nexus between both. Compensation cannot be awarded when there has been no breach of the staff member's rights or administrative wrongdoing warranting repair.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Catalin Gicu Tomeci

Entity

UNMISS

Case Number(s)

2024-1956

Tribunal

UNAT

Registry

New York

Date of Judgement

21 Jul 2025

President Judge

Gao

Judge Colgan

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Assault (verbal and physical)

Right to cross-examine witnesses

Credibility assessment

Oral hearings

Disciplinary matters / misconduct

Due process

Evidence

Procedure (first instance and UNAT)

Investigation

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNMISS Administrative Instruction No. 005/2011

Staff Rules

- Rule 10.2(a)(viii)

UNDT RoP

- Article 17.1
- Article 17.6

UNDT Statute

- Article 2.1(b)
- Article 9.2
- Article 9.4

Related Judgments and Orders

UNDT/2024/064

2010-UNAT-084

2019-UNAT-972

2011-UNAT-164

2020-UNAT-1033

2013-UNAT-364

2021-UNAT-1184

2018-UNAT-889

2018-UNAT-862

2015-UNAT-550

2018-UNAT-874