



Monika Ona Bileris
International Civil Service Attorney

Tips and Information Newsletter for International Civil Servants

November 2023

Judgment No. UNDT/2021/076 and Judgment No. 2022-UNAT-1268 shed light on the issue of administrative measures and their impact on staff being investigated for misconduct

In Brief

In Judgment UNDT/2021/076, the staff member challenged the imposition of administrative measures, namely, the issuance of a written reprimand to be placed in her official status file for a period of five years and removal from her supervisory functions for two years.¹ The UNDT rejected her application, finding that the imposition of the administrative measures was procedurally and legally sound, as well as factually supported, even though the charges against the Applicant were dropped and she was not found to have committed the misconduct alleged. The Appeals Tribunal upheld the dismissal of the UNDT case in Judgment 2022-UNAT-1268, finding that there were “reasonable grounds justifying the imposition of the administrative measures, which fall within the range of reasonable and proportionate responses aimed at enhancing self-awareness and improving [the Applicant’s] people management competence.”

This article analyzes Judgments UNDT/2021/076 and 2022-UNAT-1268, and looks into the impact of administrative measures on staff and whether they are fair and just in cases where, like here, charges were dropped following a lengthy and drawn-out investigation.

Facts and Decision

In UNDT/2021/076, the staff member (D-2) was placed on administrative leave in January 2019 after becoming the subject of an OIAI investigation. In January 2020, following the investigation process, the Applicant received a letter of reprimand from the Director, Human Resources, dropping the charges of misconduct, but nonetheless finding that she was considered to have exhibited a “concerning pattern of behavior,” and imposing the administrative measures of placement of a letter of reprimand in her official status file for five years, removal of her supervisory functions for two years (on top of the year that she had already been placed on administrative leave wherein her supervisory and other functions were taken away), and required management training.

¹ The UNDT and UNAT incorrectly claimed that the Applicant also contested the decision to require her to take management training, but she did not contest this portion of the administrative measures that were imposed.

The UNDT examined the standard of proof for the imposition of administrative measures (*i.e.*, by a preponderance of evidence), and considered that, while “the allegations remain in the realm of opinions and impressions,” the Applicant’s behavior did not meet the standards expected of an international civil servant at her seniority level and that she did not serve as a proper role model or promote a harmonious work environment. As such, it found that the facts supported the administrative measures imposed.

In examining whether the administrative measures were proportionate, the Dispute Tribunal looked to the Staff Rules, Regulations, and policies which spell out the possible disciplinary and administrative measures available to the Administration. It recognized that, while disciplinary measures are intended to punish the staff member, “administrative measures can be taken in cases where a staff member’s conduct does not rise to the level of misconduct, but a managerial action is nevertheless required; their function is preventive, corrective and cautionary in nature.” It further recognized that “the issuance of an administrative measure does not by itself bar appointment or promotion within [the Organization], and staff members who have received a written reprimand are not obliged to disclose the measure when applying for a new position,” but recognized that it could come to light during reference checks. It also noted that the reprimand is removed after a specified period of time. In this vein, the Tribunal maintained that, because the administrative measures in this case were limited in time, it set them apart from disciplinary measures, which have lasting effects.

The Tribunal next observed that the Organization has the right to apply administrative measures on a staff member who has failed to comply with the Charter of the United Nations, following an evaluation of the facts. Where a factual basis for the allegations exists, but where the staff member’s conduct does not rise to the level of misconduct, “managerial” action can be taken. It considered that the Organization has the discretionary authority to impose an administrative measure if the decision was legal, rational, procedurally correct, and proportionate. The Tribunal then essentially declared that, because the Staff Rules and Regulations prescribe a written reprimand as an administrative measure, then it is allowed. The Tribunal made a point of stating that a letter of reprimand is not of a punitive nature, but of an “informative nature as it brings to the Applicant’s attention shortcomings in her behaviour as a senior manager expected to serve as a role model for the staff members supervised.”

With regard to removal of supervisory functions, the Tribunal stated, without further analysis, that such measure is not punitive, but preventive, corrective and cautionary in nature, and indeed, a “rational response of the Organization to temporarily shield staff from the impact of the Applicant’s conduct shortcomings.”

On appeal before the UN Appeals Tribunal, the UNAT upheld the Dispute Tribunal’s decision, finding, in relevant part, that the Staff Rules governing the imposition of administrative measures allow such measures to be levied and are not intended to be punitive in nature, but are “aimed at efficiency and performance management in the interests of the Organization.” Further, if there is a “rational connection” between the purpose of the Rules (*i.e.*, to permit remedial or corrective action), the purpose of the decision to impose administrative measures, the information upon which the decision was based, and the reasons for the decision, then “the exercise of discretion will pass the test of rationality and will be lawful.” At the same time, the UNAT recognized that “[t]here is no getting away from the fact that the imposition of administrative measures may carry some stigma for the staff member.” It likewise recognized that the “removal of [the Applicant’s] supervisory functions for two years was indeed far-reaching,” but considered that “a lengthy cooling-off period was desirable.”

Comment/Commentary

In theory, the UNDT and UNAT's reasoning appears sound: the Organization should be allowed to correct a staff member by applying measures that are fair, rational, and proportionate when that staff member is considered to have stepped outside the confines of how an international civil servant is supposed to act. There can—and should be—a variety of measures applicable, depending on the severity of the conduct. The problem is that, regardless of the *intent* of applying administrative measures, the resulting *impact* is indeed punitive, and that is something that the Tribunals should have considered.

If the function of a letter of reprimand is merely to be preventive, corrective, and cautionary, then arguably, it would be enough to merely share the letter with the staff member, and perhaps have it be part of the staff member's official file for a short time. The Tribunal asserted that such letter does not have to be disclosed when a staff member is applying for other posts, but this is misleading as the likelihood of its dissemination during the course of the hiring process is almost guaranteed, and greatly reduces a staff member's chances of being hired. In the case of a five-year placement of the letter (as here), this could mean having the letter disclosed five times, possibly more, thus preventing the staff member from finding new work. This goes well beyond being merely corrective and preventive and carries a stigma more suited to a disciplinary sanction.

The same is true with regard to the removal of supervisory functions for two years. How can a staff member whose title indicates that she is a manager be in charge of nothing? And how does preventing her from managing people repair and build her managerial skills? It would make sense to remove a staff member's supervisory role pending her completion of management training, but does nothing besides punish a staff member until such time as she can take up her management role once again. Also, the stigma attached to a supervisor losing her supervisory role is necessarily damaging to her reputation and career.

Contrary to the Tribunals' opinions, administrative measures do have lasting effects. The placement of a letter of reprimand in a staff member's file for a period of five years allows several rounds of job applications to go by with upper management's knowledge of the staff member's managerial shortcomings. The longer the letter sits in the staff member's file, the longer management has to find out about it, and the longer she must carry the stigma with her. Removal from supervisory duties likewise has lasting effects, even if the measure is limited in time. A staff member who has previously served as a manager will be hard pressed to find and be accepted for a management position when she is not allowed to manage staff. That means having to find a job below one's grade, or vie for a position from a much smaller pool of appropriate jobs.

While it is not contested that a letter of reprimand and/or removal from supervisory functions can (and sometimes should) be applied as administrative measures, more thought has to be given to the actual impact on a staff member's career and reputation, and whether that impact is in line with the stated reasons for the measures: to prevent, correct, and caution a staff member, or whether the resulting consequence is indeed an unintended (or even intended) punishment.

Disclaimer

These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any particular matters you or your organisation may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.