

JUDGE MARK P. PAINTER , Presiding.



1. We will not follow the Administrative Tribunal of the International Labour Organization (ILOAT) in holding that the standard of proof in disciplinary cases is beyond a reasonable doubt. While it is correct that beyond a reasonable doubt is the standard at the ILOAT,¹ this has never been the standard at the United Nations.² In disciplinary cases we have required that when a disciplinary sanction is imposed by the Administration, “the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established fa

5. In June 2008, Ms. Molari submitted to the Danish Ministry of Foreign Affairs (MoFA), through UNOPS, a number of receipts relating to purchases of grocery items including milk, fruits, vegetables, and bread, for reimbursement of the value-added tax (VAT, or MOMS in Danish). The purchases were made in August, November, December 2007 and February 2008, at two local supermarkets (“Super Best” and “Netto”). As an L-5 UNOPS staff member, Ms. Molari enjoyed diplomatic status,

used on a single day to buy a total of 19 litres of milk from seven different brands and containing four different levels of fat content, for example.

9. The Enquiry Panel determined that the purchases resembled everyday shopping rather than that for parties or gatherings, as Ms. Molari had claimed. It concluded that it was most likely that those purchases had been made by others not known to Ms. Molari for their own purposes. The Enquiry Panel recommended the institution of disciplinary proceedings

of termination if she would produce the name

19. On 26 January 2011, Ms. Molari filed another request to this Court for suspension of the proceedings sine die pending her receipt of a decision from the Danish Parliamentary Ombudsman expected in the “middle of 2011” and to permit her to file a rejoinder to the Secretary-General’s answer. Ms. Molari’s request was forwarded to the Secretary-General on 7 February 2011. On 14 February 2011 the Secretary-General filed his observations on Ms. Molari’s request.

20. In an email dated 2 September 2011, the Registrar informed the parties of his intention to place Ms. Molari’s case on the docket for the 2011 fall session. On 3 October 2011, Ms. Molari again requested that her case be suspended pending the Danish Parliamentary Ombudsman’s report now “expected by the end of October 2011”, which she

23. The UNDT failed to give Ms. Molari the benefit of the doubt, as the Judge refused to accept her verbal and written proof and explanations. The UNDT Judge was only satisfied with one particular form of evidence (the names and credit card numbers of her friends and family) but not others, thus requiring her to prove her own innocence in violation of her right to due process.

24. The UNDT erred in law by refusing to grant Ms. Molari her requested discovery of the full text of the *Pro Memoria* and the meeting minutes; by conducting the hearing in French when she and her counsel are Anglophone, and where the probity and truthfulness of Ms. Molari were at issue; by refusing to accept the evidence proffered by Ms. Molari under the condition of confidentiality; and by reaching a determination that Ms. Molari's behaviour constituted misconduct on the basis of mere speculation without one piece of probative and demonstrative evidence that the receipts were false or fraudulent.

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25. The UNDT correctly upheld the decision to separate Ms. Molari from service with one month's notice and payment of a termination indemnity, after it had examined Ms. Molari's case, in accordance with the principles set forth by former Administrative Tribunal Judgment No. 941, *Kiwanuka* (1999), and found that there was sufficient evidence to support a reasonable inference that misconduct had occurred, that Ms. Molari had failed to provide a credible explanation or contrary evidence sufficient to rebut the Administration's case, and that the established facts legally amounted to misconduct.

26. Ms. Molari's reliance on the ILOAT jurisprudence was not warranted. A standard of proof beyond a reasonable doubt is inconsistent with the long-established jurisprudence of the former Administrative Tribunal and several judgments of the UNDT.

27. Ms. Molari's assertions of errors in law are without merit. The fact that the UNDT recognized an opportunity for her to provide evidence to rebut the Administration's case was

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