UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2020/044
Judgment No.:	UNDT/2021/133
Date:	19 November 2021
Original:	English

Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LOTO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Sètondji Roland Adjovi, Etudes Vihodé

Counsel for the Respondent:

Jacob B. van de Velden, AAS/ALD/OHR, UN Secretariat

Andrea Ernst, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant served as a mail assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO"). He held a fixed-term appointment at the FS-4 level and was based in Goma.

2. This Judgment determines his application filed on 15 June 2020, contesting the 13 January 2020 decision of the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") to place him on Administrative Leave Without Pay ("ALWOP").

3. The contested decision was made based on information provided to the USG/DMSPC in two documents. Firstly, a four-page Code Cable dated 22 November 2019 from the Special Representative of the Secretary-General ("SRSG"), MONUSCO. It set out allegations of rape against a United Nations Volunteer ("UNV"). The allegations were made by a woman who works for a vendor in MONUSCO ("the complainant/victim"). The complainant/victim also reported that she told the Applicant about the alleged rape, he promised to facilitate a mediation between the interested parties but had not done so. The code cable indicated that MONUSCO considered that there were grounds to warrant a full investigation into the conduct of the UNV.

4. Secondly, the decision was based on a two-page memorandum dated 23 December 2019, with preliminary findings by the Office of Internal Oversight Services ("OIOS") that the Applicant had:

i. Failed to report an allegation of sexual abuse (rape) made against a UNV ("the alleged perpetrator").

ii. attempted to conceal the allegation and facilitate a payment to the complainant/victim in exchange for the withdrawal of her complaint.

iii. requested a meeting with other witnesses to discuss his upcoming OIOS interview; and

iv. lied to the investigators during his OIOS interview about his conduct.

5. The duration of the ALWOP was initially for a period of three months, or until the completion of an investigation into his conduct and any disciplinary process, whichever was earlier. The ALWOP was continuing when this application was filed, as it was retroactively extended on 13 May 2020.

6. By the Tribunal's prior Orders 119 and 132 (NBI/2020) herein, the Applicant was granted suspension of action regarding the ALWOP. He is currently on administrative leave with pay ("ALWP"). His position in this application is that the prior decision to place him on ALWOP was unlawful.

7. The Respondent contends that the application is partly moot, partly not receivable, and entirely without merit. There is no dispute as to the partial mootness in respect of the 13 April to 13 May 2020 period.

8. For reasons further explained in this Judgment, the Tribunal finds the application receivable in its entirety and the Applicant also succeeds on the merits of his challenge to the decision.

Background Facts and Procedural History

9. The background information available to the Respondent at the time when the decision was made, as summarised from the OIOS Memorandum, was as follows:

i. The complainant/victim, the alleged perpetrator, the Applicant and other MONUSCO staff attended a happy hour event at a bar in Goma, on 28 June 2019. They all then went to the Applicant's home and continued to drink into the early hours of the next morning.

ii. The complainant/victim was intoxicated when she left the Applicant's home. The alleged perpetrator drove her from the Applicant's home to his house, where he engaged in non-consensual sex with her. He then drove her home and promised to pay for emergency contraceptive medication.

iii. A few weeks later, on 10 July 2019, the complainant/victim told the Applicant that she had been raped by the alleged perpetrator.

iv. The Applicant later[1] approached the alleged perpetrator who denied the allegation. The Applicant said the complainant/victim later[2] told him that she lied about the rape and she wanted to punish the alleged perpetrator because he owed her money and refused to answer her calls.

v. The Applicant therefore believed this was a case of a misunderstanding about money between his two colleagues. The Applicant admits that he did not immediately report this as a rape when he heard of the allegation.

vi. Several months later, on 20 November 2019, the complainant/victim reported the incident to the Conduct and Discipline Team ("CDT") in MONUSCO.

vii. The Applicant was made aware of the complainant/victim's report the next day. He was questioned by the CDT about his failure to report.

viii. He later sought guidance from another staff member, Mr O, and admitted to setting up a meeting for 25 September 2019.

ix. On 25 November 2019, the complainant/victim attended a meeting with the Applicant, the alleged perpetrator, Mr O and another colleague, Mr. Kuya. She recorded their conversation, wherein she requested an apology from the alleged perpetrator. The actions he was to apologise for were not defined in the discussions. The complainant/victim also requested that the alleged perpetrator pay her USD2,000.00. The Applicant, Mr. Okwakol and Mr. K directed her to withdraw her report to the CDT.

x. When the complainant/victim attempted to withdraw the report from the CDT, she was told that her complaint had been referred to the OIOS.

[1] R/3, paragraph 5. The word "later" is used in the OIOS Memorandum without specifying the time or date when the Applicant said he had this conversation with the alleged perpetrator. There is no indication whether the conversation was on the same day the Applicant received the Complainant/victim's report or at some time in the future.
[2] R/3 paragraph 5. The word later is used in the OIOS Memorandum without specifying the timeframe.

xi. At a later interview with the OIOS, the Applicant responded 'no', when asked if money or compensation was mentioned in the 25 November 2019 meeting.

xii. The Applicant requested a meeting with Mr. Okwakol and the alleged perpetrator on 11 December 2019, before his OIOS interview.

10. On 10 December 2019, the Applicant received an email from OIOS informing him that he was the subject of an investigation. He was required to submit to an interview on 13 December 2019.

11. On 13 January 2020, the USG/DMSPC placed the Applicant on ALWOP for a period of three months, pending completion of the investigation and any disciplinary process against him. On 13 May 2020, the Applicant was notified that the USG-MSPC was extending his ALWOP for an additional period of three months retroactively from 13 April 2020, or until the completion of the disciplinary process, whichever comes earlier.

12. The reason for the extension was expressed as "the considerations…warranting your placement on ALWOP continue to exist." This rationale was based on a Code Cable received on 4 May 2020 which did not provide new information or assessments. It stated that "the reasons for the initial placement of the subjects on ALWOP have not changed."

13. On 14 June 2020, the Applicant filed the instant application on the merits, challenging the decision to place him on ALWOP.

14. On 17 June 2020, the Applicant filed a motion for interim measures pending determination of this application. He sought to change his administrative leave from ALWOP to ALWP.

15. On 19 June 2020, the Assistant Secretary-General for Human Resources ("ASG/OHR") rescinded the decision to place the Applicant on ALWOP on a retroactive basis, from 13 April to 13 May 2020. The ASG/OHR instructed

MONUSCO to pay the Applicant his salary, including the corresponding allowances and entitlements, for this period.

16. By Order No. 119 (NBI/2020), issued on 25 June 2020, the Tribunal granted the Applicant's motion for interim measures and ordered that the decision to deprive him of his salaries while he was on administrative leave, pursuant to staff rule 10.4, be suspended until the completion of the investigations and the disciplinary process.

17. On 27 June 2020, the Applicant received an email from a Human Resources Officer ("HRO")/MONUSCO, informing him, among others, that the USG/DMSPC's decision of 13 May 2020 placing him on ALWOP would expire on 12 July 2020. In this regard, the Mission would advise on the Applicant's status from 12 July 2020 onwards.

18. On 28 June 2020, the Applicant replied to the HRO and clarified that Order No. 119 required him to be on ALWP from 13 January 2020.

19. On 29 June 2020, the Applicant received another email from the Chief Human Resources Officer ("CHRO"), MONUSCO, informing him that the Order was going to be implemented by the Mission and that he would soon receive a new Personnel Action placing him on ALWP effective 25 June 2020 (the date the Order was issued).

20. By a motion filed on 30 June 2020 the Applicant requested execution of Order No. 119, recognizing his ALWP from 13 January 2020. This was granted by Order No. 132 (NBI/2020).

21. Following the determinations in the motions, the application was docketed to the instant Judge on 1 September 2021, for determination on the merits. The Tribunal held a case management discussion ("CMD") with the parties on 15 September 2021.

22. The parties agreed that the matter could be determined on the papers. They duly filed written closing submissions in accordance with the Tribunal's directions.

Submissions

23. The parties differ as to the receivability of the Applicant's case, to the extent that it challenges his ALWOP for the period from 13 May 2020. According to the Respondent, this period was based on a separate decision, which should be contested in separate proceedings, when a response to the Applicant's management evaluation request is received. The Applicant contends that there was one seamless period of ALWOP, based on the 13 January 2020 decision; thus making his challenge to the entire period receivable.

24. The Applicant's submissions on the merits underscore contextual factors. He says these factors ought to have been considered by the decision maker, in deciding whether his actions amounted to misconduct, the gravity of which warranted ALWOP. These contextual factors included:

i. The close relationship the Applicant had as a mentor/father figure to the complainant/victim and the alleged perpetrator, who were colleagues.

ii. That the complainant/victim was a colleague who often turned to the Applicant for financial assistance which he provided, and he often did likewise for the alleged perpetrator as well.

iii. The alleged victim's reports to the Applicant were equivocal. Although in the first instance she accused her colleague of rape, she later spoke about him owing her money and acting against him for that reason.

iv. There were contemporary reports of instances in the Applicant's home country, Central African Republic ("CAR"), of allegations of sexual abuse being used for extortion against United Nations Staff.

25. In substantiating these contextual points in the application, reference was made to an email sent on 27 November 2019[3] to the MUNOSCO Chief of Staff. In that email, the Applicant pleaded for re-consideration. He had been orally informed by the Chief of Staff, that because he did not report the rape allegation, he would be suspended without pay and have a bad Christmas. The Applicant, while admitting that the complainant/victim at first came to him to say she had been raped, explained in his email:

> I could not immediately inform CDU, because if the facts are not proven, it would be a slanderous denunciation. It was therefore necessary to be very cautious. I did not find myself in a proper place yet to report it to CDU.

26. In this way, the Applicant addressed the allegation of not reporting the alleged rape from the outset. The application and closing submissions do not address the allegations concerning his involvement in the meeting on 25 November 2019.

27. The Applicant's personal circumstances, including his prior 30 years of continuous, unblemished service with the United Nations, his financial responsibility for his immediate and extended family, were also highlighted in his application. This provided further contextual information on the impact of the ALWOP decision. There is no indication, in the decision correspondence, that personal circumstances were considered before implementing ALWOP, with immediate effect.

28. In closing submissions, Counsel for the Applicant made the additional argument that he relies on the point made in Order No. 119: that the retroactive aspect of the decision-making process tainted the decision as a whole and rendered it unlawful.

29. The Respondent's submission in response to this point is that the Tribunal's determination must be limited to considering the evidence available at the time the decision was made, including the Applicant's admissions of some aspects of the

[3] Annex 6 to the application.

questioned conduct and audio recordings as referred to in the information provided to the decision maker.

30. The Respondent emphasized the Organization's firm policy prohibiting sexual exploitation and abuse ("SEA"). Successful execution of this policy depends on each staff member reporting any suspicion and concerns of such possible misconduct to the appropriate officials. Success also depends on creating an environment that prevents SEA. This includes requiring staff members to refrain from activities that would discourage complainants/victims from making complaints or that would encourage them to reconcile with alleged perpetrators and withdraw reports of SEA; especially when the matter is under investigation.

31. The Respondent's case is firstly, that the Applicant's alleged misconduct is sufficiently grave to meet the exceptional circumstances where a staff member can be placed on ALWOP pending conclusion of investigations. The Respondent contends that the misconduct alleged is of such a grave nature that it would warrant separation from service. Accordingly, ALWOP was justified.

32. Secondly, the Respondent contends that the information before the USG/DMSPC when the decision was made was sufficient for a conclusion that it was more likely than not (a preponderance of evidence) that the misconduct was committed.

33. In closing submissions, the Respondent brought to the Tribunal's attention that on 4 October 2021, the USG/DMSPC decided to impose on the Applicant the disciplinary measure of dismissal.

Considerations

Receivability

34. Staff Rule 11.2(a) provides as follows:

> A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a

> first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

35. The Respondent contends that the 13 May 2020 retroactive extension was a separate administrative decision. There was a request by the Applicant for management evaluation, made out of an abundance of caution, but the time to consider it had not elapsed when he filed this application. In these circumstances, the Respondent's case is that consideration by the Tribunal of the period of ALWOP beyond the first three months is not receivable.

36. At the interim measures stage of these proceedings, the Tribunal made findings in Order No. 119 that, on an examination of the wording of the Respondent's correspondence, there was one ALWOP decision.[4] The ALWOP was expressly intended to be retroactively extended; it was based on the same information (nothing new) and continued seamlessly by correspondence dated 13 May 2020.

37. In *Gisage* 2019-UNAT-973, the Appeal's Tribunal explained the reason for finding an extension of the ALWOP in that case, to be a separate administrative decision. At paragraph 30, the Appeal's Tribunal explained:

> The **facts** taken into consideration at that stage **were different**. As such, the decision to extend the ALWOP was based on **a fresh assessmen**t and constituted **a separate decision**. [Emphasis added]

38. Unlike the circumstances in *Gisage*, this case did not involve a situation of new decisions being made with each extension.

39. In this case, the Order No. 119 interpretation of the impugned ALWOP as one continuing decision fits squarely within the regulatory framework. Staff rule 10.4(a) contemplates ALWOP as potentially continuing until completion of the disciplinary process. Implicitly, extensions can be anticipated once an ALWOP decision is made.

40. Unless there are new facts and assessments giving rise to the extensions, the

[4] Paragraphs 15-17.

extensions *per se* may not fit within the characteristics clearly elucidated in *Gisage* to amount to new decisions. In such cases, staff members cannot be expected to submit repeated management evaluation requests and applications to the Tribunal.

41. Having considered the facts and circumstances in this matter, the Tribunal finds that there was one continuing ALWOP decision expressly based on the initial assessment. The application is receivable in its entirety.

Merits

42. As aforementioned, the Applicant's closing submissions mainly challenge the lawfulness of the ALWOP decision based on it being tainted with illegality, by an attempt to make part of it retroactive.

43. However, the Tribunal's review of the merits of this application focusses primarily on determining whether the impugned decision was rationally based on criteria for ALWOP, applied to information available when the decision was made on 13 January 2020.

44. The unlawful retroactive aspect of the extension of the decision arose much later on, in April 2020; and was appropriately addressed in June 2020 in Order No. 119 (NBI/2020). It is not a relevant consideration for the Tribunal in the current exercise of reviewing the decision as at 13 January 2020.

45. The Tribunal's current focus, in assessing whether the decision was properly made within the regulatory framework for ALWOP, will be on information available at the time when the decision was made.

46. In this process of review, the Tribunal is mindful of the presumption of regularity of the Respondent's decisions.[5] However, while the Respondent's "classification of the objectively established circumstances as exceptional is a

[5] *Niedermayr* 2015-UNAT-603; *Survo*, 2015-UNAT-595 (both quoting *Rolland*, 2011-UNAT-122). *See also Simmons* 2014-UNAT-425; *Zhuang Zhao and Xie* 2015-UNAT-536; *Tintukasiri* 2015-UNAT-526, *Landgraf* 2014-UNAT-471.

matter for his discretion," it "nonetheless must be exercised rationally."[6]

47. The regulatory framework governing when the placement of a staff member on ALWOP is as follows:

> Staff Rule 10.4
>
> (a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary-General, at any time after an allegation of misconduct and pending the completion of a disciplinary process. Administrative leave may continue until the completion of the disciplinary process.
>
> (b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration.
>
> (c) Administrative leave shall be with full pay except (i) in cases in which there is probable cause that a staff member has engaged in sexual exploitation and sexual abuse, or (ii) when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay.
>
> ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process)
>
> 11.4 A staff member may be placed on administrative leave without pay by an authorized official when at least one of the following conditions is met:
>
> (a) There are reasonable grounds to believe (probable cause) that the staff member engaged in sexual exploitation and sexual abuse, in which case the placement of the staff member on administrative leave shall be without pay;
>
> (b) There are exceptional circumstances that warrant the placement of the staff member on administrative leave without pay because the unsatisfactory conduct is of such gravity that it would, if established, warrant separation or dismissal under staff rule 10.2 (a) (viii) or (ix), and there is information before the authorized official about the unsatisfactory conduct that makes it more likely than not (preponderance of the evidence) that the staff member engaged in the unsatisfactory conduct.

48. These provisions easily lend themselves to a literal interpretation. In other words: its plain English meaning. It is clear from the provisions, that when

[6] *Muteeganda*, 2018-UNAT-869, para. 38.

deciding whether to place a staff member on ALWOP, the authorized official, who in this case was the USG/DMSPC, must have reason to view the circumstances as exceptional.

49. In determining that circumstances are "exceptional", two elements must be present. Firstly the 'unsatisfactory conduct' the staff member is alleged to have engaged in must be grave enough to warrant separation from service (with or without notice and/or indemnity) or dismissal. Secondly, the authorized official deciding on whether to place a staff member on ALWOP must have before them, information which 'more likely than not' proves the staff member engaged in the unsatisfactory conduct.

The Unsatisfactory Conduct

50. Based on the above-mentioned provisions, the Tribunal must consider the basis upon which the Respondent considered that separation from service or dismissal would be warranted for the Applicant's conduct.

51. Counsel for the Respondent appears to place significant reliance on the Organization's firm policy against sexual abuse. Using this policy basis, the Respondent submits that failure to report sexual abuse allegations arising between other colleagues is a breach of staff rule 1.2(c) and (e).

52. The Respondent's submissions are however not supported by, or aligned with, the regulatory framework for reporting on sexual abuse matters. ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse) makes clear that it is 'concerns and suspicions' that a staff member is duty bound to report. The Bulletin does not require a staff member to report mere allegations that come to their attention. The provision is as follows:

> 3.2 In order to further protect the most vulnerable populations, especially women and children, the following specific standards which reiterate existing general obligations under the United Nations Staff Regulations and Rules, are promulgated:
>
> …

> (e) Where a United Nations staff member develops **concerns or suspicions** regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, **he or she must report such concerns** via established reporting mechanisms;

53. The regulatory framework also guides the staff member on the elements he/she should consider when deciding whether to report on private interactions between colleagues, that have led to sexual abuse allegations. There is no indication that as soon as any staff member alleges to another, that a mutual colleague engaged in unwelcomed sexual conduct, the staff member receiving the information must report it to the Organization's investigators.

54. It is only when the staff member receiving the information is subjectively, and in good faith, concerned or suspicious that misconduct took place, that a report must be made. This may reasonably exclude a situation where the staff member has knowledge of improper motives, such as malice or extortion, for the allegation against another person being disseminated. Making a report in such circumstances may put the staff member at risk of disciplinary action for malicious reporting. It may also deprive the staff member of protection against retaliation for making the report.[7]

55. Additionally, it is implicit in ST/AI/2017/1 that the staff member thinking of reporting such a matter ought to have details as follows:

> 4.5 Information received from either a staff member or a non-staff member alleging unsatisfactory conduct should contain sufficient details for it to be assessed under the present instruction, such as:
>
> (a) A detailed description of the unsatisfactory conduct;
>
> (b) The names of the implicated staff member(s);
>
> (c) Where and when the unsatisfactory conduct occurred;
>
> (d) The names of potential witnesses to the unsatisfactory conduct; and
>
> (e) All available supporting documentation.

[7] Sections 2.1(a) and 2.3 of ST/SGB/2017/2 (Rev.1) (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations).

56. The Respondent has not established that each element of the Applicant's alleged actions herein is *per se* grave enough to warrant ALWOP. This case must be examined on its own facts.

57. It is arguable that, whilst separately each alleged act of misconduct may not be sufficiently grave, when considered as a series of actions, the Applicant's alleged misconduct undermines the Respondent's zero-tolerance approach to SEA. It may have been of sufficient gravity to justify separation or dismissal. If so placement on ALWOP could be justified. There is no absurdity in the Respondent's finding that the alleged misconduct, considered globally, is grave enough, if proven, to warrant separation or termination.

58. In considering whether the Respondent's ALWOP decision was justified, there must be further consideration whether, on the information available at the time the decision was made, it was more likely than not that the alleged misconduct was in fact committed.

The information before the Authorized Official

59. The Respondent has confirmed, in disclosures filed pursuant to CMD directions, that transcripts of interviews and the recorded meeting were not part of the information the USG/DMSPC had when deciding on the ALWOP. The only information before the USG/DMSPC was the Code Cable and the memorandum from the OIOS.

60. The information available from these two documents, in support of the charge of failure to report an incident of SEA, was equivocal. On the one hand, there was the report by the complainant/victim that she informed the Applicant that she had been raped by their mutual colleague. On the other hand there is, on the face of the record that was before the USG/DMSPC, a version of events that the complainant/victim told the Applicant that the true problem she had with the alleged perpetrator was that he owed her money.

61. On the latter version of events, there may have been neither evidential basis nor a regulatory obligation for the Applicant to have reported the matter to the

Organizations investigators. To do so without genuine concern, suspicion or factual details, could be deemed an ill-motivated act, to damage the reputation and career of a colleague. There was no rational basis, from the information available, to conclude that it was more likely than not that the Applicant committed misconduct worthy of dismissal, by not reporting this complainant/victim's allegations.

62. As to the misconduct charges arising from the 25 November 2019 meeting, the Respondent had more substantive information based on which to conclude that it was more likely than not that some misconduct took place. The OIOS memorandum indicated that there was a recording of the meeting, which included demands by the complainant/victim for payments from the alleged perpetrator and directions by the Applicant that she should withdraw her complaint.

63. However, the recorded discussions described in the OIOS memorandum were not conclusive as to whether the Applicant and others were discussing payment in exchange for not reporting a rape. There were alternate versions of events on the record, whether rape or money owed was the true problem faced by the complainant/victim. The OIOS report of the recording did not provide a preponderance of evidence as to the misconduct of attempting to conceal a rape.

64. On the other hand, there was cogent available information that the Applicant lied during his interview, by denying that money was discussed at the 25 November 2019 meeting.

65. Finally, information available from the OIOS memorandum indicated that the Applicant attempted to have discussions with other witnesses before his OIOS interview. However, no information available to the USG/DMSPC clearly linked all this to concealment of a rape allegation.

66. The information available to the USG/DMSPC did not include transcripts of the OIOS interviews or of the recorded meeting. It comprised two documents, the Code Cable and the OIOS memorandum, of less than five pages each. The information therein was equivocal as to whether the actions of the Applicant were linked to concerns, suspicion, or concealment of rape allegations.

67. In *Okwakol* Order No. 127 (NBI/2020), the importance of fact-based justification for ALWOP was highlighted. At paragraph 22, the Tribunal observed that "[u]sing ALWOP is not a matter of vast administrative discretion, as the Respondent wants, because it concerns fundamental contractual rights of the staff member."

68. The impact of ALWOP on a staff member may be as onerous as summary dismissal, but without the fundamental contractual procedural fairness protections. An international staff member on ALWOP may remain in limbo for an undetermined period of time, unable to seek alternate employment or survive financially at the duty station away from their home country.

69. In the instant case, if not for the Tribunal's intervention with interim measures, the Applicant could have been on ALWOP for 22 months. Potentially, in circumstances like the Applicant's the impact of ALWOP may be harsher than for a summarily dismissed person. It is a draconian measure to be used only in exceptional cases.[8]

70. In the instant case, the information available when the decision was made remained the same over an extended ALWOP period. The information was not sufficient for a determination that it was more likely than not that the Applicant committed misconduct grave enough to warrant dismissal. There is no indication that any consideration was given to a phased approach of administrative leave with partial pay at least from January 2020, at the start of the investigations. The Applicant ought not to have been summarily deprived of his contractual entitlements based on the information available.

[8] *Antoine* Order No. 172 (NBI/2020) 'A staff member should not be surprised by a sudden loss of income before she or he could make provisions for sustaining him/herself and family during the investigation. Neither should placement on ALWOP serve to encourage resigning of expeditiousness in investigation, which is a risk where the Organization does not bear much cost of keeping a staff member of ALWOP. It follows that the financial burden of placing a staff member on administrative leave must be shared and administrative leave should be applied in a phased approach, with consideration given to leave with partial pay before ALWOP, the latter justified in genuinely exceptional cases, where objective reasons do not allow concluding the disciplinary process within a standard time'.

71. In all the circumstances, the Applicant has succeeded in establishing on the merits that the decision to place him on ALWOP was not justified.

Conclusion

72. The Application succeeds on the merits.

73. The decision to place the Applicant on ALWOP for six months is hereby rescinded.

(*Signed*)

Judge Eleanor Donaldson-Honeywell

Dated this 19th day of November, 2021

Entered in the Register on this 19th day of November 2021

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi