

UNDT/2010/056, Masri

UNAT Held or UNDT Pronouncements

The more serious an allegation against a staff member and attendant sanction, the higher the degree of proof required. Establishing criminal liability in investigations and judicial proceedings even in the context of a civil matter such as this must necessarily require that a standard higher than the ordinary one of a balance of probabilities must be attained. The OIOS Investigations Manual requires that investigators approach matters with an “open mind” and emphasises that their task is to “establish facts” and draw “reasonable conclusions” from those facts. It is a “dispassionate professional exercise” which shall be conducted with strict regard for “fairness” throughout the investigative process. The OIOS report must be “impartial” and “objective” and must demonstrate that conclusions drawn and recommendations made are “rational and sustainable”. The report must be factually “accurate” and each piece of evidence relied upon must be supported by documentation in the investigation case file. Reports should where available, include “exculpatory and mitigating” evidence. Investigators must bear in mind that allegations from an informant or programme manager are simply allegations. The OIOS, in view of their mandate, the functions they perform and the singular weight attached to their investigation report must therefore be alive to the awesome and enormous responsibility they bear. Since disciplinary action such as summary dismissal of a staff member would often depend mostly on an investigation report, OIOS investigators must exercise their functions and power with a high sense of accountability and responsibility. As the Investigations Manual provides, their conclusions and recommendations must be seen to be both rational and sustainable. This is even more so when in their report, they arrive at a conclusion that a staff member’s actions are enough to found criminal liability.

Decision Contested or Judgment/Order Appealed

The Applicant contested his summary dismissal for serious misconduct.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal orders rescission of the decision to summarily dismiss the Applicant; reinstatement; demotion by four steps within his job level at the time of his summary dismissal; and fixes the compensation to be paid to the Applicant, should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to rescind the decision, at two years' net base salary.

Full judgment

[Full judgment](#)

Applicants/Appellants

Masri

Entity

MONUC

Case Number(s)

UNDT/NBI/2009/051

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

8 Apr 2010

Duty Judge

Judge Izuako

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Investigation

Due process

Standard of proof

Disciplinary cases

Termination (of appointment)

Summary dismissal

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 110.3

GA Resolutions

Other UN issuances (guidelines, policies etc.)

- UN Procurement Manual

Secretary-General's bulletins

- ST/SGB/273

UNDT RoP

- Article 8.2(g)

Related Judgments and Orders

UNDT/2010/036

UNDT/2010/044