

UNDT/2011/123, Johnson

UNAT Held or UNDT Pronouncements

Placing the Applicant on SLWFP. The Tribunal agrees with and adopts the Kamunyi reasoning that former staff rule 105.2 did not permit placing a staff member on SLWFP where an investigation was being made into possible wrong-doing by that staff member. The formal nature of the OIOS/PTF investigation. A preliminary investigation under ST/AI/371, sec. 2, is differentiated from a formal investigation under ST/AI/371, sec. 6, as occupying different places within the overall structure of ST/AI/371. For an investigation to be regarded as merely preliminary in nature, some “reason to believe” must exist that a staff member has engaged in unsatisfactory conduct, but the investigation must not have reached the stage where the reports of misconduct are “well founded” and where a decision already has been made that the matter is of such gravity that it should be pursued further, through a decision of the ASG/OHRM. Where the latter threshold has been reached, the investigation at that point ceases to be preliminary and in substance converts to a formal investigation with a focus on a specific staff member. The initial identification of the eight staff members and their linkage to criminal wrong-doing (the Applicant was later “specifically cleared” hereof) meant that the investigation by the OIOS/PTF had long since passed the preliminary stage and that a de facto investigation into actual misconduct was taking place. A de facto suspension. In reality, the Respondent charged the Applicant with misconduct on a sub silentio basis, made a decision that the case against the Applicant should be pursued, and constituted the special OIOS/PTF to look into the matter. The impression conveyed was that of a purposeful denial of due process rights for all eight staff members concerned, including the Applicant. Breaches of the Applicant’s due process rights under ST/AI/371 when placed on SLWFP. The Applicant was deprived of his rights to: be informed of the allegations and of the right to respond to the allegations; be provided with documentary evidence of the alleged misconduct; be informed of his right to the advice of other staff members to assist in his responses; and be given a specified time to answer the allegations and to be informed of the procedure for producing countervailing evidence. The inadequate reasons proffered by the Organization for

placing the Applicant on SLWFP. The rationale advanced by the Respondent for placing the Applicant on SWLFP was not supported by the facts in this case: (1) the goal of protecting witnesses was not achieved, since the staff members who were placed on SLWFP were not directed to avoid speaking with their colleagues or from entering United Nations buildings while on SLWFP; (2) the Respondent did not provide any objective evidence to show that the Applicant would, or could, have tainted the OIOS/PTF investigation; and (3) the Applicant was placed on SLWFP solely to guard against perceptions that might occur. Violation of the Applicant's due process rights during the interrogations subsequent to his being put on SLWFP. The Applicant was never advised of his due process rights, but was specifically refused any such rights during the course of the OIOS/PTF investigation. Outcome: Applicant awarded two years' net base salary in effect in January 2006 as for the substantial and unwarranted irregularities when the Applicant was placed on SLWFP and during the OIOS/PTF investigation thereafter.

Decision Contested or Judgment/Order Appealed

Placement on Special Leave With Full Pay ("SLWFP") pending investigation.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Johnson

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2010/056/AT/1569

Tribunal

UNDT

Registry

New York

Date of Judgement

30 Jun 2011

Duty Judge

Judge Kaman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Due process

Investigation

Discretionary authority

Applicable Law

Administrative Instructions

- ST/AI/371

Staff Rules

- Rule 105.2(a)
- Rule 110.2
- Rule 110.3
- Rule 110.4

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2011/081

UNDT/2010/122

UNDT/2010/214

2010-UNAT-042

2010-UNAT-059

2010-UNAT-093

2010-UNAT-092