

UNDT/2011/205, Marshall

UNAT Held or UNDT Pronouncements

Allegations of domestic violence and conflicts over child custody, maintenance or paternity are properly matters for a criminal court and family court to entertain. The Organization has no business using its administrative procedures to involve itself in a personal dispute when other appropriate legal channels were available to the parties to sort out their rights and responsibilities. The unilateral extension of the Applicant's temporary assignment to Addis Ababa beyond the agreed one month amounted to bias, abuse of authority and a breach of the Applicant's due process rights. The Applicant could not receive the SPA for the work of a higher level post which he did not have in Addis Ababa when he agreed to a one month temporary assignment. The Applicant was entitled to the SPA for the full duration for which it had been granted.

Decision Contested or Judgment/Order Appealed

In sum, the Applicant contested the Organisation's handling of the alleged misconduct. On 8 August 2006, the Applicant was charged with verbal harassment, physical assault and acting in a manner unbecoming of his status as a civil servant. The Complainant was a staff member with whom the Applicant lived and had a son. On 19 December 2006, the Applicant was informed that following a careful review of the investigation file and his response, the case was being closed in accordance with paragraph 9 (a) of ST/AI/371. The Applicant was, however, cautioned that he should be mindful to avoid the appearance of a conflict of interest between his professional duties and personal interests.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The cautionary note of 19 December 2006, which was termed managerial action, is rescinded and nullified and the Applicant is awarded compensation for the substantial and grave mishandling by the Administration of this matter to his detriment and an award of nine months' net base salary for the totality of the moral damages suffered. The Applicant shall also be paid the difference between the salary he received, while in Addis Ababa and the SPA earlier granted him. The said SPA shall be calculated from 1 September 2005 when his continued assignment to Addis Ababa became illegal up to the period for which the SPA was initially granted.

Full judgment

[Full judgment](#)

Applicants/Appellants

Marshall

Entity

UNMEE

Case Number(s)

UNDT/NBI/2010/27/UNAT/1684

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

30 Nov 2011

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process

Investigation

Applicable Law

Administrative Instructions

- ST/AI/2000/12
- ST/AI/2003/3
- ST/AI/371

Agreements, conventions, treaties (etc.)

- Agreement on Privileges and Immunities of the United Nations concluded between the Swiss Federal Council and the Secretary General of the United Nations on 19 April 1946

Former Staff Rules

- Rule 101.2(c)
- Rule 101.2(d)

Secretary-General's bulletins

- ST/SGB/2002/13
- ST/SGB/2008/5

Security Council Resolutions

- S/RES/1325

UNDT Statute

- Article 10.5(a)

Related Judgments and Orders

UNDT/2011/106