

# UNDT/2011/209, Shanks

## UNAT Held or UNDT Pronouncements

The process leading up to the termination decision. A human resources office, such as OHR, has the obligation to ensure that its administrative decisions are taken on a proper factual basis and, if necessary, make the necessary enquiries to ensure this to protect the affected staff member's rights. OHR failed to inform the Applicant and the relevant medical advisors about the consequences of her being declared disabled by UNSPC and about her possible alternatives. OHR also failed to delay the examination of the Applicant's case by UNSPC. All these circumstances breached the Applicant's rights to fair and diligent treatment. Furthermore, OHR proceeded with the case to UNSPC in violation of the procedures set out in the Prescriptive Content. The Applicant gradually returning to work on a part-time basis. The Applicant's request for a gradual return to work was not fairly or adequately considered by neither OHR nor SSC. The termination decision. In a situation as that of the Applicant, the OHR Director, who exclusively decides on the matter of her termination under the UNDP Prescriptive Content, in the proper exercise of his discretion must weigh up all relevant considerations about the particular case in hand before making the decision taking into account, but not limiting herself/himself to, UNSPC's position on the matter. The most relevant consideration in the present case was the on-going dialogue between the Applicant and OHR and their respective medical advisors about her willingness and ability to return to work on a graduated work plan. Most importantly, under the Prescriptive Content, a staff member may only be terminated based on conclusive medical evidence. The OHR Director's reliance solely on the findings of UNSPC, and the resulting termination of the Applicant's appointment, was therefore in breach of UNDP's obligation to act fairly towards the Applicant and was a breach of the proper exercise of his discretion. Outcome: The Applicant's rights were breached. Liability to be determined separately.

## Decision Contested or Judgment/Order Appealed

The Applicant appealed the decision of UNDP to terminate her contract.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The Applicant's rights were breached. Liability to be determined separately.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Shanks

## Entity

UNDP

## Case Number(s)

UNDT/NY/2010/028/UNAT/1664

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

8 Dec 2011

## Duty Judge

Judge Shaw

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Separation from service

Termination of appointment (see also, Termination of appointment)

Termination (of appointment)

## Applicable Law

Former Staff Regulations

- Regulation 9.1

Former Staff Rules

- Rule 111.2