

# UNDT/2011/218, Massah

## UNAT Held or UNDT Pronouncements

The Tribunal did not find any evidence of sexual exploitation and abuse as defined by the SGB. The Tribunal considered the definition of pornography and on viewing the images concluded that they were obscene, hardcore pornography. In view of the Applicant's admissions and the quantity of materials on his official computer, the misconduct charge in that respect was well founded. The Applicant's submission that the evidence was fruit of the poison tree and therefore inadmissible was rejected on the basis that the illegally obtained evidence (a CD) merely triggered the investigation but did not found the charge which the Tribunal found proven—that of misuse of ICT resources. Relying on *Jeffrey v. Black* the Tribunal did not consider that the illegally obtained 'trigger' rendered the subsequent charges/proceedings defective. The Tribunal considered whether or not the sanction was proportionate, in light of the Secretary-General's published practice in disciplinary cases. The Tribunal considered that summary dismissal was far more severe than the sanction imposed on other staff members for having pornography on their official computers. The severe sanction was wrongly imposed in all likelihood because of the sexual exploitation element in the case. That not having been proven before the Tribunal, the sanction could only be described as disproportionate.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss him for sexual exploitation and abuse as well as violations of ST/SGB/2004/15 ("Use of Information and Communication Technology Resources and Data") following the discovery of a large number of allegedly pornographic images on the hard drive of his official computer. It was said that the Applicant had taken pornographic photographs of local women at his apartment and this constituted sexual exploitation. The Applicant admitted having the images on his computer but denied that they were pornographic and that he had taken those that were said to be pornographic.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Application granted. Applicant's estate awarded four months' net base salary plus interest.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Massah

## Entity

MINURSO

## Case Number(s)

UNDT/NBI/2010/008/UNAT/1581

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

29 Dec 2011

## Duty Judge

Judge Boolell

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Sexual exploitation and abuse

Termination (of appointment)

Summary dismissal

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2003/13
- ST/SGB/2004/15

## Related Judgments and Orders

2010-UNAT-022

2010-UNAT-040

2010-UNAT-087