

# UNDT/2012/039, Powell

## UNAT Held or UNDT Pronouncements

The Tribunal held that since summary dismissal/termination may have been the possible outcome at the end of the disciplinary process, the Respondent had to establish by clear and convincing evidence that the daily casual worker (Mary) was transferred to MovCon as a result of the alleged sexual relationship between her and the Applicant. The Tribunal concluded that the facts upon which the disciplinary measure was based were not established and that the facts which were established did not legally amount to misconduct under the Regulations and Rules of the United Nations. Consequently, the Tribunal held that the disciplinary measure imposed on the Applicant was unlawful ab initio and therefore, a violation of his rights. Additionally, the Tribunal concluded that there were procedural irregularities in the conduct of the investigation and the disciplinary proceedings that form a separate basis for awarding compensation to the Applicant.

## Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of MONUSCO, is contesting the decision to demote him for reasons of misconduct. Subsequent to a Board of Inquiry and Sexual Exploitation and Abuse (SEA) investigation, the Applicant was charged with four instances of alleged misconduct, including SEA, and placed on suspension. After a review of the evidence, a majority of the JDC panel found that the Applicant had engaged in a sexual relationship with a daily worker and had favoured her by actively seeking her transfer to his section, MovCon. Based on this finding, the Secretary-General found that the Applicant's conduct constituted misconduct and imposed on him the disciplinary measure of demotion without promotion for two years.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The Tribunal ordered rescission of the decision to demote the Applicant. The Respondent was also ordered to compensate the Applicant for loss of earnings from the date of his demotion to the date of the Tribunal's judgment. Further, the Respondent was ordered to compensate the Applicant in the amount of one year's net base salary for the procedural irregularities in the investigation and disciplinary process and \$15,000 for moral injury caused by the excessive suspension period he endured.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Powell

## Entity

MONUC

## Case Number(s)

UNDT/NBI/2010/006/UNAT/1575

## Tribunal

UNDT

## Registry

Nairobi

Date of Judgement

28 Mar 2012

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual exploitation and abuse

Applicable Law

Administrative Instructions

- ST/AI/371

Other UN issuances (guidelines, policies etc.)

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.2(f)
- Regulation 1.2(g)

Staff Rules

- Rule 110.1
- Rule 110.2(a)

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

2010-UNAT-084

2011-UNAT-123

2011-UNAT-164

UNDT/2010/041

UNDT/2010/044

UNDT/2011/018

UNDT/2011/054

UNDT/2011/115

UNDT/2011/123

UNDT/2011/162