

UNDT/2012/139, Nyambuza

UNAT Held or UNDT Pronouncements

The practice of placing reliance upon recordings in initial fact finding exercises and interview notes of appointed investigators in an effort to establish gross misconduct warranting summary dismissal before the Tribunal is grossly inadequate and cannot establish the facts in issue. An investigator must be committed to ascertaining the facts of the case through relevant inquiry involving the questioning of witnesses, forensic evidence where necessary and identification and collection of relevant documentary evidence. The investigator's findings should be based on substantiated facts and related analysis, not suppositions and assumptions. Factual accuracy is very important. Establishing criminal liability in investigations and judicial proceedings even in the context of a civil matter, such as in the present case, must necessarily require that a standard higher than the ordinary one of a balance of probabilities must be attained. In disciplinary cases where the charges against a staff-member are quasi-criminal in nature, the burden of proof rests with the Respondent to produce evidence that raises a reasonable inference, higher than the balance of probabilities standard that misconduct has occurred.

Decision Contested or Judgment/Order Appealed

The Applicant contests a decision, dated 6 November 2008, summarily dismissing her from MONUC for improperly soliciting and receiving monies from local citizens in exchange for their initial recruitment and continued service as United Nations staff in violation of staff regulations 1.2(b), (e), (f) and (g) and under staff rules 301.3(e) and (i). The Tribunal rescinds the Applicant's summary dismissal and holds that until the date of this judgment the Applicant remained lawfully in the service of the Organisation.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

UNDT rescinded the decision to summarily dismiss the Applicant. UNDT ordered reinstatement of the Applicant or the payment of compensation in lieu. UNDT ordered all material relating to the dismissal be removed from the Applicant's official status file with the exception of the Judgment and any subsequent action taken by the Administration to implement it.

Full judgment

[Full judgment](#)

Applicants/Appellants

Nyambuza

Entity

MONUC

Case Number(s)

UNDT/NBI/2010/037

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

18 Sep 2012

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary

Termination (of appointment)

Summary dismissal

Applicable Law

Staff Regulations

- Regulation 1.2(g)

Staff Rules

- Rule 301.3(i)

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2011/067