

UNDT/2013/009, Diabagate

UNAT Held or UNDT Pronouncements

All the unresolved questions, the established facts and the Applicant's failure to bring evidence in order to convince the Tribunal of the alleged extortion scheme against him support an inference that the Applicant had likely engaged in a sexual relationship with V01, a minor. Given all the surrounding circumstances of the charge, investigations and his own actions and explanations, the Applicant has not sufficiently discharged the burden upon him. The wording in paragraphs 3.2 (a) and (b) of ST/SGB/2003/13 is clear. Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures including summary dismissal. Mistaken belief in the age of a child is not a defence. The Tribunal, having found that there is a preponderance of evidence that the Applicant engaged in sexual activity with V01 who was at the time under the age of 18 years, holds that the disciplinary measure of summary dismissal that was imposed on the Applicant was proportionate to the offence.

Decision Contested or Judgment/Order Appealed

On 6 October 2010 the Applicant was summarily dismissed from service for serious misconduct. On 17 January 2011, he filed an Application challenging the decision.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Diabagate

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2011/002

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

23 Jan 2013

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Sexual exploitation and abuse

Sexual harassment

Due process

Separation from service

Termination (of appointment)

Summary dismissal

Applicable Law

Other UN issuances (guidelines, policies etc.)

- MONUC Code of Conduct on Sexual Exploitation and Sexual Abuse

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.1(f)

UNDT RoP

- Article 17.1
- Article 17.2

Related Judgments and Orders

2010-UNAT-018

2011-UNAT-164