

UNDT/2013/012, Toukolon

UNAT Held or UNDT Pronouncements

The Organization's jurisdictional competence does not extend to the physical assault of a non-UN staff member by a staff member. It was within the province of the Respondent or his agents in this case to investigate the events leading up to the physical assault of Ms. Oduke. Having established that Ms. Oduke had been physically assaulted, the appropriate action for the Administration after that would have been for Ms. Oduke, as a non-staff member, to be advised or even assisted to file charges against the Applicant for assault in the appropriate local court. The conclusions of the local court could then have formed the basis for any subsequent administrative action against the Applicant. United Nations Managers have no competence to make pronouncements of law on certain legal matters which fall squarely within the province of national courts. The Administration, in line with its own practice and in proper application of its internal laws, ought to have imposed a sanction, not more serious than a censure against the Applicant for verbally abusing Mr. Perera and for engaging in aggressive and uncooperative behaviour directed towards him at the same time. The fact of the Applicant's drunkenness, his remorse concerning the incident and his apology to Ms. Oduke and all concerned in the incident, as soon as he sobered up and the fact that Ms. Oduke a non-UN staff member was at the Base outside curfew hours were mitigating factors which ought to have been taken into account. The doctrine of proportionality is applicable in this case to reduce the Applicant's separation from service without compensation in lieu of notice and termination indemnity to a censure in line with the Secretary-General's practice in disciplinary cases.

Decision Contested or Judgment/Order Appealed

On 6 July 2011, the Applicant was separated from service for having assaulted one Ms. Juliet Marion Oduke on 4 July 2010, verbally abusing a Security Officer with UNMIS and engaging in aggressive and uncooperative behaviour towards him. The Applicant contests the disciplinary measure imposed on him and requests to be

reinstated and compensated.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

UNDT ordered the Respondent to rescind the Applicant's separation from service with compensation in lieu of notice and with termination indemnity and held that until the date of closure of UNMIS, he remained lawfully in the service of the Organization. UNDT ordered the Respondent to pay the Applicant all his salaries and entitlements from 6 July 2011 until the date of closure of UNMIS.

Full judgment

[Full judgment](#)

Applicants/Appellants

Toukolon

Entity

UNMIS

Case Number(s)

UNDT/NBI/2011/058

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 Jan 2013

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Harassment (non-sexual)

Due process

Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/371

GA Resolutions

- A/RES/64/110

Information Circulars

- ST/IC/2011/20

Secretary-General's bulletins

- ST/SGB/2008/5

Security Council Resolutions

- S/RES/1997

Staff Regulations

- Regulation 1.1(f)

Related Judgments and Orders

UNDT/2010/036

UNDT/2012/124

2010-UNAT-018

2012-UNAT-270