

UNDT/2014/122, Tshika

UNAT Held or UNDT Pronouncements

The Tribunal concluded that the established facts did not legally amount to misconduct and that the disciplinary measure imposed on the Applicant was unlawful ab initio and therefore, a violation of her rights. Breadth of judicial review: When reviewing disciplinary matters, the role of the Tribunal is to look at all the facts, including the facts that came up during the investigation. Thus, the Tribunal is entitled to look at the manner in which the investigation was conducted; the facts gathered; the testimony of witnesses and the documentary evidence.

ST/AI/371: The Tribunal noted that: (i) under ST/AI/371, it is the responsibility of the head of office or responsible officer to undertake a preliminary investigation where there is reason to believe that a staff member has engaged in unsatisfactory conduct and (ii) that the head of office or responsible officer appears to be vested with wide discretion at the initial stage of a disciplinary matter. The Tribunal concluded, however, that this discretion is to be exercised judiciously in the light of what the investigation has revealed. In the exercise of that discretion the head of office or responsible officer is compelled to carefully scrutinize the facts gathered during the investigation; see if there are any flaws or omissions in the facts gathered that need to be remedied; assess whether all available and relevant witnesses have been interviewed; and call for supplementary investigation or clarification if need be. Allegations of misconduct (Charge Letter): Noting that the charge of submitting fraudulent documents was never put to the Applicant specifically in the charge letter, the Tribunal concluded that it cannot and should not embark on an analysis of what appears to be clearly “a new charge that was not the subject of an investigation”.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of MONUC, contested the decision by the USG of Management to summarily dismiss her from service.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Applicant was awarded financial compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Tshika

Entity

MONUC

Case Number(s)

UNDT/NBI/2010/068

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

13 Oct 2014

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary matters / misconduct

Dismissal/separation

Fraud, misrepresentation and false certification

Investigation

Applicable Law

Administrative Instructions

- ST/AI/371

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2010/024

UNDT/2010/053

UNDT/2011/067

UNDT/2011/162

UNDT/2012/049

2010-UNAT-022

2010-UNAT-042

2010-UNAT-084

2010-UNAT-087

2011-UNAT-143

2011-UNAT-164

2012-UNAT-207

2012-UNAT-232

2012-UNAT-233

2012-UNAT-272

2013-UNAT-309

2013-UNAT-364

2014-UNAT-398

2014-UNAT-403