

UNDT/2015/004, Ocokoru

UNAT Held or UNDT Pronouncements

The Tribunal found that the Applicant had discharged the burden of proof in showing that her separation from the Organization was motivated by extraneous factors and improper motives. Extraneous factors – There was increased animosity between the Applicant and her various supervisors both in Bor and later when she was transferred to Wau. Consequently, the Tribunal found that bias against the Applicant existed on the part of UNMISS management. Due Process/ Procedural flaw – The responsible officials at the mission all defied the procedures provided for by ST/AI/371 for dealing with reports of misconduct. The highly irregular alternative comparative review process used in abolishing the Applicant's post was not simply a procedural error. Coupled with Civil Affairs Division's (CAD) apparent unwillingness to grant her a lateral transfer there is no doubt of a strong resolve and desire to separate the Applicant from the Organization. The issuance of a vacancy announcement for the post the Applicant encumbered was more than a simple clerical error as presented by the Respondent and evidenced a desire on the part of CAD and UNMISS managers for the Applicant to leave the Organization. Burden of proof - The burden of proof lies with the Applicant contesting the administrative decision. The Applicant manifestly discharged this burden. It is clear from the manner in which her claim of sexual assault was handled as well as other evidence led that there was no love lost between the Applicant and her supervisors as well as a general disdain for her serious grievances.

Decision Contested or Judgment/Order Appealed

On 21 December 2012 and 18 April 2013, the Applicant filed an Application and a revised Application respectfully, contesting the administrative decision not to renew her fixed-term contract due to abolition of post.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance.

Full judgment

Full judgment

Applicants/Appellants

Ocokoru

Entity

UNMISS

Case Number(s)

UNDT/NBI/2012/74

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Jan 2015

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Burden of proof

Due process

Non-renewal

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/371

Staff Rules

- Rule 10.1

Related Judgments and Orders

UNDT/2011/045

2010-UNAT-100

2010-UNAT-021

2011-UNAT-178

2012-UNAT-236