

# UNDT/2015/104, Omwanda

## UNAT Held or UNDT Pronouncements

**Performance Notice** The Tribunal finds that this Notice was not reflected in the Applicant's ePAS and was not placed on the Applicant's Official Status File. The Tribunal concludes that the Performance Notice issued to the Applicant has not, in and of itself, affected his legal rights. Having found that his legal rights were not affected by the decision to issue the Performance Notice, it is not necessary for the Tribunal to consider the Applicant's other submissions in relation to this issue. **Complaint of harassment and discrimination** The Tribunal considers that, having received allegations of harassment and discrimination, and having received an undertaking to provide evidence to support those allegations, it was contrary to the policy set out in ST/SGB/2008/5 for the USG/DSS to conclude, without requesting further particulars or evidence from the Applicant, that there were insufficient grounds to warrant a fact-finding investigation. The Tribunal finds that the decision was procedurally flawed and is accordingly rescinded. The Tribunal found that the Performance Notice issued to the Applicant did not, in and of itself, affect his legal rights and dismissed this element of the application. The Tribunal found that having received an undertaking to provide evidence to support allegations of discrimination and harassment, it was contrary to the policy set out in ST/SGB/2008/5 for the USG/DSS to conclude, without requesting further particulars or evidence from the Applicant, that there were insufficient grounds to warrant a fact-finding investigation. The Tribunal found that the decision was procedurally flawed and therefore rescinded the decision. The Respondent was ordered to pay USD3,000 in compensation to the Applicant for the distress caused by the decision.

## Decision Contested or Judgment/Order Appealed

The Applicant, a Security Officer with the Security and Safety Service ("SSS"), Department of Safety and Security ("DSS") contested the decision of the Chief, SSS to issue him a Performance Notice and the decision of the Under-Secretary-General for Safety and Security ("USG/DSS") not to initiate a fact-finding investigation in response to the Applicant's complaint of harassment and discrimination.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial comp. and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Omwanda

Entity

DSS

Case Number(s)

UNDT/NY/2014/059

Tribunal

UNDT

Registry  
New York  
Date of Judgement  
3 Nov 2015  
Duty Judge  
Judge Meeran  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Disciplinary matters / misconduct  
Harassment (non-sexual)  
Discrimination and other improper motives  
Investigation  
Fact-finding investigation  
Performance management  
Applicable Law  
Administrative Instructions

- ST/AI/2010/5

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 2.1

Related Judgments and Orders

2010-UNAT-058

2010-UNAT-095

2015-UNAT-501