

UNDT/2015/112, Dia

UNAT Held or UNDT Pronouncements

Promulgation of MONUSCO Administrative Instruction No. 2013/15: The Tribunal observed that MONUSCO Administrative Instruction No. 2013/15 is of general application to the extent that it applies to all MONUSCO personnel but it was not expressly issued for the implementation of any specific rules or ST/SGBs. However, it does not meet the requirements of ST/SGB/2009/4. Accordingly, the Tribunal held that the lack of promulgation of the AI does not of itself render the impugned decision null and void. Withdrawal of the Applicant's driving privileges: The Tribunal found that MONUSCO Administrative Instruction No. 2013/15 was the only source of the Administration's authority to withdraw or suspend a driver's permit at MONUSCO. The corrective measures in the AI are for specific traffic violations and for causing accidents or incidents. The Administration did not identify the Applicant's breach of any of the infractions listed in the AI to justify withdrawal of his driver's permit. Additionally, the Tribunal found that the memorandum advising the Applicant of the suspension of his driver's permit had all the characteristics of a punitive measure. Its subject was "Driver's conduct". It referred to administrative actions for continued unjustified absence from the workplace and it referred to a breach of United Nations Rules and Regulations although it did not specify which of these had been breached. Lastly, it purported to impose a measure derived from the list of corrective measures in MONUSCO Administrative Instruction No. 2013/15.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decisions by MONUSCO to revoke his driving privileges (driver's permit) due to unjustified absence from the workplace and to place adverse material into his personnel file.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal concluded that the decision to suspend the Applicant's driver's permit was unlawful. Since the Applicant's safety and security were compromised due to the revocation of his driving privileges, the Tribunal awarded him USD1500 as moral damages.

Full judgment

[Full judgment](#)

Applicants/Appellants

Dia

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2014/74

UNDT/NBI/2015/79

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

21 Nov 2018

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Performance management

Rebuttal

Applicable Law

Administrative Instructions

- MONUSCO AI No. 2013/15
- ST/AI/1999/13
- ST/AI/2010/6

Secretary-General's bulletins

- ST/SGB/2009/4

Staff Rules

- Rule 10.2(b)
- Rule 10.3

Related Judgments and Orders

UNDT/2009/030

2010-UNAT-084

2012-UNAT-201

2013-UNAT-309

2014-UNAT-409