

# UNDT/2017/026, Marin

## UNAT Held or UNDT Pronouncements

Disciplinary process and agreed separation: While the fact that an investigation for misconduct was ongoing was not in itself a basis for excluding the Applicant from consideration for agreed separation outright, as this was not one of the non-eligibility factors set forth in the relevant rules, the Administration was entitled to take into account the outcome of the investigation and subsequent disciplinary process when carrying out its consideration to award a discretionary benefit on to a staff member.

Accountability referral: The Tribunal referred the case to the UNDP Administrator due to the inordinate delay in concluding the disciplinary process.

## Decision Contested or Judgment/Order Appealed

The Applicant was a long-serving UNDP staff member holding a fixed-term appointment. While on secondment to DPKO, an investigation for misconduct was launched against him, which had not concluded when he returned to UNDP. After a search period during which no alternative position was found for him in UNDP, the Applicant was given a three-month notice and, towards the end of it he requested an agreed separation under a legal scheme specific to UNDP by which long-serving staff could benefit, upon separation, from entitlements going well beyond those catered for in the Staff Rules, including payment of termination indemnity. In his request he choose the option of receiving a lump-sum combined with bridging with his retirement age through SLWOP. No final decision was made on the Applicant's request for agreed termination and, instead, it was put on hold until the end of the disciplinary process against him and the Applicant was placed on SLWOP. Upon him reaching the maximum of 24 months of SLWOP, he was separated for expiration of his appointment. He contested the deferment of the decision on his agreed termination request until the completion of the disciplinary process. The Tribunal found that the Applicant had not been implicitly granted an agreed termination as from the moment he was placed on three-month notice. It also found that the decision to wait until the disciplinary case is finalized to make a final decision on the Applicant's agreed termination request was not an unreasonable exercise of the Administration's discretion.

## Legal Principle(s)

N/A

## Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Marin

Entity

UNDP

Case Number(s)

UNDT/GVA/2016/27

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 Apr 2017

Duty Judge

Judge Meeran

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Separation from service

Referral for accountability

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNDP Agreed Separation Arrangements

Related Judgments and Orders

UNDT/2015/020

2016-UNAT-614