

UNDT/2018/045, Micaletti

UNAT Held or UNDT Pronouncements

1) With regard to Case No. UNDT/NBI/2015/058, the Tribunal declined to entertain decisions a, b and c as listed above on the ground that the Applicant had not submitted them for management evaluation as required by the provisions of articles 8.1(c) and (i) of the Tribunal's Statute. The only decision under Case No. UNDT/NBI/2015/058 that the Tribunal considered was the Respondent's decision to not provide the Applicant with a copy of the investigation report in the complaint of the physical assault against him. On this issue, the Tribunal found no merit in the Applicant's case. The Tribunal reasoned that the Applicant had not presented any cogent argument to show that there were exceptional circumstances that might otherwise would have entitled him to the investigation report. 2)With regard to Case No. UNDT/NBI/2015/078, where the Applicant contested the decision of USG/DM to impose on him the disciplinary measure of separation, the Tribunal found the impugned decision to have been fair and appropriate. The Tribunal found that the Applicant had engaged in a criminal conduct of physically and viciously assaulting another staff member within the United Nations workplace. 3) For Case No. UNDT/NBI/2015/062, where the Applicant contested the decision to abolish the P-5 post of Humanitarian Affairs Officer that he encumbered, the Tribunal held that since the decision was taken by the General Assembly, it did not constitute an administrative decision capable of being challenged before it. The Tribunal observed that many of the claims and submissions by the Applicant in each of his three cases which were consolidated, were not founded on or supported by credible and relevant evidence. Accordingly, the consolidated case was dismissed.

Decision Contested or Judgment/Order Appealed

The Applicant filed three applications (UNDT/NBI/2015/058 062 and 078) that were consolidated for purposes of the judgment. In Case No. UNDT/NBI/2015/058, the Applicant contested four decisions, namely: a)The decision of the Under-Secretary-General for Field Support ("USG/DFS") to close his complaint filed under

ST/SGB/2008/5 against the Deputy Joint Special Representative/Political (“DJSR/P”) of UNAMID b)The decision of USG/DFS not to provide him with a copy of the investigation report into his ST/SGB/2008/5 complaint against DJSR/P c)The decision of the Office of Human Resources Management (“OHRM”) to proceed with the disciplinary case against him that resulted in his separation and d)The decision to treat the case of physical assault by him against another staff member, Mr. A, separately from his complaint under ST/SGB/2008/5. In Case No. UNDT/NBI/2015/062, the Applicant contested the decision to abolish the P-5 post of Humanitarian Affairs Officer in UNAMID effective 1 April 2015. In Case No. UNDT/NBI/2015/078, the Applicant contested the decision of the UnderSecretary-General for Management (USG/DM) to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity.

Legal Principle(s)

a) Pursuant to staff rule 11.2, a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules, is required, as a first step, to submit to the Secretary-General in writing a request for a management evaluation of the administrative decision. b) According to section 5.18(a) of ST/SGB/2008/5, if the investigation findings conclude that no prohibited conduct took place, the case is closed. The responsible official is duty bound in such a case to inform the alleged offender and the aggrieved individual of the outcome by giving them a summary of the findings and conclusions of the investigation. However, the Appeals Tribunal found that once the investigation is closed and there are exceptional circumstances, the report may be communicated to the complainant. c) Pursuant to staff regulation 1.2(f), the staff members are required to conduct themselves at all times in a manner befitting their status as international civil servants. In the same vein, staff rule 1.2(f) prohibits abuse in any form at the workplace or in connection with work. d) Regarding the abolition of a post as a result of the General Assembly decision, the settled jurisprudence of the tribunal is that such a decision does not constitute an administrative decision capable of being challenged before the Tribunal. The Secretary-General is duty bound to comply with General Assembly decisions.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Micaletti

Entity

UNAMID

Case Number(s)

UNDT/NBI/2015/058

UNDT/NBI/2015/062

UNDT/NBI/2015/078

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 Mar 2018

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Separation from service

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(a)

Staff Rules

- Rule 11.2

UNDT Statute

- Article 2.6
- Article 8.1(c)