

UNDT/2018/056, Sall

UNAT Held or UNDT Pronouncements

The failure to re-interview the subject of an investigation to confront him/her with additional gathered evidence constitutes a breach of his/her due process rights: the contested disciplinary decision is unlawful since it was taken based on the evidence and recommendations of the SIU/UNAMID investigation reports issued in January 2013 and December 2013, even though the SIU/UNAMID continued the investigation and gathered additional evidence from two witnesses in January 2015 and April 2015. The new evidence was never brought to the attention of the Applicant or of the decision-maker before the contested decision was issued and the exonerating evidence was never evaluated and taken into consideration during the investigation and the disciplinary process. The Dispute Tribunal concluded that (a) the application is granted in part, the contested decision to terminate the Applicant's contract for disciplinary reasons and to separate him from the UNAMID is rescinded, and any references relative to the Applicant's disciplinary sanction of separation from service are to be removed from his official status file; (b) As an alternative to the rescission of the contested decision, the Respondent is to pay to the Applicant USD5,000; (c) The Respondent is to pay the Applicant the equivalent of his net salary for the period 8 May-30 June 2016 as material damages. Further, the Applicant's request for reinstatement is rejected since he was separated from service for disciplinary reasons on 8 May 2016 and his fixed-term contract was due to expire on 30 June 2016.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations African Union Mission in Darfur ("UNAMID"), filed an application before the Dispute Tribunal contesting the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity. As remedy, the Applicant requested his reinstatement with back pay and benefits.

Legal Principle(s)

Legal value of a closure report issued by the ID/OIOS Director: the Tribunal considers that once a closure report is issued by the ID/OIOS Director, any prior investigation report(s) can no longer constitute the basis for a disciplinary decision to be taken by the USG/DM. In case that, after the issuance of a closure report, new incriminating evidence is presented, based on which the USG/OIOS decides to re-open the investigation, the closure report is no longer in effect and the investigation is considered to be pending and a new report is to be prepared by ID/OIOS. If, after the re-opening of the investigation, ID/OIOS issues an investigation report, only this new document represents the basis for the issuance of a disciplinary sanction.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Sall

Entity

UNAMID

Case Number(s)

UNDT/NY/2016/62

Tribunal

UNDT

Registry

New York

Date of Judgement

4 May 2018

Duty Judge

Judge Greceanu

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Separation from service

Applicable Law

Administrative Instructions

Secretary-General's bulletins

- ST/SGB/2016/1

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.5(c)
- Regulation 9.3

Staff Rules

- Rule 1.2(e)
- Rule 10.1

- Rule 10.2
- Rule 10.3
- Rule 4.13(b)
- Rule 4.13(c)
- Rule 9.6

UNDT RoP

- Article 15
- Article 19

UNDT Statute

- Article 10.5(a)
- Article 10.7
- Article 8

Related Judgments and Orders

UNDT/2011/012

UNDT/2011/068

UNDT/2010/073

UNDT/2011/061

UNDT/2010/169

UNDT/2011/046

UNDT/2010/204

UNDT/2010/176

2013-UNAT-310

2016-UNAT-700

2015-UNAT-550

2013-UNAT-302

2010-UNAT-092

2015-UNAT-505

2017-UNAT-742

2013-UNAT-309

2011-UNAT-164