

UNDT/2018/122, Kramo

UNAT Held or UNDT Pronouncements

The Tribunal found that clear and convincing evidence was obtained which was consistent with the Applicant's sexually exploiting local women and the impugned decision was well-founded. The Applicant had claimed that he had given his username and password to other staff members therefore, he could not be attributed the accessing and storing of the material. The Tribunal did accept this. The Applicant admitted that he had downloaded and installed the cracked software that had caused pornographic material to appear on his computer. He neither named any person with whom he shared the password nor for what specific purpose there would have been for such a sharing. The frequency of accessing the pornographic material under the Applicant's user name, storing it in his "documents" folder and an attempt at accessing a pornographic site from the Applicant's private account render it highly improbable that this would have been done by others without his acquiescence. Had indeed anyone else been given access to the Applicant's official laptop and used it to access pornographic material, the Applicant tolerated it which rendered him complicit. The Tribunal found that the relevant facts were established by clear and convincing evidence, that the Respondent properly found that the conduct amounted to misconduct and that there were no violations of the procedure that might have had impact on these findings. The Tribunal furthermore found that the disciplinary measure that was meted out was not disproportionate and indeed consistent with the established practice and the jurisprudence of the Appeals Tribunal.

Decision Contested or Judgment/Order Appealed

The Applicant contested a decision dated 29 March 2016 to impose on him the disciplinary penalty of separation from service with compensation in lieu of notice and without termination indemnity in accordance with staff rule 10.2(a)(viii).

Legal Principle(s)

Judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration.” The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. It is not the role of the UNDT to conduct a de novo review of the evidence and place itself “in the shoes of the decision-maker. The Appeals Tribunal has underlined that the United Nations disciplinary process is not governed by the standards of criminal procedure. Moreover, it is trite law that under art. 18.1 of the Dispute Tribunal’s Rules of Procedure, the UNDT has broad discretion to determine the admissibility of evidence and the weight to accord evidence before it.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kramo

Entity

OCHA

Case Number(s)

UNDT/NBI/2016/038

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

5 Dec 2018

Duty Judge

Judge Milart

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Separation from service

Standard of review (judicial)

Sexual exploitation and abuse

Applicable Law

Secretary-General's bulletins

- ST/SGB/2003/13
- ST/SGB/2004/16

Staff Rules

- Rule 1.2(b)
- Rule 1.2(q)

- Rule 10.2(a)(viii)