

UNDT/2019/059, Gisage

UNAT Held or UNDT Pronouncements

Neither the initial placement of the Applicant on ALWOP nor any of its extensions could be separated; each extension of the same ALWOP decision triggered a challenge; of all the previous related decisions. The challenge of any extension of the ALWOP was a challenge of the entire continuum of ALWOP, previous or subsequent. The placement of the Applicant on ALWOP fell below the required threshold for the Respondent/decision-maker to show that exceptional circumstances existed to support it. It was unjust and unlawful to place the Applicant on ALWOP for twelve consecutive months. UNDT ordered the Respondent to pay the Applicant his salary that was withheld during the period that he was unlawfully placed on ALWOP.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions of the Under-Secretary-General for Management to place him on Administrative Leave without Pay (ALWOP) and to extend the ALWOP for three months.

Legal Principle(s)

The mere existence of allegations against an applicant that are so serious that, if proven, would result in separation cannot constitute exceptional circumstances. The allegations must be established through prima facie evidence. ALWOP is not meant to constitute a disciplinary sanction, but the affected staff member is usually stripped of various benefits, including the right to seek and accept other employment, and cannot leave the duty station without approval. Accordingly, it is crucial that the required investigation and disciplinary process are accelerated. If the entire process is not treated with reasonable dispatch, it is disingenuous to claim that ALWOP does not constitute a disciplinary sanction or that the principle of presumption of innocence applies.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Respondent was ordered to pay the Applicant's salary for the period he was on ALWOP.

Full judgment

[Full judgment](#)

Applicants/Appellants

Gisage

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2017/127

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

17 Apr 2019

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary matters / misconduct

Disciplinary measure or sanction

Facts (establishment of) / evidence

Investigation

Sexual exploitation and abuse

Applicable Law

Administrative Instructions

- ST/AI/371

Staff Rules

- Rule 10.2(b)(iii)
- Rule 10.4
- Rule 11.2(a)
- Rule 11.2(c)

UNDT Statute

- Article 8.1(c)

Related Judgments and Orders

2019-UNAT-973