

UNDT/2020/006, Nsengiyumva

UNAT Held or UNDT Pronouncements

The facts on which the disciplinary measure was based were established because the Applicant rendered himself publicly drunk over several hours, embroiled in a bar fight, was twice detained by the local police, went out to a bar after curfew drove a UN vehicle while he was legally drunk based on MINUSCA's zero tolerance policy refused to stop and exit the UN vehicle when signaled by MINUSCA Security Officers, including his superior drove in a dangerous manner. The established facts legally amounted to misconduct because the Applicant's actions, which included public drunkenness, becoming embroiled in a bar fight and being detained for drunkenness were unbecoming of an international civil servant, in violation of staff regulation 1.2(f). The Applicant also violated staff regulation 1.2(q) through his failure to operate his vehicle with reasonable care, and staff rule 1.2(a) through his failure to follow the instructions issued on behalf of the Secretary-General by his superior and MINUSCA Security Officers. The disciplinary measure was proportionate. The Applicant, as a MINUSCA Security Officer, was held to an elevated standard of conduct with respect to security and safety. Whereas his conduct, in addition to formally breaching the rules, was irresponsible and dangerous. He put in peril his own safety as well as the safety of others and United Nations property. He undermined MINUSCA's and the Organization's reputation in the eyes of the host country population. Additionally, the Applicant had received a written reprimand in 2009 and a written censure in 2011 for similar conduct (misuse of United Nations vehicles and disorderly conduct). The attitude represented by the Applicant and the futility of previously applied discipline were irreconcilable with him remaining in service. There were no procedural violations that had any bearing on the impugned decision.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to impose on him the disciplinary measure 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)

When reviewing a disciplinary matter, the Tribunal's role is to determine: whether the facts on which the disciplinary measures were based have been established whether the established facts legally amount to misconduct under the United Nations Regulations and Rules whether the disciplinary measures imposed are proportionate to the offence and whether there were any substantive or procedural irregularities that would vitiate the disciplinary process. Proportionality of the sanction is a jural postulate or ordering principle requiring teleological application, which derives from the postulate of reasonableness of all administrative decisions. It is necessary that the sanction bear a rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline. The proportionality principle limits discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result. Accordingly, where the Respondent resorts to separating a staff member, it must be shown why the staff member's remaining in service was not a viable option.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nsengiyumva

Entity

MINUSCA

Case Number(s)

UNDT/NBI/2017/064

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Jan 2020

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Applicable Law

Staff Regulations

- Regulation 1.2(f)
- Regulation 1.2(q)

Staff Rules

- Rule 1.2(a)

Related Judgments and Orders

2020-UNAT-1057