

UNDT/2020/111, Applicant

UNAT Held or UNDT Pronouncements

The acts of sexual harassment committed by the Applicant were of such a persistent and offensive nature that in keeping with the Organization's zero-tolerance policy he could not remain on the job. However, the Organization's policy on care and support for persons suffering with mental illness was also clear. The Applicant's behaviour was influenced by severe mental illness. The illness ought to have been addressed in a more timely and considerate manner by the Respondent by denying his clearance to return to work in March 2015 and in August 2016. He may then have retired due to ill-health with disability benefits and a record clean of misconduct. The Respondent's position, as testified to by the Head of Medical Entitlements, that the Organization does not bear "a duty of care" to staff members with mental health challenges needed to be re-examined. The position that one has to exhaust all of one's entitlement to certified sick leave before being considered fit for separation on grounds of ill health should be revisited. The Tribunal believed that a holistic review of the Applicant's medical records coupled with the evidence that the Respondent had of the Applicant's egregious behavior would, at the very least, have suggested that something was amiss and prompted a deeper inquiry. The Respondent's review of the record and decision to clear the Applicant's return to Mali in 2016 was not properly informed. The Applicant's substance abuse, contrary to the laws of the host country, would itself have given rise to disciplinary proceedings and sanction.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the disciplinary sanction to separate him from service with compensation in lieu of notice and termination indemnity in accordance with staff rule 10.2(a)(viii).

Legal Principle(s)

The adjudication function of the Tribunal is that of judicial review. In other words, the Tribunal examines how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. The Tribunal's judicial review of the challenged decision in this case considered not only the remedies of withdrawal of charges, annulment of sanction and return to work sought by the Applicant, but also whether the Respondent could have considered an alternate approach to treating the Applicant based on his illness. The Tribunal found it could have been.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

MINUSMA

Case Number(s)

UNDT/NBI/2018/112

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

8 Jul 2020

Duty Judge

Judge Honeywell

Language of Judgment

French

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Facts (establishment of) / evidence

Termination (of appointment)

Disciplinary sanction

Sexual harassment

Applicable Law

Administrative Instructions

- ST/AI/1999/111
- ST/AI/1999/16
- ST/AI/372

Information Circulars

Secretary-General's bulletins

- ST/SGB/2019/8

Staff Rules

- Rule 10.2(a)(viii)