

# UNDT/2020/121, Gisage

## UNAT Held or UNDT Pronouncements

The Tribunal found that there was clear and convincing evidence that between 7 and 10 December 2016, at his residence, the Applicant had sexual intercourse with one Congolese woman, V0. By his own admission during the investigation, the Applicant procured sexual services of V0 whom he had picked up from a bar where he had been drinking and paid her FC40,000 through an intermediary, Francois. The Tribunal held that based on strict interpretation of the applicable legal provisions, in particular, staff rule 1.2(e), it did not make any difference that money was requested and paid after the sexual intercourse or whether or not the women were prostitutes. The wording used in the provision is “exchange of money” and that was exactly what had been proved through unequivocal admission by the Applicant and evidence of several other witnesses who were interviewed during investigations. The Applicant violated staff regulation 1.2(q) by ferrying women, being unauthorised passengers from a bar where he had been drinking alcohol (and not working) and taking them to his house for sex and not for official purposes in the wee hours of the day using the property of the Organization, a United Nations registered motor vehicle. The Tribunal finds the Applicant’s allegations that he was targeted for dismissal based on his race, national origin and his low rank in the service, to be baseless. He did not adduce any evidence containing particulars to show how he was targeted. There was ample evidence through UNAT and UNDT jurisprudence to show that staff members are dismissed from service for violating SEA rules. It was up to the Applicant to have produced evidence before the Tribunal to show that these cases did not involve as culprits, persons of races other than black African and of higher ranks. In view of the seriousness of the misconduct and consistent with prior UNDT and UNAT jurisprudence and the practice of the Secretary-General in similar cases, the Tribunal found that the sanction of dismissal was appropriate under the circumstances.

## Decision Contested or Judgment/Order Appealed

The Applicant was contesting the decision to impose on him the disciplinary sanction of dismissal from service for serious misconduct in accordance with staff rule 10.2(a)(ix).

## Legal Principle(s)

In disciplinary cases, the Tribunals will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (where termination is the sanction imposed, the facts must be established by clear and convincing evidence in all other cases preponderance of the evidence is sufficient) (ii) whether the established facts amount to misconduct (iii) whether the sanction is proportionate to the offence and (iv) whether staff member’s due process rights were respected. 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. The burden of proving improper motivation lies with the staff member raising such claims. Exchanging money for sex qualifies as misconduct under the Staff Regulations and Rules. Any disciplinary measure imposed on a staff member has to be proportionate to the nature and gravity of his or her misconduct. Factors other than the impugned behaviour to be considered in assessing the proportionality of a sanction include the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.

## Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal found that the decision to dismiss the Applicant from service for serious misconduct was properly motivated and dismissed the application in its entirety.

Full judgment

[Full judgment](#)

Applicants/Appellants

Gisage

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2018/030

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Jul 2020

Duty Judge

Judge Sikwese

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual exploitation and abuse

Termination (of appointment)

Summary dismissal

Applicable Law

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Rules

- Rule 1.2(e)
- Rule 10.2(a)(ix)