

# UNDT/2020/204, Applicant

## UNAT Held or UNDT Pronouncements

UNDT accepted the Applicant's witnesses' as evidence as relevant and admissible. The witnesses generally addressed the atmosphere in which the United Nations Interim Security Force for Abyei (UNISFA) staff in Abyei functioned, including the reaction of the principal chiefs of the Dinka tribe to policy changes which they did not like. This raised issues to be considered in assessing the complaints of Complainants 1 and 2. Complainants 1 and 2 did not sign or indicate the veracity of their statements. This failure to authenticate the statements created doubt as to the veracity of the statements provided, especially where they failed to identify the author of the statements or the truthfulness of the statements. UNDT, thus, could not find these witnesses' statements to be reliable. UNDT further held that the evidence against the Applicant was not clear and convincing, as required. UNDT held that it is self-evident that any person having to face the kinds of allegations levelled at the Applicant and the disciplinary measure of dismissal would suffer serious damage to his/her reputation, loss of employment and prospect of future employment and deprivation of the personal enjoyment and feeling of fulfilment that would be experienced by an individual working for an organization such as the United Nations or any of the associated agencies. In light of this, UNDT held that the Applicant should be compensated in a manner commensurate with the nature of the damage suffered. UNDT ordered rescission of the decision dismissing the Applicant from service with the Organisation and further ordered that failing restatement, the Applicant should be compensated in lieu of rescission with two years' net base salary.

## Decision Contested or Judgment/Order Appealed

The Application challenged the decision to separate him from service of the United Nations for misconduct in violation of Staff Regulations 1.2(a) and (b), Staff Rules 1.2(e) and (f), and sections 1 and 3.2(a) of ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse) on 20 December 2018 with compensation in lieu of notice but without termination indemnity.

## Legal Principle(s)

In disciplinary matters, the onus is on the Respondent to demonstrate that there was clear and convincing evidence of the misconduct that is alleged against the Applicant. A witness whose evidence is being recorded in a language that is foreign to the investigator should be treated with an abundance of caution, so that the evidence in its final form can be reread to the witness and corrected if necessary or compared with oral evidence provided at trial. It is established that the standard of "clear and convincing" evidence does not rise to that of evidence beyond reasonable doubt but is higher than that of evidence of probability. The jurisprudence consistently states this to mean that the truth of the facts asserted must be "highly probable".

## Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNISFA

Case Number(s)

UNDT/NBI/2019/29

Tribunal

UNDT  
Registry  
Nairobi  
Date of Judgement  
8 Dec 2020  
Duty Judge  
Judge Belle  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Compensation  
In-lieu compensation  
Disciplinary matters / misconduct  
Evidence  
Credibility assessment  
Standard of proof  
Disciplinary cases  
Sexual exploitation and abuse  
Applicable Law  
Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(b)
- Regulation 1.2(e)
- Regulation 1.2(f)