

# UNDT/2021/091, Applicant

## Decision Contested or Judgment/Order Appealed

To have ST/AI/2017/1 applied strictly, the Applicant in this case would have been required to report an allegation of rape which he heard from another person who attended court and which in turn was based on what that individual was told based on a complaint by the victim's mother/the Complainant. It provided for what exactly the reporting staff member "shall" report. In order for the Applicant to have assisted the investigation in full compliance with the relevant section (4.5) he would have to have reported: (a) a detailed description of the unsatisfactory conduct; (b) the names of the staff member(s) involved; (c) where and when the unsatisfactory conduct occurred; and (d) the names of potential witnesses to the unsatisfactory conduct and provide supporting documents. It should not be presumed in applying this rule that the Applicant had a concern or suspicion about the alleged sexual abuse which sections 3.2 (e) and (f) of ST/SGB/2003/13 suggests he should report. Indeed, based on the evidence produced the only information the Applicant would have become aware of on 15 July 2017 is that a colleague had been charged with rape by the domestic authorities. The Tribunal found that section 4.1 of ST/AI/2017/1 did not apply to an individual who merely heard second-hand about a case of misconduct since much of what such a person has to report would be hearsay and possibly misleading and devoid of the kind of detail the rule is seeking to elicit from the staff member. There is nothing on the record to show how MSD, who had certified the Applicant's sick leave, came to the conclusion that he was nevertheless well enough to be interviewed as a subject of an investigation. The Tribunal considered this process, as reported, fatally flawed since any medical professional who was going to comment on the availability of a person on sick leave to be interviewed should first examine or at least speak to that person about the nature of their illness. There is no evidence that they did so.

## Legal Principle(s)

The Applicant challenged the Respondent's decision to separate him from service for misconduct.

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Appeals Tribunal has consistently held that the "[j]udicial review of a disciplinary case requires [the Dispute Tribunal] to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration". In this context, the Dispute Tribunal is "to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence."

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2020/34

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 Jul 2021

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Sexual exploitation and abuse

Evidence

Credibility assessment

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 1.2