

UNDT/2021/109, Erefa

UNAT Held or UNDT Pronouncements

The Tribunal found that V01 was a credible witness. Her testimony was taken independently, bearing in mind all the circumstances, and established the facts that sexual exploitation and abuse took place. The Tribunal found W01 a credible witness, her testimony relating to the first incident which she resolved informally with the Applicant was consistent with and corroborated V01's testimony. The Applicant did not successfully discredit this testimony. The Tribunal found that the established facts qualified as misconduct under the Staff Regulations and Rules. The Applicant engaged in sexual exploitation and abuse of a minor contrary to staff rule 1.2(e). His conduct clearly violated staff regulation 1.2(b) which stipulates that, staff members shall uphold the highest standards of efficiency, competence and integrity. The Tribunal agreed with the Respondent that the Applicant also violated staff regulation 1.2(f), which stipulates, inter alia, that staff members shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. The Applicant did not show that his due process rights were violated at any stage of the disciplinary proceedings. The record showed that he was aware of the allegations against him, he knew his accusers, he had ample opportunity to present his defence and attack his accusers' testimony. The fact that his defence was weak and that his attempts at introducing exculpatory evidence were unsuccessful did not render the investigation and Administration's findings procedurally flawed. The Tribunal found that the Applicant's due process rights were respected. As the Respondent had proved through clear and convincing evidence that the Applicant breached his terms of contract and appointment by engaging in serious acts of misconduct, the application was dismissed in its entirety.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Under-Secretary-General for Management, Strategy, Policy and Compliance's decision to impose on him the disciplinary sanction of dismissal from service and a fine equivalent to one month's net base salary for serious misconduct in accordance with staff rule 10.2(a)(v) and (ix).

Legal Principle(s)

In exercising judicial review, the role of the Dispute Tribunal is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision. The role of the Tribunal is to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. There are four essential elements that the Tribunal must evaluate during the judicial review of a disciplinary case. These are: (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 the staff member's due process rights were respected. The Respondent has the burden of proof to show that the facts on which the sanction was based are established by clear and convincing evidence. Any disciplinary measure imposed on a staff member has to be proportionate to the nature and gravity of his or her misconduct.

Outcome

Dismissed on merits

Outcome Extra Text

Not Applicable

Full judgment

[Full judgment](#)

Applicants/Appellants

Erefa

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2019/44

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

20 Sep 2021

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual exploitation and abuse

Separation from service

Applicable Law

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

Staff Rules

- Rule 1.2(e)
- Rule 1.2(f)
- Rule 1.2(q)
- Rule 10.2(a)
- Rule 10.2(a)(ix)
- Rule 10.2(a)(v)