

UNDT/2021/133, Loto

UNAT Held or UNDT Pronouncements

The impact of ALWOP on a staff member may be as onerous as summary dismissal, but without the fundamental contractual procedural fairness protections. An international staff member on ALWOP may remain in limbo for an undetermined period of time, unable to seek alternate employment or survive financially at the duty station away from their home country. The information available when the decision was made remained the same over an extended ALWOP period. The information was not sufficient for a determination that it was more likely than not that the Applicant committed misconduct grave enough to warrant dismissal. There is no indication that any consideration was given to a phased approach of administrative leave with partial pay at the start of the investigations. The Applicant ought not to have been summarily deprived of his contractual entitlements based on the information available.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision of the Respondent to place him on Administrative Leave Without Pay.

Legal Principle(s)

ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse) makes clear that it is ‘concerns and suspicions’ that a staff member is duty bound to report. The Bulletin does not require a staff member to report mere allegations that come to their attention. It is clear from the provisions of ST/AI/2017/1 that when deciding whether to place a staff member on ALWOP, the authorized official, who in this case was the USG/DMSPC, must have reason to view the circumstances as exceptional. In determining that circumstances are “exceptional”, two elements must be present. Firstly the ‘unsatisfactory conduct’ the

staff member is alleged to have engaged in must be grave enough to warrant separation from service (with or without notice and/or indemnity) or dismissal. Secondly, the authorized official deciding on whether to place a staff member on ALWOP must have before them, information which 'more likely than not' proves the staff member engaged in the unsatisfactory conduct. The regulatory framework also guides the staff member on the elements he/she should consider when deciding whether to report on private interactions between colleagues that have led to sexual abuse allegations. There is no indication that as soon as any staff member alleges to another, that a mutual colleague engaged in unwelcomed sexual conduct, the staff member receiving the information must report it to the Organization's investigators. It is only when the staff member receiving the information is subjectively, and in good faith, concerned or suspicious that misconduct took place, that a report must be made. This may reasonably exclude a situation where the staff member has knowledge of improper motives, such as malice or extortion, for the allegation against another person being disseminated. Making a report in such circumstances may put the staff member at risk of disciplinary action for malicious reporting. It may also deprive the staff member of protection against retaliation for making the report.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Loto

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2020/44

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

18 Nov 2021

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Disciplinary matters / misconduct

Failure to report misconduct

Sexual exploitation and abuse

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Rules

- Rule 1.2
- Rule 10.4