

UNDT/2021/145, Millan

UNAT Held or UDT Pronouncements

The Tribunal ruled that Annex 18 to the application was inadmissible. According to the Applicant, the annexure comprised of a publicly released commentary and analysis of the case. The Tribunal found that such commentary has no value, evidential or otherwise, being that whoever compiled it was not subject to the Tribunal's jurisdiction. That being the case, the veracity of the comments was not and could not be tested. The commentary neither amounted to evidence nor to parties' submissions. Based on the uncontroverted evidence that the Applicant refused to participate in a follow-up interview to provide additional information which conduct, in the Tribunal's view, amounted to refusal to cooperate with the investigation, the Tribunal determined that the impugned decision was fully consonant with appellate jurisdiction guidance that the length of time an investigation may take will depend on the circumstances including any practical challenges at the duty station, the nature of the allegations, the complexity of the investigation and the need to follow due process and was therefore not abusive, did not violate due process rights and did not amount to abuse of discretion. The Tribunal was in full agreement with the Respondent that the duty to cooperate with the investigation cannot be delegated. Staff members have a personal obligation to cooperate with any authorized investigation or audit. Section 6.9 of ST/AI/2017/1 does not provide staff members with the possibility of being legally represented during the investigation process. The Tribunal found that the contested decision complied with staff rule 10.4(b) since the decision-maker drew the Applicant's attention to earlier letters addressed to him in relation to his ALWP, including the letter informing him of his initial placement on ALWP dated 24 September 2020 which had explicitly referred to Order No. 172 (NBI/2020) and to the letter which communicated the ALWOP which detailed the factual basis for the decisions. The Applicant was therefore properly informed of the facts underpinning the decision to place him on ALWP, and the decision to extend the ALWP.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to extend his placement on administrative leave with pay ("ALWP") for another three months or until the completion of an investigation and any disciplinary process, whichever was earlier.

Legal Principle(s)

In conducting judicial review of decisions to place an applicant on ALWP, the Dispute Tribunal reviews whether the decision was lawful and rational, considering the criteria stipulated in the Staff Rules and ST/AI/2017/1 and the information before the head of entity at the time of the decision. It is not for the Dispute Tribunal to substitute its own view for that of the head of the entity, but to evaluate whether that decision was irrational or arbitrary. The period of time for placement of staff on administrative leave should be reasonable and proportionate, but the Tribunal may not set arbitrary time limits for the Organization to complete an investigation and any subsequent disciplinary process.

Outcome

Dismissed on merits

Outcome Extra Text

The application was dismissed in its entirety for lack of merit.

Full judgment

[Full judgment](#)

Applicants/Appellants

Millan

Entity

UNTSO

Case Number(s)

UNDT/NBI/2021/079

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

30 Nov 2021

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Non-disciplinary/administrative measures

Evidence

Admissibility

Investigation

Fact-finding investigation

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Staff Rules

- Rule 10.4