

2012-UNAT-274, Massah

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. Regarding the evidence on which the disciplinary measure was based, UNAT held that UNDT had failed to appreciate the fact that the women who had been sexually exploited or abused came from a highly sensitive cultural background and were socially vulnerable. UNAT held that UNDT failed to consider the fact that the staff member, as Officer-in-Charge of Security of MINURSO, had a particular duty of care towards women and children, pursuant to Section 7 of ST/SGB/1999/13. UNAT held that the established facts amounted to sexual exploitation. UNAT held that UNDT had erred on a question of fact and law in concluding that there was not an iota of evidence to establish any act of sexual exploitation since the staff member had admitted to the fact during the investigations of having compensated women for sexual services, which was a clear breach of section 3. 2(c) of ST/SGB/2003/13. UNAT held that the disciplinary measure of dismissal was proportionate. UNAT upheld the appeal and reversed the UNDT judgment in part.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to dismiss him from service following the findings by a Joint Disciplinary Committee (JDC) that he had engaged in serious misconduct, specifically sexual exploitation and abuse. UNDT concluded that the Applicant had been wrongly charged with sexual exploitation, stating that there was no evidence to establish any act of sexual exploitation (as defined [in Section 1 of ST/SGB/2003/13]) perpetrated by the Applicant. However, UNDT found that the second charge of unauthorised use of the Organisation's information technology resources was established, as the Applicant had admitted to having stored pornographic images on his office computer. UNDT found that the sanction of separation without notice or compensation was disproportionate in comparison to the disciplinary measures imposed in similar cases. UNDT reasoned that, given that the Applicant had died in the interim, the only appropriate remedy was

compensation, which UNDT fixed at four months' net base salary.

Legal Principle(s)

The Secretary-General has wide discretionary powers in applying sanctions for misconduct committed by staff, but the disciplinary measures must be proportionate to the offence.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Massah

Entity

MINURSO

Case Number(s)

2012-301

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Dismissal/separation

Misuse of information and communication technology resources

Sexual exploitation and abuse

Termination (of appointment)

Summary dismissal

Applicable Law

Secretary-General's bulletins

- ST/SGB/2003/13

Related Judgments and Orders

UNDT/2011/218

2010-UNAT-024

2010-UNAT-022

2011-UNAT-168

2010-UNAT-018

2010-UNAT-040

2010-UNAT-028