

2018-UNAT-869, Muteeganda

UNAT Held or UNDT Pronouncements

UNAT considered the appeal by the Secretary-General. UNAT held that UNDT correctly concluded that the Administration properly exercised its discretion to place the Applicant on administrative leave, considering an enduring reputational risk in light of the allegations relating to sexual abuse and exploitation of an under-age girl, which were reasonably supported by the evidence. UNAT held that the new Staff Rule 10. 4(c), which had not yet been enacted at the relevant time, was not applicable to the Applicant's misconduct. UNAT held that UNDT's factual findings were open to criticism in that UNDT failed to take into account or give weight to several facts. UNAT held that the totality of the evidence formed an adequate objective basis to conclude that there was probable cause that the Applicant had engaged in the alleged misconduct. UNAT emphasised that the Secretary-General's classification of the objectively established circumstances as exceptional was a matter for his discretion. UNAT held that UNDT erred in law by holding that a reasonable exercise of the discretion required a stricter standard of clear and convincing evidence and that the existence of objective grounds sustaining a reasonable belief of misconduct will normally be sufficient justification for the decision. UNAT held that the decision of the Secretary-General to regard the egregious sexual misconduct as an "exceptional circumstance" was within the bounds of reasonableness. UNAT held that the decision to impose ALWOP in sexual misconduct cases was not disproportionate. UNAT held that UNDT erred in law and in fact. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to place him on ALWOP. UNDT found that the Administration, given the sensitive nature of the allegations and the reputational risk involved, correctly exercised its discretion when it placed the Applicant on administrative leave. However, UNDT held that the evidence available at the time of the contested decision was insufficient to support the Administration's conclusion

that “exceptional circumstances”, justified placing the Applicant on ALWOP and therefore concluded that the decision was unlawful. UNDT ordered the rescission of that decision, declared the subsequent extension of ALWOP void ab initio, and rejected the Applicant’s claims for moral damages.

Legal Principle(s)

The probable cause standard is a practical, non-technical standard asking whether the proven circumstances permit a reasonable inference. The existence of reasonable cause, and of the belief founded upon it, is still ultimately a question of fact to be tried on evidence. There must be an objective factual basis for the reasonable belief of sexual misconduct. A decision to impose administrative leave without pay (ALWOP) in sexual misconduct cases is not disproportionate.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Muteeganda

Entity

UNOCI

Case Number(s)

2018-1161

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Oct 2018

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Sexual exploitation and abuse

Applicable Law

Administrative Instructions

- ST/AI/2017/1
- ST/AI/371

Former Staff Rules

- Rule 10.4(c)

Related Judgments and Orders

UNDT/2018/009