

2019-UNAT-973, Gisage

UNAT Held or UNDT Pronouncements

On the issue of receivability, UNAT held that UNDT erred in concluding that the application was receivable in its entirety, as each of the three decisions taken on ALWOP were distinct and the Appellant failed to seek management evaluation of the first and second decisions. UNAT held the application was only receivable *ratione materiae* in respect of the third and last decision. UNAT held that UNDT's finding that no exceptional circumstances existed to warrant the extension of the Appellant's ALWOP was a material error of law. UNAT held that UNDT erred in concluding that 12 months ALWOP was unjust and unlawful because of its duration. 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 pending the completion of an investigation into allegations of misconduct in the form of sexual exploitation and abuse and the ensuing disciplinary process. UNDT found that the placement on ALWOP for 12 months was unlawful and ordered payment of the salary that had been unlawfully withheld.

Legal Principle(s)

The applicable standard of proof to determine whether exceptional circumstances warranting the placement of a staff member on Administrative Leave Without Pay (ALWOP) is that of probable cause. Reasonable grounds to believe that sexual misconduct has occurred may be considered as exceptional circumstances warranting the placement of a staff member on ALWOP.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Gisage

Entity

MONUSCO

Case Number(s)

2019-1274

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Non-disciplinary/administrative measures

Sexual exploitation and abuse

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/371

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Rules

- Rule 10.4
- Rule 11.2(c)

Related Judgments and Orders

UNDT/2019/059