

UNDT/2022/081, Loto

UNAT Held or UNDT Pronouncements

On the due process prong, the Tribunal concluded that the Respondent had demonstrated that the investigation and the disciplinary process leading up to the disciplinary sanction were conducted in accordance with the applicable legal framework and investigation guidelines. The Applicant was interviewed and was provided with an audio-recording of the interview, and all supporting documentation. He was informed of the allegations against him and afforded his right to seek the assistance of counsel. He was provided the opportunity to comment on the allegations, and his comments were duly considered. Accordingly, the Tribunal held that the Applicant's due process rights were guaranteed. On whether the facts were established by clear and convincing evidence, the Tribunal held that based on the evidence adduced by the Complainant, the Applicant's own admissions and on the totality of the evidence before it, the facts on which the disciplinary measure was based were established by clear and convincing evidence. Regarding misconduct, the Tribunal established that the Applicant had failed to report the alleged rape of the Complainant, set up the meeting to pressure the Complainant to withdraw her rape-complaint and had interfered with the investigation. Accordingly, the Tribunal held that the Applicant's acts constituted a misconduct, in violation of the applicable rules and regulations. On whether the sanction was proportionate to the offence, the Tribunal noted the sanction imposed on the Applicant accorded with the practice of the Secretary-General in similar cases of sexual exploitation and sexual abuse. Further, the sanction was in line with the policies and procedures of the Organization. Accordingly, the Tribunal found that the disciplinary measure applied was proportionate to the offence.

Decision Contested or Judgment/Order Appealed

The Applicant contested the disciplinary measure of dismissal imposed on him in accordance with staff rule 10.2(a)(ix).

Legal Principle(s)

Pursuant to the jurisprudence, the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements: i. Whether the staff member's due process rights were guaranteed during the entire proceeding. ii. Whether the facts were established by clear and convincing evidence; iii. Whether facts amount to misconduct; and iv. Whether the sanction is proportionate to the gravity of the offence.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Loto

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2022/002

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

20 Sep 2022

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary measure or sanction

Disciplinary matters / misconduct

Applicable Law

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(c)
- Rule 1.2(e)
- Rule 1.2(g)

Related Judgments and Orders

2020-UNAT-982

2013-UNAT-295

2015-UNAT-523

2018-UNAT-859

2010-UNAT-084