

UNDT/2022/082, Okwakol

UNAT Held or UNDT Pronouncements

On the due process prong, the Tribunal concluded that the Applicant's procedural fairness rights were respected throughout the investigation and the disciplinary process. The Applicant was interviewed by the Office of Internal Oversight Services and was provided with an audio-recording of the interview. He was provided all supporting documentation, was informed of the allegations against him, his right to seek the assistance of counsel and 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 found that the Applicant had failed to report misconduct; he hosted a meeting to pressurize the Complainant to withdraw her rape-complaint and he had interfered with the investigation. Accordingly, the Tribunal held that the Respondent had substantiated with clear and convincing evidence the factual basis of the contested decision. Regarding misconduct, the Tribunal concluded that the Applicant had failed to report misconduct, hosted, and participated in a meeting to pressure the Complainant to withdraw her rape-complaint and had interfered with the investigation. Accordingly, the Tribunal held that the Applicant's actions constituted misconduct and were inconsistent with the applicable rules and regulations of the Organization. On whether the sanction was proportionate to the offence, the Tribunal noted that the Applicant had engaged in serious misconduct under Chapter X of the staff rules. Therefore, the sanction imposed on the Applicant accorded with the practice of the Secretary-General in similar cases and with the policies 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 decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and without termination

indemnity, in accordance with staff rule 10.2(a)(viii).

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

Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Okwakol

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2022/004

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

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 1.2(c)
- Rule 1.2(e)
- Rule 10.2(a)(viii)

Related Judgments and Orders

2015-UNAT-523

2010-UNAT-084

2015-UNAT-545

2018-UNAT-889

2010-UNAT-025