

# UNDT/2022/083, Stefan

## UNAT Held or UNDT Pronouncements

The Applicant was sanctioned for engaging in two types of misconduct: (i) sexually exploiting V01, and (ii) engaging in a misrepresentation to the Organization and a misappropriation of assets from the Organization regarding Family Emergency Leave from 22 until 27 July 2019. On whether the facts were established by clear and convincing evidence; regarding the first sanction of sexually exploiting V01, the Tribunal concluded that based on the finding that the Applicant was aware of V01's vulnerability, the evidence that he continued to have sexual intercourse with her even at times when she had just taken alcohol and drugs supports a finding that he sexually exploited her. The Tribunal thus found that the facts on which the first sanction was based were established. On the second sanction, the Tribunal also found that the facts that the Applicant engaged in a misrepresentation to the Organization and a misappropriation of assets from the Organization regarding family emergency leave had been established with clear and convincing evidence. Regarding misconduct, the Tribunal concluded that the Applicant's behavior was unbecoming of an international civil servant and amounted to serious misconduct. The Tribunal held that the Applicant had violated staff rule 1.2(e) and sections 1, 3.2 and 3.3 of ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse) and/or staff regulation 1.2(f), as well as staff regulations 1.2(b) and 1.2(q). Further, the Tribunal held that since the Applicant was irregularly paid for the days he did not work on account of his misrepresentations, he misappropriated the funds of the Organization, thereby committing a misconduct and violating the applicable rules. On the due process prong, the Tribunal noted that the Applicant did not dispute the fact that his procedural fairness rights were respected. The Tribunal found that in accordance with staff rule 10.3(a), the Applicant was informed of the charges against him, he was afforded the right to be heard, and the right to mount a formal defence. Accordingly, the Tribunal concluded that there were no due process violations in the investigation and the disciplinary process leading up to the disciplinary sanction against the Applicant. On whether the sanction was proportionate to the offence, the Tribunal concluded that considering the gravity and nature of the misconduct, compounded by the fact that the disciplinary measure in this case was in line with the zero-tolerance policy to sexual exploitation, there was no doubt that the sanction of separation from service 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; together with a fine of one month's salary recovery action; and inclusion of his name in the Clear Check database.

## 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

Stefan

Entity

UNMISS

Case Number(s)

UNDT/NBI/2022/001

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(q)

Staff Rules

- Rule 1.2(b)
- Rule 1.2(e)

Related Judgments and Orders

2015-UNAT-523

2010-UNAT-084

2014-UNAT-415

2010-UNAT-018

2010-UNAT-024

2010-UNAT-098

2017-UNAT-776

2018-UNAT-890

UNDT/2019/187

UNDT/2020/090

2021-UNAT-1076