

UNDT/2022/102, Fultang

UNAT Held or UNDT Pronouncements

The Tribunal found that the use of the investigation report was not subject to the confidentiality agreement between the parties; it was an autonomous document, which was lawfully used in court. The decision did not constitute a disciplinary measure. It was taken pending the completion of the disciplinary process and was without prejudice to the Applicant's rights. More than one circumstance warranting the placement of the staff member on ALWP occurred. The Applicant could be dismissed or separated from service with the United Nations for breach of the duty of trust and confidence, in particular, in view of his position as a Conduct and Discipline Officer. The rule requiring the presence of two investigators is applicable to audio-recorded interviews, not to videorecording. Indeed, by videorecording the interview, OIOS ensured that everyone was accountable for their part in the process, in total transparency of what happened. The presence of two investigators was not necessary and did not render the investigative process flawed.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Administration's decision to place him on Administrative Leave with Pay ("ALWP") for three months, or until the completion of an investigation into his conduct and any disciplinary process.

Legal Principle(s)

The Tribunal reviewed whether the decision was lawful and rational, considering the criteria stipulated in the Staff Rules and sections 11.1 and 11.3 of ST/AI/2017/1 and the information before the Administration at the time of the decision. It is not for the Tribunal to substitute its own view for the Administration's decision but to evaluate whether that decision was irrational or arbitrary. This task, however, includes an assessment of facts and has limitation only in the Secretary-General's discretionary

powers. Any decision to extend ALWOP must be reasonable and proportionate and that such a decision is a drastic administrative measure and normally should be of short duration. In determining whether an extension of ALWOP is lawful, the Tribunal shall be guided by factors such as, the circumstances of the case, including any practical challenges at the duty station, the nature of the allegations, the complexity of the investigation and the need to follow due process.

Outcome

Appeal dismissed on merits

Outcome Extra Text

The application was dismissed for lack of merit.

Full judgment

[Full judgment](#)

Applicants/Appellants

Fultang

Entity

UNISFA

Case Number(s)

UNDT/NBI/2021/073

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

7 Oct 2022

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Fraud, misrepresentation and false certification

Due process

Fact-finding investigation

Disciplinary matters / misconduct

Investigation

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Information Circulars

- ST/IC/2016/26

Secretary-General's bulletins

- ST/SGB/2010/9

Staff Rules

- Rule 10.4(a)

Related Judgments and Orders

UNDT/2016/032

2010-UNAT-084

UNDT/2022/032

UNDT/2022/032

2019-UNAT-973