

UNDT/2022/084, Haydar

UNAT Held or UINDT Pronouncements

The record demonstrated that the Applicant refused to complete her supervisees' performance evaluation and delayed the contract extension process. The Applicant refused to perform key managerial functions.

While it may be true that she was not given an opportunity to explain her actions, the remedies under section 10.1 ST/AI/2010/5 are only aimed at rectifying performance short comings and are not punitive. It was therefore not necessary to conduct some form of investigation in which a staff member would be required to explain her actions.

While the Applicant had a duty and a right to perform her roles, she also had a responsibility to exercise and enjoy that duty and right within the confines of the law. This is necessary for ensuring that there is institutional order and to avoid anarchy which could arise if only the side of rights and duties were emphasised.

Given the nature of the established facts that formed the basis for the contested decision and considering that the contested decision was to be in place only until the matters concerning the hostile work environment were resolved, the contested decision which was taken within the confines of the cited legal provisions constituted proper exercise of discretion to organize work of in the interest of the Organization and was therefore lawful.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's decision to strip her off her managerial and other substantive duties.

Legal Principle(s)

The Appeals Tribunal has held that as a matter of general principle, in exercising its judicial review, the Dispute Tribunal will not lightly interfere with the exercise of managerial discretion. A discretionary administrative decision can be challenged on the grounds that the Organization has not acted fairly, justly, or transparently. The staff member bears the burden of proving that such factors played a role in the administrative decision.

Staff rule 1.2(a) provides that staff members shall follow the directions and instructions properly issued by the Secretary-General and by their supervisors. Staff regulation 1.2(c) provides that the Secretary-General has broad discretion to assign staff to different functions as he deems appropriate.

The proportionality principle limits discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result. The purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity and suitability.

The Respondent had broad discretion in relation to the internal organization of its units and departments. It was not within the remit of the UINDT to pronounce itself on the exercise of this discretion.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Haydar

Entity

MINUSCA

Case Number(s)

UNDT/NBI/2021/49

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

21 Sep 2022

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Conduct

Discrimination and other improper motives

Performance management

Applicable Law

Administrative Instructions

- ST/AI/2010/5
- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2019/8

Staff Rules

- Rule 1.2

Related Judgments and Orders

2010-UNAT-084

2017-UNAT-759

2018-UNAT-849

2013-UNAT-311

UNDT/2011/187

2018-UNAT-859