

2022-UNAT-1292, Richard Loto

UNAT Held or UNDT Pronouncements

The UNAT first reviewed the Secretary-General's claim that the UNDT erred in finding that Mr. Loto's application was receivable with respect to the entire period for which he was on ALWOP. The Secretary-General contended that Mr. Loto had timely challenged only an initial ALWOP decision, and not a subsequent decision when the ALWOP was extended. The UNAT dismissed the Secretary-General's receivability argument, finding that the Secretary-General was estopped from raising it on appeal. The UNAT observed that Mr. Loto had filed a request for management evaluation of the second ALWOP decision, and had relied to his prejudice on the Management Evaluation Unit's (MEU) advice that his request had been rendered moot.

On the issue of lawfulness of the ALWOP decision, the Appeals Tribunal examined whether the UNDT erred by finding that the available information did not establish by a preponderance of the evidence that Mr. Loto engaged in misconduct. The UNAT held that there was a preponderance of the evidence that Mr. Loto had failed to immediately report an allegation of SEA and had attempted to interfere with the administration of justice by concealing SEA allegations by negotiating a payment to the SEA complainant in exchange for the withdrawal of her complaint. The UNAT also concluded that the failure to report SEA and the attempts to conceal SEA were grave enough for the Administration to contemplate separation or dismissal, as these acts irretrievably damaged the trust relationship between Mr. Loto and the Organization. Much more importantly, the UNAT held that Mr. Loto's conduct constituted an exceptional circumstance, considering the risk that his conduct was likely to undermine the Organization's zero tolerance policy against SEA.

For these reasons, the UNAT held that the UNDT erred in concluding that Mr. Loto's placement on ALWOP was unlawful because there was no preponderance of the evidence that he had engaged in serious acts of misconduct warranting separation or dismissal. The UNAT therefore granted the Secretary-General's appeal and reversed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Loto challenged his placement on Administrative Leave Without Pay (ALWOP) pending completion of investigation into allegations of misconduct against him in connection with a sexual exploitation and abuse matter. The UNDT granted Mr. Loto's application and rescinded the ALWOP decision.

The Secretary-General appeals the UNDT Judgment.

Legal Principle(s)

The UNDT assumes jurisdiction only following an application for judicial review by an allegedly aggrieved staff member and is competent to order remedies of any specific kind provided that a previous claim for such remedy had been requested (principle of disposition).

Under the applicable legal framework, in cases of misconduct the Secretary-General is not at complete liberty to place a staff member on ALWOP, as his discretion to do so is conditioned upon the existence of exceptional circumstances which, in instances of misconduct other than those concerning sexual exploitation and abuse (SEA), requires that (1) the unsatisfactory conduct is of such gravity that it would, if established, warrant separation or dismissal, and (2) there is information before the authorized official about the unsatisfactory conduct that makes it more likely than not that the staff member engaged in the unsatisfactory conduct.

The applicable standard of proof to determine whether exceptional circumstances warranting the placement of a staff member on ALWOP in cases other than SEA is that of preponderance of the evidence not probable cause.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Richard Loto

Entity

MONUSCO

Case Number(s)

2022-1651

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Dec 2022

President Judge

Judge Raikos

Judge Sandhu

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-disciplinary/administrative measures

Subject matter (ratione materiae)

Disciplinary matters / misconduct

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Staff Regulations

- Regulation 11.1

Staff Rules

- Rule 10.4

UNDT Statute

- Article 2.1(d)
- Article 8.1(c)

Related Judgments and Orders

UNDT/2021/133

2019-UNAT-917
2019-UNAT-967
2020-UNAT-1004
2019-UNAT-973
2018-UNAT-860
2018-UNAT-869
2013-UNAT-288
2018-UNAT-840
2014-UNAT-481
2018-UNAT-876
2017-UNAT-765