

2022-UNAT-1293, James Okwakol

UNAT Held or UNDT Pronouncements

The UNAT concluded that the UNDT erred in considering that the different periods of ALWOP on which Mr. Okwakol was placed, were the subject of a single and continuing administrative decision. The UNAT held that each of the three identifiable periods was the subject of consideration or reconsideration of the circumstances at that time. On each occasion, the Organisation took a decision about the state of the misconduct investigation and its ongoing nature and advised Mr. Okwakol accordingly. It was not decisive or even material that the renewals of the ALWOP were referred to as extensions of the previous leave. The significant element was that at each decision point, the Administration reassessed the situation and the progress of the investigation.

The UNAT then analyzed whether one of the exceptions to the presumption that administrative leave shall be on full pay, applied to Mr. Okwakol. The UNAT concluded that the first exception, namely that there was probable cause that the staff member engaged in sexual exploitation and sexual abuse, did not apply to Mr. Okwakol. The UNAT then examined whether there were exceptional circumstances warranting administrative leave without pay. For exceptional circumstances to exist, there are two cumulative conditions. The first is that the unsatisfactory conduct is of such gravity that it would, if established, warrant separation from service or dismissal. The second requirement is that there is information about this unsatisfactory conduct before the authorized official making the administrative leave decision that it makes it more likely than not that the staff member engaged in this unsatisfactory conduct. The UNAT concluded that the Administration had evidence that Mr. Okwakol was complicit in seeking to persuade the complainant in a sexual exploitation and abuse matter to withdraw her complaint. The UNAT held that the Administration was entitled to assume that this was unsatisfactory conduct and of such gravity that if established in the investigation would warrant separation or dismissal of Mr. Okwakol. The UNAT also found that for the purpose of determining that his administrative leave was to be without pay, the Administration was entitled to find that it was more likely than not that Mr. Okwakol engaged in the unsatisfactory misconduct.

The UNAT concluded that there was no irregularity in Mr. Okwakol's placement on ALWOP, and accordingly, it granted the Secretary-General's appeal.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2021/135, the UNDT granted Mr. Okwakol's application contesting his placement on Administrative Leave Without Pay (ALWOP), pending investigation into alleged misconduct by him.

The UNDT rescinded the contested decision and ordered payment of all salary and entitlements foregone by Mr. Okwakol, plus interest.

The Secretary-General appeals the UNDT judgment.

Legal Principle(s)

The emphasis placed by the Organization on the identification and elimination of sexual exploitation and abuse is very important, but so too are the human and due process rights of staff members who have not yet at least, been adjudged guilty of that misconduct. These factors must be carefully balanced in making decisions about administrative leave and particularly if this is to be without pay and for prolonged periods.

While Administrative Leave Without Pay (ALWOP) is not a disciplinary sanction, its effects on a staff member, especially in cases involving a prolonged investigation, can be detrimental and in some ways at least as, or even more, detrimental than severance from service.

The consequences of being on ALWOP are not only economic. The shame, stigma, humiliation, loss of dignity and other similar less tangible but nevertheless real consequences attaching to being suspected of serious misconduct are residual and oppressive.

The General Assembly has put in place some protections or safeguards against the improper use of ALWOP which, because of its potential effects on fundamental human rights, must be satisfied by the Organization if it seeks to impose this administrative measure. First, Staff Rule 10.4(b) requires that if a staff member is to be placed on administrative leave (irrespective of whether this is with or without pay), that staff member must be given a written statement of the reasons for such leave and its probable duration. This requirement focuses the Organization's attention on the need to have good reasons for the interim sanction and to undertake and complete its investigation and decision-making in a timely, as well as a thorough, way. Second, the presumption is that administrative leave will be on full pay (ALWP). That default position is subject to exceptions. The first exception is where there is "probable cause" (reasonable grounds to believe) that the staff member has engaged in sexual exploitation and sexual abuse. The second and independent ground on which a staff member may be placed on ALWOP is where, pursuant to Staff Rule 10.4(c)(ii), the Secretary-General "decides that exceptional circumstances exist which warrant the placement of the staff member on administrative leave with partial pay or without pay."

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

James Okwakol

Entity

MONUSCO

Case Number(s)

2022-1652

Tribunal

UNAT

Registry

New York

Date of Judgement

22 Dec 2022

President Judge

Judge Raikos

Judge Colgan

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-disciplinary/administrative measures

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2003/13

Staff Rules

- Rule 10.4

Related Judgments and Orders

UNDT/2021/135

2019-UNAT-973

2018-UNAT-869