

# **2023-UNAT-1403, Francis N. Fultang**

## **UNAT Held or UNDT Pronouncements**

The UNAT held that the absence of a case management discussion and an oral hearing before the UNDT was not a procedural error.

The UNAT found that the UNDT did not err in admitting and considering the memorandum of allegations of misconduct, as it was used by the Administration only to verify that circumstances warranting the placement of the Appellant on ALWP occurred. The UNAT also found that the OIOS Investigation Report did not refer to the communications between the Appellant and his counsel, nor to exchanges during a mediation process, but only considered the Appellant's objective behavior.

The UNAT concluded that the duration of the ALWP (18 months) was reasonable, especially as the disciplinary process was still ongoing. The UNAT took into consideration the level of the post occupied by the Appellant, the nature of the misconduct (providing falsified documents to the Organization), the impact of the COVID-19 pandemic as well as the long distances between the Appellant's duty station, the location of the suspected misconduct and the venue of the investigative organ.

The UNAT found that since the disciplinary process had not been concluded by the expiration of the ALWP decision, there was a substantial basis to extend the ALWP and that the delay in the issuance of the retroactive ALWP extension decision was not a substantial procedural irregularity.

With regard to the Appellant's request to refer the conduct of the Chief of MEU to the Secretary-General for possible action to enforce accountability, the UNAT concluded that the justifiable basis to refer the case for accountability was not sustained.

The UNAT dismissed the appeals and affirmed Judgments Nos. UNDT/2022/102 and UNDT/2022/110.

## Decision Contested or Judgment/Order Appealed

The Appellant, a staff member of the United Nations Interim Security Force for Abyei (UNISFA) contested the decisions of the Administration: i) to place him on ALWP for three months as of 14 June 2021 and/or until the completion of any further investigations into his conduct or other subsequent disciplinary process; and ii) to retroactively extend his ALWP for three months from 13 December 2021 through 13 March 2022, or until the completion of a disciplinary process, if any, whichever was earlier.

In its Judgment No. UNDT/2022/102, the UNDT dismissed the Appellant's first application and concluded that the initial decision to place him on ALWP was lawful and rational. In its Judgment No. UNDT/2022/110, the UNDT also dismissed the Appellant's second application and concluded that the reasons set out in support of his placement on ALWP continued to exist and that, therefore, the Administration acted lawfully when it decided to extend retroactively his ALWP.

The staff member appealed.

## Legal Principle(s)

The UNDT has broad discretion with respect to case management and the UNAT should not interfere lightly with that discretion.

An appellant has the duty to establish an error of the UNDT. The appeals procedure before the UNAT is not an opportunity to relitigate a case. Only substantial procedural irregularities can render an administrative decision unlawful.

When judging the validity of the Administration's exercise of discretion in administrative matters, the UNDT determines if the decision is legal, rational, procedurally correct, and proportionate. It may consider whether relevant matters were ignored and irrelevant matters considered, and examine whether the decision is absurd or perverse. It is not the role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the first instance tribunal to substitute its own decision for that of the Administration.

When a disciplinary process is initiated, a staff member may be placed on ALWP at any time until its completion. With respect to any extension of administrative leave, there is no basis for the UNDT to set an arbitrary time limit to complete the investigation and the disciplinary process. Much will depend on the circumstances, 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.

The exercise of the power of referral for accountability must be exercised sparingly and only when the breach or conduct in question displays serious flaws.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Francis N. Fultang

## Entity

UNISFA

## Case Number(s)

2022-1761, 2022-1762

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

14 Dec 2023

## President Judge

Judge Colgan

Judge Gao

Judge Ziadé

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Fraud, misrepresentation and false certification

Due process

Right to a hearing

Investigation

Due process

Fact-finding investigation

Procedure (first instance and UNAT)

Case management

Referral for accountability

## Applicable Law

Administrative Instructions

- ST/AI/2017/1

Former Staff Rules

- Rule 10.4b

Secretary-General's bulletins

- ST/SGB/2019/2

## Staff Rules

- Rule 10.3

## UNDT RoP

- Article 16
- Article 19

## UNDT Statute

- Article 19

## UNRWA DT Statute

- Article 10.8

## Staff Regulations

- Regulation 1.2(b)

## UNAT Statute

- Article 9.5

## Related Judgments and Orders

UNDT/2022/102

UNDT/2022/110

2020-UNAT-981

2016-UNAT-668

2023-UNAT-1330

2019-UNAT-915

2019-UNAT-973

2018-UNAT-811

2022-UNAT-1200