

UNDT/2024/055, Bangambila

UNAT Held or UNDT Pronouncements

In the case at hand there is clearly a lack of *mens rea*. The Respondent failed to provide any evidence to substantiate the contention that the Applicant unlawfully made any misrepresentation or had any intent to defraud or deceive when submitting her request. She did not knowingly misrepresent or submit falsified documents. She submitted a birth certificate containing the names and occupation of both parents. She did not lie while filling her Questionnaire on Dependency Status (Form P84) as she wrote that she was single, and logically and truthfully answered “N/A” when asked after “is your spouse a UN common system staff member?”

The Respondent’s submission that the Applicant should have revealed that the child’s father was a staff member of the United Nations is unacceptable. The Applicant did not withhold this information. Rather, the systems in place (P.84 form and Umoja) did not provide an appropriate avenue for her to disclose it any more than she already had. The birth certificate, which clearly states the father’s profession as a UN staff member, was submitted and verified by HR. The contention that she withheld information and displayed a lack of integrity is unsupported by the evidence.

Since the Applicant did not provide any evidence of non-pecuniary (moral) harm, the Tribunal concludes that there is no ground for granting such compensation.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s decision to separate her from service with compensation in lieu of notice and termination indemnity. This disciplinary measure was imposed on her following a finding of misconduct.

Legal Principle(s)

The rules' [on Child Dependency Status and child Benefit Eligibility] emphasis on determining the dependency status before providing the benefits ensures that the benefits are directed towards those who genuinely need them.

Consequently, considering the dependency status of the child and child benefit eligibility requirements as per the rules of the Organization, it is clear that the child is the recognized dependent of the Applicant and the Applicant is eligible under the applicable rules to receive the child dependency allowance.

The Applicant could not disclose information on the status of the child's father as a UN staff member on either the P84 form or in Umoja due to their design. She did not withhold this information but was unable to disclose it due to system limitations.

Considering the Tribunal's findings on the unlawfulness of the contested decision, the Tribunal finds that this is a case where the only fair remedy for the Applicant would be a rescission of the impugned decision so that she is restored to her *status quo ante*. There was a clear failure of due diligence at almost every level of scrutiny, which resulted in the Applicant, a single mother with two children under her sole care, losing her livelihood.

[Respondent's] Counsel must assist the Secretary-General in achieving the ends of justice. They must also help the Secretary-General by providing sound advice to prevent wrong decisions, thereby contributing to the fair administration of justice and the promotion of the rule of law.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

In light of the foregoing, the Tribunal DECIDES:

- a. To rescind the contested decision in its entirety;
- b. In respect of compensation in lieu of reinstatement, to set its amount at three (3) years' net base salary; and

c. In addition to the compensation awarded to the Applicant, to direct the Registry to serve a copy of this judgment on the Secretary-General, the Under-Secretary-General, DMSPC, and the Under-Secretary-General, OIOS, to draw their attention to the conduct of the staff members under their charge involved in the present case.

Full judgment

[Full judgment](#)

Applicants/Appellants

Bangambila

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2023/044

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

4 Sep 2024

Duty Judge

Judge Waktolla

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Dismissal/separation

Disciplinary matters / misconduct

Applicable Law

Administrative Instructions

- ST/AI/2018/6

Staff Rules

- Rule 1.2(b)
- Rule 1.5(a)
- Rule 1.7
- Rule 3.6

UNDT Statute

- Article 9.4

Related Judgments and Orders

2019-UNAT-955

2022-UNAT-1254

2021-UNAT-1172

2011-UNAT-164

2019-UNAT-918

2017-UNAT-776

2010-UNAT-024

2010-UNAT-018

2023-UNAT-1370

2022-UNAT-1231