

UNDT/2025/005, Herve Wamara

Tibenderana

UNAT Held or UNDT Pronouncements

On delegation on authority, the Respondent argued that the presumption of regularity avoids the need for proof absent a prima facie case. This argument is entirely correct. The Respondent was required to and submitted email correspondence between the ASG/OHRM and the USG/DMSPC regarding this case. In that correspondence, the ASG/OHRM attaches her recommendation to impose a disciplinary sanction on the Applicant, along with a “detailed analysis in the body to the recommendation.” In response, the USG/DMSPC writes “Recommendation approved.” The Tribunal was therefore convinced that the contested decision was made by the USG/DMSPC.

Decision Contested or Judgment/Order Appealed

The Applicant challenged his separation from service for sexually harassing two female members of the Canadian Armed Forces (CAF) supporting MONUSCO’s activities.

Legal Principle(s)

There is always a presumption that official acts have been regularly performed. But this presumption is a rebuttable one. The Applicant must present “clear and convincing evidence “ that an irregularity was highly probable.

In disciplinary cases, when termination is a possible outcome, the Administration must establish the alleged misconduct by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.

In sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required, because it is not always the situation in sexual harassment cases that corroboration exists in the form of notebook entries, email communications, or other similar documentary evidence, and the absence of such documents should not automatically render a complaining victim's version as being weak or meaningless.

Article 18.1 of the Dispute Tribunal Rules of Procedure makes clear that the "Dispute Tribunal shall determine the admissibility of evidence." The Appeals Tribunal has long held that the UNDT has "broad discretion" under this provision to determine the admissibility of any evidence. In exercising this discretion, the Tribunal may consider "judicial economy."

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Herve Wamara Tibenderana

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2024/013

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

6 Feb 2025

Duty Judge

Wallace

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Due process

Sexual harassment

Investigation

Right to cross-examine witnesses

Investigation

Applicable Law

Secretary-General's bulletins

- ST/SGB/2023/1
- ST/SGB/2019/8

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(f)

Staff Rules

- Rule 1.2(f)

Related Judgments and Orders

2023-UNAT-1370

2015-UNAT-550

2011-UNAT-122

2024-UNAT-1486

2017-UNAT-762

UNDT/2011/046

2012-UNAT-207

2012-UNAT-263

2020-UNAT-998

UNDT/2024/100

2018-UNAT-819

2012-UNAT-263