
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/073
Judgment No.: UNDT/2022/102
Date: 7 October

Introduction

1. The Applicant, a Conduct and Discipline Officer at the United Nations Interim Security Force for Abyei (UNISFA), serving on a continuing appointment at the P-4 level, challenges the Administration's decision to place him on Administrative Leave w

argues that this procedural violation is fatal to the admissibility of the Investigation Report.

18. OIOS had no authority to make any conclusions or statements about whether they considered that the Applicant had engaged in any misconduct to influence the decision-maker.

19. As of the filing of closing submissions, the Applicant continues to be on ALWP; 14 months since he responded to the allegation on 19 September 2021.

20. The Respondent is unequivocal in his position that the application has no merit and should be rejected. The decision to place the Applicant on ALWP was lawful and rational. It was based on the information provided by OIOS following a procedurally proper investigation. The Applicant was informed of the duration of his ALWP, which was reasonable. Finally, the decision did not constitute a disciplinary

The reasons provided

11.1 In accordance with staff rule 10.4, a staff member may be placed on administrative leave with or without pay at any time after an allegation of suspected unsatisfactory conduct and pending the completion of the disciplinary process. The period of administrative leave may continue until the completion of the disciplinary process. Such action is without prejudice to the rights of the staff member and does not constitute a disciplinary measure. A staff member placed on administrative leave shall be given a written statement of the reason(s) for such leave and shall be informed of its likely duration.

...

Administrative leave with pay

11.3 The decision to place a staff member on administrative leave with pay may be made by the authorized official at any time following a report of suspected unsatisfactory conduct and following

considering the criteria stipulated in the Staff Rules and sections 11.1 and 11.3 of ST/AI/2017/1 and the information before the Administration at the time of the decision. It is not for the Tribunal to substitute its own view for the Administration's decision but to evaluate whether that decision was irrational or arbitrary. This task, however, includes an assessment of facts and has limitation only in the Secretary-General's discretionary powers.

40. As the Tribunal stressed in *Kavosh* UNDT/2022/032, the placement on administrative leave without pay (ALWOP) cannot be regarded as a disciplinary measure infringing on the presumption of innocence or aimed at inducing the staff member to resign from his job, as the Staff Rules specifically provide that administrative leave with full or partial pay or without pay is not a disciplinary measure but an administrative measure.

41. Following *Gharagozloo Pakkala* UNDT/2021/076, administrative and disciplinary measures are different in nature, conditions, scope and consequences. In particular, disciplinary measures are intended to punish the infringement by the staff member of his/her duty inherent in the working relationship and presuppose a fact of misconduct, specifically provided in the rules as such and punished. On the contrary, administrative measures can be taken in cases where a staff member's conduct does not rise to the level of misconduct, but a managerial action is nevertheless required; their function is preventive, corrective and cautionary in nature.

42. In *Gisage* 2019-UNAT-973, par.a 37, UNAT stressed that

ALWOP may be contemplated if the conduct in question might pose a danger to the Organization, including, in our view, the reputational harm to the Organization caused by its staff members engaging in exploitative conduct in disadvantaged communities subject to the protective mandate of the Organization.

43. In the same judgment, UNAT has also cautioned (para. 40), that any decision to extend ALWOP must be reasonable and proportionate and that such a decision is a drastic administrative measure and normally should be of short duration. In determining whether an extension of ALWOP is lawful, the Tribunal shall be

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53. The Tribunal finds that the investigative procedure is not flawed. Indeed, the rule requiring the presence of two investigators is applicable to audio-recorded interviews, and it does not apply to videorecording. Indeed, by videorecording the interview, O1oFsyOS dq0.5595.1(q0.000008871 0 595.32 842.04 reW*ñBT/F1 12 Tf1 0 0 1 144.5 672.9