
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/056

Judgment No.: UNDT/2021/051

Date: 7 May 2021

Original:

Background

1. The Applicant commenced service with the Organization in 2004. Prior to her separation from service, on 1 March 2018, she held a fixed-term appointment as a Nurse at the GL-4 level, with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

2. On 7 May 2018, she filed an application with the United Nations Dispute

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3. The Respondent filed his reply to the application on 8 June 2018.

4. The Tribunal heard the case on 7, 14, 17 and 21 December 2020, on 29 January 2021 and on 4, 5 and 19 February 2021 when oral testimony was received from:

a. the Applicant;

b. Dr. Pontife , V D Q G D , V D O L P \ D W K H \$ S S @ t h e D Q W ¶ V W U
Centre Psychiatrique Sosame); and

c. Ms. Lesa Brittain, then 2 I I L F H R I , Q W H U Q D O 2 Y H U V L J K W 6 H U
, Q Y H V W L J D W R U Z K R L Q Y H V W L J D W H G W K H \$ S S O L F D Q V

5. The Respondent and Applicant filed closing submissions on 10 and 12 April 2021 respectively. On 14 April 2021, the Applicant filed a motion seeking to amend her closing submissions. On 16 April 2021, the Respondent filed a response to the \$ S S O L F D Q W ¶ V P R W L R Q

Summary of the relevant facts

6. On 4 May 2015, the Applicant attended the Centre Hospitalier Biopharm to undergo a pregnancy check-up. This medical test confirmed that she was four and a

half months pregnant.¹

7. On or around June 2015, six months into her pregnancy, the Applicant suffered a miscarriage. She became depressed as a result of the miscarriage, was admitted to the Centre Psychiatrique Sosame in Bukavu and received treatment for major depressive disorder.²

8. On 30 6 H S W H P E H U W K H \$ S S O L F D Q W T V R D W H U Q L W \ The period 5 October to 24 January 2016 was approved by her immediate supervisor.³

9. On 17 December 2015, the Investigations Division of OIOS received a report implicating the Applicant in child trafficking. In or around December 2015, OIOS opened an investigation under case no. 0572/15, to investigate the allegations of child trafficking implicating the Applicant. Specifically, there were four allegations: i) child trafficking; ii) knowingly obtaining a medical certificate for maternity leave without being pregnant; iii) submitting fraudulent medical insurance claims; and iv) accepting money from colleagues to assist with a pregnancy.⁴

10. The Applicant was interviewed in connection with these allegations on 1 July 2016.⁵

11. On 29 September 2016, OIOS informed the Applicant that the alleged misconduct was not substantiated and that the case was closed. She was also informed that a further investigation might be considered if new evidence was discovered.⁶

12. On 19 December 2016, OIOS finalized its Investigation Report in Case No. 0495/16 which found that, in 2015, the Applicant had fraudulently sought and was

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Considerations

Legal issues

The role of the UNDT in disciplinary cases

17. In keeping with UNAT jurisprudence¹² the Tribunal will examine:
- a. whether the facts on which the sanction is based have been established;
 - b. whether the established facts qualify as misconduct under the Staff Regulations and Rules; and
 - c.

the Secretary- * H Q H U D O ¶ V G L V F L i S i O n Q u e G h e T r i b u n a l Q V
consider the correctness of the choice made by the Secretary-General amongst the

female.⁴²

62. Based on the above, the Tribunal finds that the alleged translation mistakes and discrepancies between her OIOS interview and the transcript thereafter produced G L G Q ¶ W have a material impact on the established facts that the Applicant knowingly and wilfully misrepresented her pregnancy to Dr Cizungu in order to fraudulently obtain a medical certificate attesting to her pregnancy and subsequently used that certificate to claim a benefit to which she was not entitled. The alleged translat L R Q P L V W D N H V G L G Q have a material impact on either her due process rights or on the established facts relevant to the proportionality of the sanction imposed.

63. In the result the Tribunal finds that that there is clear and convincing evidence that the Applicant committed the misconduct complained of, and that the established facts qualify as misconduct under the Staff Regulations and Rules, further that the sanction is proportionate to the offence and therefore lawful. The Tribunal also finds that there were no due process violations in the investigation and in the disciplinary process leading up to the disciplinary sanction against the Applicant.

Judgment

64. The application is dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 7th day of May