



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/030

Judgment No.: UNDT/2020/121

Date: 16 July 2020

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GISAGE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Abbe Jolles

Counsel for the Respondent:

Susan Maddox, AAS/ALD/OHR, UN Secretariat

Background

1. This is an application filed by the Applicant contesting the Under-Secretary-General for Management's ("USG/DM") decision to impose on him the disciplinary sanction of dismissal from service for serious misconduct in accordance with staff rule 10.2(a)(ix). In his reply, the Respondent argues that the Applicant's actions amounted to serious misconduct justifying the imposed sanction and that his application should be dismissed. The Tribunal dismisses the application in its entirety.

Facts and Proceedings

5.

clear and convincing evidence, hence the dismissal.

the majority of the reports were of staff perpetuating the trade by using the brothels, but there were those very specific incidents where people were caught purchasing women outright from the bars, not just going there and buying an hour's worth of use. Ms. Bulkovac reported many high-level UN staff. No one was dismissed, prosecuted or even disciplined. From time to time handwritten notes came from UN high level officials "this matter has been dealt with..."⁸

18. The Applicant argues further that,

there were crimes and direct violations of SEA Rules proven by clear and convincing evidence and yet no participants suffered any consequences. Yet Applicant is dismissed for transporting Congolese women in his UN vehicle? This is clear discrimination.⁹

19. He asserts that Under-Secretary-Generals or Assistant Secretary-Generals who commit sexual assault, abuse or harassment are protected and that he has been terminated because he is a low-level staff member from black Africa.¹⁰

20. In conclusion, the Applicant argues that dismissing him for the said reasons is illegal. Selective discriminatory dismissal under the guise of zero tolerance is illegal.

21. Consequently, the Applicant seeks immediate reinstatement with back pay, an award of 36 months' net base pay; moral damages; and an apology for differential treatment based on race and national origin.

The Respondent

22. The Respondent urges the Tribunal to reject the application because there is clear and convincing evidence that, between 7 and 10 December 2016, the Applicant transported up to five Congolese women in his service vehicle, registration number UN 24342, after having consumed alcohol; had sexual intercourse with up to three of the women; and eventually paid each of them FC40,000 (approximately USD25) through an intermediary.

⁸ Ibid., para. 7.

⁹ Ibid., para. 8.

¹⁰ Ibid., para. 9.

23. The Respondent avers that the record contains the Applicant's statements as

public filings in this case. The Tribunal grants the motion based on UNAT authority that victims of misconduct need anonymity. As the purpose of anonymity is to protect

You stated that you wanted to pay, but you realised that you did not have the money. You explained that you suspected that the woman, who had left earlier that morning, might have stolen your money. You stated that you asked V0

2016) in his service vehicle, UN 24342, together with “four girls”²². This piece of evidence has not been contradicted.

Whether the established facts qualify as misconduct under the Staff Regulations and Rules

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have sexually assaulted (raped) in many parts of the world with impunity.

The referenced articles do not show that any particular member of staff committed these acts and was spared because he/she was senior in rank or of race other than black African. This argument lacks sound basis and it is irrelevant to resolving this application.

52. All in all, the Tribunal finds that the Applicant's conduct clearly violated the following Staffaffaffaffaff

JUDGMENT

59. The application is dismissed in its entirety.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 16th day July 2020

Entered in the Register on this 16th day July 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi