

# UNDT/2012/054, Applicant

## UNAT Held or UNDT Pronouncements

The investigation against the Applicant lacked integrity and credibility. The investigator was incompetent, exhibited bias and lacked objectivity and fairness. The Investigator's note-taker was not only allowed to conduct part of the investigation by solely administering questions to two witnesses, she was also allowed the liberty of expressing her views on how some evidence she had elicited from a witness should not change impressions earlier formed. The investigation report was biased, unreliable and unfair. The characterisation of certain facts was done in a manner intended to draw only inculpatory conclusions with regard to the Applicant. Where an allegation is quasi-criminal in nature, justice is denied the person against whom an allegation is made if he is not afforded an opportunity to challenge the one making the allegation. The practice of placing reliance upon recordings in initial fact-finding exercises and interview notes of appointed investigators in an effort to establish gross misconduct warranting summary dismissal before the Tribunal is grossly inadequate. The Respondent has failed to substantiate the charges of misconduct against the Applicant and the charges were entirely without proper legal basis. The Organization does not have jurisdictional competence with respect to the private conduct of a staff member especially where such conduct has no bearing on the work environment. If the investigation had established a prima facie case of wrongdoing on the part of the Applicant, the correct procedure would have been for the Complainants to bring the relevant legal proceedings in the national courts against the Applicant after which a request for waiver of his immunity from legal process would be considered by the Respondent. The difficulty of UNICEF or other international agencies operating in difficult environments where, as in this case, a staff member is accused of criminal acts must be acknowledged. The solution cannot lie in hastily dismissing such a staff member for political expediency or to save face and their projects because justice for both accuser and accused. The sanction of summary dismissal was based on unsubstantiated charges. Accordingly, the Tribunal rescinds the Applicant's summary dismissal and holds that until the date of this judgment the Applicant remains lawfully in the service of UNICEF.

## Decision Contested or Judgment/Order Appealed

The Applicant contests a decision to summarily dismiss him from UNICEF based on allegations of sexual harassment made by two waiters and two security men working at the Africa Expeditions, United Nations Office for the Coordination of Humanitarian Affairs tented camp in Juba where he was living.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNICEF

Case Number(s)

UNDT/NBI/2010/011/UNAT/1587

Tribunal

UNDT

Registry  
Nairobi  
Date of Judgement  
18 Apr 2012  
Duty Judge  
Judge Izuako  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Disciplinary matters / misconduct  
Sexual harassment  
Termination (of appointment)  
Summary dismissal  
Applicable Law  
Staff Rules

- Rule 101.2(d)

UN Charter

- Article 101

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

2010-UNAT-087

UNDT/2011/205

UNDT/2010/036