

UNDT/2013/131, Applicant

UNAT Held or UNDT Pronouncements

Testimony of anonymous witnesses: The Tribunal held that the testimony of witnesses whom the Applicant has not had the opportunity to confront in proceedings is not inadmissible per se. However, a decision adverse to a staff member in a disciplinary case may not be based solely on this. There must be some independent evidence that can confirm the anonymous testimony, especially where the staff member has not had a chance to confront the witnesses and therefore challenge any incriminating evidence they have given against the staff member. The Tribunal also held that the requirements of due process rights would have been met in relation to witness statements of both identified and unidentified witnesses if the witnesses' statements have been provided to the staff member and the staff member has had an opportunity to comment on, and respond to, the statements. Legal representation: The Tribunal noted that section 49 of the OIOS Manual denies legal representation while compelling a staff member to answer questions during the preliminary investigation. The Tribunal questioned the fairness of such a rule, but concluded that it has no choice but to follow the precepts of UNAT that at the stage of the preliminary investigation an accused staff member has no right to legal representation. Admissibility of admissions: The Tribunal held that: (a) before an admission can be admitted, it must be reduced to writing; and (b) notes taken during an interview may be admissible if they are contemporaneous notes that satisfy the test of contemporaneity (that is the statements given by the person interrogated are taken down by the note taker verbatim and are taken at the very moment the person is speaking or reasonably soon thereafter).

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the Under-Secretary-General for the Department of Management (USG/DM) to summarily dismiss him from service for the serious misconduct of sexual exploitation and abuse in contravention of ST/SGB/2003/13. The Applicant submitted that the evidence fell short of establishing the acts of misconduct because the evidence used to substantiate the charges consisted of: (a) unsigned hearsay statements from OIOS investigators based on alleged interviews with anonymous individuals, and (b) an unsigned hearsay statement of OIOS investigators based on an interview with him. He also alleged due process violations during the preliminary investigation.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNOCI

Case Number(s)

UNDT/NBI/2010/072

Tribunal

UNDT

Registry

Nairobi

Date of Judgement
29 Oct 2013
Duty Judge
Judge Boolell
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Disciplinary matters / misconduct
Disciplinary measure or sanction
Legal services (OSLA or other) and self-representation
Legal representation
Standard of proof
Disciplinary cases
Termination (of appointment)
Summary dismissal
Applicable Law
Administrative Instructions

- ST/AI/371

Agreements, conventions, treaties (etc.)

- United Nations Convention against Transnational Organized Crime

Former Staff Rules

- Rule 110.4

GA Resolutions

- A/RES/59/296

Other UN issuances (guidelines, policies etc.)

- OIOS Manual of Investigation Practices

Secretary-General's bulletins

- ST/SGB/2003/13
- ST/SGB/2009/11

Security Council Resolutions

UNDT RoP

- Article 16.2

Related Judgments and Orders

UNDT/2010/024

2010-UNAT-087

2010-UNAT-098

2011-UNAT-164
2012-UNAT-209
2013-UNAT-295
2013-UNAT-302