

2014-UNAT-403, Diabagate

UNAT Held or UNDT Pronouncements

UNAT noted that V01 had not been placed under oath before giving her interview and that she did not sign the transcribed version of her interview statement. UNAT held that V01's transcribed statement, in which she said that the Appellant had raped her and engaged in sex with her, was neither reliable nor trustworthy; it was solely hearsay and insufficient, by itself, to prove the charge that the Appellant engaged in sexual activity with a minor. UNAT held that similarly the other written documents were replete with hearsay and multiple hearsays and were neither trustworthy nor sufficient to prove that the Appellant had sex with a minor (V01). UNAT held that UNDT had reached the erroneous conclusion that the Appellant had engaged in sexual activity with V01 by ignoring the well-established jurisprudence of UNAT. UNAT held that UNDT had failed to place the burden on the Administration to prove the facts underlying the discipline and, instead, shifted the burden to the staff member to disprove the facts. UNAT held that UNDT had failed to apply the proper standard of proof which was clear and convincing evidence. UNAT held that neither preponderance of the evidence nor an inference amounted to clear and convincing evidence. UNAT upheld the appeal, reversed the UNDT judgment, rescinded the decision to summarily dismiss the Appellant and ordered that he should be reinstated or, in lieu thereof, he should be awarded compensation in the amount of one year's net base salary.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss him. UNDT issued judgment No. UNDT/2013/009, in which it determined that: (1) it was proven that the Applicant had engaged in a sexual relationship with V01; (2) it was not proven that the Applicant had engaged in sexual relationships with beneficiaries of UN assistance; and (3) it was proven that the Applicant had engaged in the unofficial and unauthorised use of UN vehicles, as he had conceded. UNDT concluded that the Applicant had sexually exploited and abused V01 (a minor) in violation of

ST/SGB/2003/13, paragraphs 3. 2(a) and (b), which constituted serious misconduct, and summary dismissal was a proportionate penalty for such serious misconduct. UNDT upheld the summary dismissal of the Applicant and dismissed his application.

Legal Principle(s)

The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. When the termination or dismissal of a staff member is a possible sanction, the misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Diabagate

Entity

MONUC

Case Number(s)

2013-453

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Disciplinary

Disciplinary matters / misconduct

Disciplinary measure or sanction

Dismissal/separation

Sexual exploitation and abuse

Termination (of appointment)

Summary dismissal

Applicable Law

Former Staff Regulations

- Regulation 1.2(b)

Secretary-General's bulletins

- ST/SGB/2003/13

Related Judgments and Orders

UNDT/2013/009

2010-UNAT-081
2013-UNAT-302
2011-UNAT-164
2010-UNAT-048
2013-UNAT-361
2013-UNAT-364
2011-UNAT-153
2010-UNAT-098
2010-UNAT-084
2010-UNAT-024
2010-UNAT-018
2010-UNAT-087