# **2014-UNAT-440, Stoykov**

#### **UNAT Held or UNDT Pronouncements**

UNAT held that, while the representatives of the parties were present at the oral proceedings, they are entitled to the record of the testimonies made at those proceedings from the relevant UNDT Registry. UNAT held that this record is critical for the preparation of the appeal case. UNAT held that the transcripts of the testimonies of seven out of 17 witnesses were missing. UNAT held that the Appellant was entitled to the record of the testimonies critical to the preparation of the appeal case, applying its jurisprudence in Finnis (Order No. 49 (2011)). UNAT upheld the appeal, vacated the UNDT judgment, and remanded the case to UNDT for retrial by a different judge.

### Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss him on grounds of misconduct. UNDT found that there were serious due process violations in the investigation. UNDT, however, determined that such flaws had been rectified by the proceedings before UNDT. UNDT found that the evidence which transpired during the trial did not materially depart from what the investigators found. UNAT found that the burden of proof utilised by the Secretary-General did not meet the standard established by UNAT in Molari (2011-UNAT-164) (clear and convincing evidence). UNDT, however, concluded that the sanction of summary dismissal was fully justified.

### Legal Principle(s)

In a case with oral evidence, UNAT cannot review UNDT's findings unless it has a transcript of that testimony. In a case that turns on disputed facts, UNAT would have no choice, in the absence of a written transcript, but to remand to the trial court for a new and recorded hearing.

#### Outcome

Appeal granted

Full judgment

Full judgment

Applicants/Appellants

Stoykov

**Entity** 

ECA

Case Number(s)

2013-504

Tribunal

**UNAT** 

Registry

New York

Date of Judgement

27 Jun 2014

Language of Judgment

English

Issuance Type

Judgment

# Categories/Subcategories

Evidence Audio-recordings Procedure (first instance and UNAT)

## **Applicable Law**

#### **UNAT Statute**

- Article 2.1(e)
- Article 2.7

## Related Judgments and Orders

UNDT/2013/070 2011-UNAT-130 2011-UNAT-164