

# 2014-UNAT-480, Oh

## UNAT Held or UNDT Pronouncements

UNAT preliminarily dismissed the Appellant's Application for Confidentiality and then considered the merits of the Appeal, which contained three grounds. With respect to the first ground, UNAT held that UNDT did not err in concluding that due process was satisfied if the staff member could comment on anonymous witness statements providing evidence against him. UNAT noted that the reasons for withholding the identities of the victims and for not producing them at trial were contained in the OIOS Investigation Report that was sent to the Appellant, thus the conditions for the admissibility for anonymous statements were met. UNAT also noted that statements of witnesses need not be signed when their cross-examination is not possible, rather the due process is met as long as the staff member has a meaningful opportunity to mount a defence and question the veracity of the statements against them, which occurred here. With respect to the second ground, UNAT held that UNDT did not err in upholding the Secretary-General's decision based on the record of the Appellant's interview that he contested. UNAT noted that it was clear that the OIOS complied with the OIOS Investigation Manual and that the Appellant failed to establish any procedural irregularity that would undermine the reliability of the record of his statements to OIOS. UNAT also upheld UNDT's decision to reject the Appellant's claim that his statement, as recorded by OIOS had been entirely fabricated. UNAT also held that UNDT properly relied on the record of the Appellant's statement to the OIOS investigators, which corroborated the statements of VO3 and VO4 that he had paid them for sexual services. With respect to the third ground of appeal, UNAT found that the identification of the Appellant from six photographs by each of the two victims, independently and separately from each other, constituted evidence that was reasonably considered by the Administration and UNDT as supporting the finding of his misconduct. UNAT dismissed the appeal in its entirety and affirmed UNDT's judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested allegations of misconduct. UNDT held that there was sufficient proof that he had engaged in sexual exploitation and abuse, in light of the totality of the evidence on the record. UNDT concluded that the Applicant's due process rights had been respected and that the summary dismissal was proportionate to the offence. UNDT dismissed the application.

## Legal Principle(s)

The use of statements gathered in the course of the investigation from witnesses who remained anonymous throughout the proceedings may be used as evidence only in exceptional cases because of the difficulties in establishing the facts, if such facts are seriously prejudicial to the work, functioning and reputation of the Organisation, and if maintaining anonymity is really necessary for the protection of the witness. It should be possible to verify the circumstances surrounding anonymous witness statements and to allow the accused staff member to effectively challenge such statements.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Oh

## Entity

UNOCI

## Case Number(s)

2014-554

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

17 Oct 2014

## President Judge

Judge Adinyira

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Investigation (see category: Investigation)

Sexual exploitation and abuse

Due process

Right to comment/respond

Evidence

Anonymous statements

Investigation

Termination (of appointment)

Summary dismissal

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- OIOS Investigation Manual

## Related Judgments and Orders

UNDT/2013/131

2011-UNAT-123

2010-UNAT-021

2013-UNAT-302

2010-UNAT-087

2014-UNAT-408

2014-UNAT-481