

2023-UNAT-1362, Richard Loto

UNAT Held or UNDT Pronouncements

The UNAT first dismissed as not receivable Mr. Loto's appeal of the UNDT's Order denying his motion to strike an audio-recording and certain pleadings submitted by the Secretary-General. The UNAT held that these matters could be addressed in Mr. Loto's appeal of the judgment on the merits of his application.

The UNAT was satisfied that the UNDT correctly admitted the audio-recording of the meeting between the alleged victim, Mr. Loto and others, as the recording assisted in resolving any evidential conflict about what transpired at this meeting, in which payment to the victim was discussed in exchange for withdrawing her SEA complaint. The UNAT also found no error in the UNDT's refusal to strike certain submissions of the Secretary-General, concluding that the UNDT was well-placed to discern if these materials were relevant or not.

The UNAT rejected Mr. Loto's principal argument that he could not be sanctioned for not reporting the SEA complaint if it had not been firmly established that the victim had indeed been raped. The UNAT held that the duty under the relevant Secretary-General's Bulletin ST/SGB/2003/13 is to report complaints or allegations of sexual misconduct so that they may be investigated. The UNAT held that the UNDT was correct to find that, given the circumstances of the case, Mr. Loto must have had a sufficient degree of confidence in the veracity of what the victim told him happened, such that it triggered his obligation to report suspected SEA to the relevant authorities. With regards to proposed payment to the victim to withdraw her SEA complaint, the UNAT acknowledged that the specific sum was first mentioned by her, but rejected the argument that it was an attempt at extortion. The UNAT held that, by that point, Mr. Loto had already exerted moral pressure and offered other inducements in order to get her to recant her account. Overall, the UNAT agreed with the UNDT that Mr. Loto's acts and omissions amounted to serious misconduct which justified the disciplinary sanction imposed.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/081, the UNDT dismissed Mr. Loto's challenge to his separation from service due to his failure to report a complaint of sexual exploitation and abuse (SEA). As part of this case, the UNDT had denied Mr. Loto's motion to strike an audio-recording that was made by the alleged victim of the SEA of a particularly critical meeting. Mr. Loto also appealed this Order No. 081 (NBI/2022).

Legal Principle(s)

Whether any particular interlocutory order is amenable to immediate and discrete appeal depends on whether the rights or obligations of either party are affected irrevocably by the interlocutory order or its implementation, or, on the other hand, whether if the UNDT has erred, the decision and its effects can be justly remedied as part of a later substantive appeal.

The admissibility of a covert recording should take into consideration factors such as whether the evidence was obtained by entrapment or trickery, the nature and significance of the evidence, the probative value of it as compared to any prejudicial effect it may bring to bear, and the relationships of power and influence that there may be between the parties to the recording.

The nature of the duty under the relevant United Nations legal framework is to report complaints or allegations of sexual misconduct so that they can be investigated, regardless of whether the sexual misconduct has been established yet.

Outcome

Appeal dismissed on merits; Appeal dismissed on receivability

Outcome Extra Text

The appeal against Order No. 081/(NBI/2022) is dismissed for want of jurisdiction, and the appeal on the merits is dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Richard Loto

Entity

MONUSCO

Case Number(s)

2022-1713

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Jul 2023

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Due process

Failure to report misconduct

Evidence

Audio-recordings

Interlocutory appeal

Sexual exploitation and abuse

Jurisdiction / receivability (UNAT)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2003/13

UNAT Statute

- Article 2.1

Related Judgments and Orders

2023-UNAT-1348

2023-UNAT-1328

2010-UNAT-062

2010-UNAT-005

UNDT/2022/081