

# UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2023-UNAT-1354



Counsel for Appellant: Sètonджи Roland Adjovi

Counsel for Respondent: Angélique Trouche

JUDGE DIMITRIOS RAIKOS , PRESIDING .

1. Mr. James Okwakol, the former Chief Resident Auditor with the Office of Internal Oversight Services (OIOS) with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), appeals the dismissal of his application before the United Nations Dispute

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meeting to be held later that day with V01, Mr. [R.L.], Mr. [J.M.] and Mr. [B.K.] to discuss V01's complaint.

- b. During that meeting, [Mr. Okwakol] urged V01 to withdraw her complaint from the CDT, told her to say that she was withdrawing the complaint of her own volition, and facilitated an agreement pursuant to which Mr. [J.M.] would pay V01 USD \$2,000, in return for the withdrawal of her complaint and/or in connection with her complaint of rape.
- c. On 11 December 2019, after having received notice from OIOS investigators of the investigation into [Mr. Okwakol's] conduct and of [his] upcoming interview, [Mr. Okwakol] participated in a meeting with Mr. [ R.L.] and Mr. [J.M.]. During that meeting, [Mr. Okwakol] discussed the OIOS investigation and gave advice to Mr. [ R.L.] regarding what he should say during his upcoming interview with OIOS.



24. On 4 February 2022, the Secretary-General filed his reply, and included as annex 7, the brief of the Office of Legal Affairs (OLA) in the Administration's appeal of Judgment No. UNDT/2021/135, wherein the Dispute Tribunal had found Mr. Okwakol's placement on ALWOP to be unlawful. At the time, this was pending as Case No. 2022-1652 before the Appeals Tribunal.<sup>12</sup>

25. On 8 July 2022, a Case Management Discussion (CMD) was held. Counsel for Mr. Okwakol raised arguments regarding the admissibility of the audio-recording made by V01 and also objected to the inclusion in the Secretary-General's reply of the OLA brief in Mr. Okwakol's then-pending

30. A hearing was held on 4, 5, and 8 August 2022, and the UNDT heard testimony from Mr. Okwakol, Mr. R.L., V01, a member of CDT, and one of the OIOS investigators.

31. On 20 September 2022, the UNDT issued the impugned Judgment. The UNDT held that Mr. Okwakol's failure to report V01's complaint of rape and Mr. R.L.'s failure to report was established by clear and convincing evidence. The UNDT did not credit Mr. Okwakol's contention that Mr. R.L. never told him that V01 had filed a rape complaint against Mr. J.M., and that Mr. R.L. never told him that Mr. R.L. had failed to promptly report this complaint when it came to his attention.<sup>15</sup>

32. The UNDT also rejected as "far from the truth" Mr. Okwakol's claim that the meeting of 25 November 2019 concerned a dispute about money between Mr. J.M. and V01. Considering all of the evidence, the UNDT concluded that it was clearly established that Mr. Okwakol had pressured V01 at this meeting to withdraw her SEA complaint.<sup>16</sup>

33. In terms of interference with the OIOS investigation, the UNDT was not inclined to rely on carlog and logbook data to find that Mr. Okwakol met with Mr. R.L. and Mr. J.M. on 11 December 2019 in order to discuss the OIOS interviews. However, the UNDT held that it was reasonable to rely on Mr. R.L.'s testimony that Mr. Okwakol advised him to say that the dispute between Mr. J.M. and V01 was "all [] about money" and that he "stick to the money issue, whatever you say".<sup>17</sup> The UNDT noted that Mr. R.L.'s testimony reaffirmed his original interview with OIOS, and that this evidence was inculpatory of him, that he was not seeking to exonerate himself by implicating Mr. Okwakol, and he had no ulterior motive to testify as he did.<sup>18</sup> Thus, the UNDT concluded that it was established by clear and convincing evidence that Mr. Okwakol interfered with the OIOS investigation.

34. The UNDT noted that Mr. Okwakol did not address whether the established facts constituted misconduct, but nonetheless held that his actions violated Staff Regulation 1.2(b), Staff Rules 1.2(c), 1.2(e), and 1.2(g), and Section 3.2(f) of ST/SGB/2003/13.

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<sup>15</sup> Impugned Judgment, paras. 8-11.

<sup>16</sup> .., paras. 14-16.

<sup>17</sup> para. 18.

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75. The Secretary-General submits that the UNDT properly found that, contrary to Mr. Okwakol's claim, the Allegations Memorandum was signed by an official with proper authority.

76. The Secretary-General submits that the UNDT was right to reject Mr. Okwakol's claim that he was sanctioned for something that he was not charged with (failing to report Mr. R.L.'s failure to report the alleged rape).

77. The Secretary-General argues that the UNDT did not err in finding that the sanction of dismissal was proportionate to the established misconduct.

78. The Secretary-General submits that Mr. Okwakol has failed to demonstrate any error in the UNDT's review and merely disagrees with the outcome and restates his unsuccessful arguments before the UNDT. In accordance with long-standing UNAT jurisprudence<sup>1</sup> (p) 8(e)-10(p)6.8 T





91. In the same line of reasoning, the UNDT found that :<sup>36</sup>

... It is the role of the Dispute Tribunal to determine the admissibility of evidence and the weight to be attached to it. This should be done in the final judgment preparation process rather than being done in the piecemeal manner proposed by the Applicant. The suggestion that there should be a hearing to determine the admissibility of specified pieces of evidence if granted would lead to an unhealthy situation where the Tribunal would conduct mini hearings and draft a multiplicity of micro judgments before the main hearing and final judgment, which would be detrimental to judicial economy.

92. We agree with and uphold the UNDT’s conclusion and reasoning. The impugned Order clearly comes within the UNDT’s competence to issue appropriate case management orders.

93. Pursuant to Article 19 of the UNDT Rules of Procedure, the UNDT “may at any time, either on application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”.

94. It is our settled case-law that the UNDT has broad discretion under its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence.<sup>37</sup> As we noted in :<sup>38</sup>

... Our jurisprudence has consistently held that the Appeals Tribunal will not

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... Judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. In this context, the UNDT is “to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is

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115. Notably, with regard to Mr. Okwakol's alleged pressuring of V01 to withdraw her complaint, the UNDT exhaustively examined Mr. Okwakol at the hearing of 5 August 2022 about what transpired and the statements he reportedly made during this meeting as these are evident on the relevant transcript of audio-recorded conversations. The UNDT found on the



he will tell them it's a misunderstanding about money, because they didn't share the money, right, and that's why the girl want to punish James[.]

121. The UNDT found Mr. R.L.'s testimony reliable in this respect for two reasons. In the first place, Mr. R.L. re-affirmed his OIOS interview statement at the hearing before the UNDT. Secondly, his evidence was inculpatory of him. He did not seek to exonerate himself by implicating Mr. Okwakol. He therefore had no ulterior motive in testifying in the way he did. <sup>55</sup>

122. We share the UNDT Judge's assessment of the critical facts and hold that it would be improbable that Mr. R.L. fabricated the whole story on account of lack of any motive on his part. Moreover, the credibility of Mr. R.L.'s account of events has not been damaged by any countervailing evidence. In sum, the documentary evidence on file, as well as the strong circumstantial evidence and the inherent probabilities of the situation, taken cumulatively, suggest to the appropriate evidentiary standard of clear and convincing evidence, as correctly held by the UNDT that Mr. Okwakol committed the alleged misconduct of ( )TJ 2.15 (m).9 (a)1.7 (d .1 ( c)1)7 (g

and Mr. J.M. to discuss the OIOS investigation and provided advice about what they should say during his upcoming OIOS interview, including telling him to withhold information from OIOS.

125. Mr. Okwakol does not raise on appeal any specific challenge to the UNDT's holding on the proportionality of the imposed sanction of separation from service with compensation in lieu of notice and without termination indemnity. He does not even put forward grounds against that holding or show why the findings or reasoning of the UNDT could have been erroneous. He simply requests us to modify the sanction with a termination indemnity, a request that we deny

126. Next, we do not find merit in Mr. Okwakol's claims that the UNDT erred in fact and law when it found that his due process rights were not violated during the investigative process. Specifically, Mr. Okwakol submits that the UNDT did not consider his arguments on due process seriously. He argues that the way in which OIOS conducted the investigations shows a bias that negated the presumption of innocence and led to how OIOS framed its work in the report that purported to establish misconduct. He further contends that "the illegality of the recording that was at the heart of the accusation is not in dispute even though the Tribunal failed to draw the only conclusion: dismiss the procedure against the Appellant".

127. First, the UNDT considered whether Mr. Okwakol's due process rights had been violated during the investigation and the disciplinary process, and rejected his claim that his presumption of innocence had not been respected. As the UNDT correctly held, the title of the investigation report "investigation report on prohibited conduct" (instead of "allegations of

performance evaluation meeting”.<sup>57</sup> In this context, the UNDT found that Mr. Okwakol’s concerns had been addressed, in that he had been reinterviewed, and a new investigation report, not relying on his initial OIOS interview, was issued on 18 September 2020.

129. Moreover, we find that Mr. Okwakol has failed to demonstrate in what way the alleged violations of his due process rights prejudiced him or impacted the outcome of his case. Additionally, we take note that the due process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against him. The Appeals Tribunal is satisfied that the key elements of Mr. Okwakol’s right to due process were met and that the interests of justice were served in this case.

130. Indeed, there is no evidence that Mr. Okwakol’s rights had been infringed in any way during the investigation. The Administration diligently undertook the investigation, Mr. Okwakol was fully informed of the charges against him and was able to mount a defense and had ample opportunities to make his case. He was provided with the allegations of misconduct and was given, and availed himself of, the opportunity to answer them.

131. With regard to the alleged illegality of the audio-recording of the 25 November 2019 meeting, the UNDT, relying on our judgment in <sup>58</sup> correctly found that the audio-recording was admissible, given its evidentiary value to show Mr. Okwakol’s misconduct, that he could have no expectation that the meeting, which he hosted, would stay

132. In compliance with our jurisprudence above, the UNDT admitted the hearsay evidence of the recorded conversation after having taken stock of and critically analyzing

135. Consequently, we see no error in that approach and in the determination of the facts, either. As already noted, we are satisfied that the UNDT's conclusions are consistent with the evidence. Mr. Okwakol has not put forward any persuasive grounds to warrant interference by this Tribunal. Therefore, we reject the arguments advanced by Mr Okwakol to the contrary, and the appeal fails on this ground.

136. In view of the foregoing, the appeal fails.



