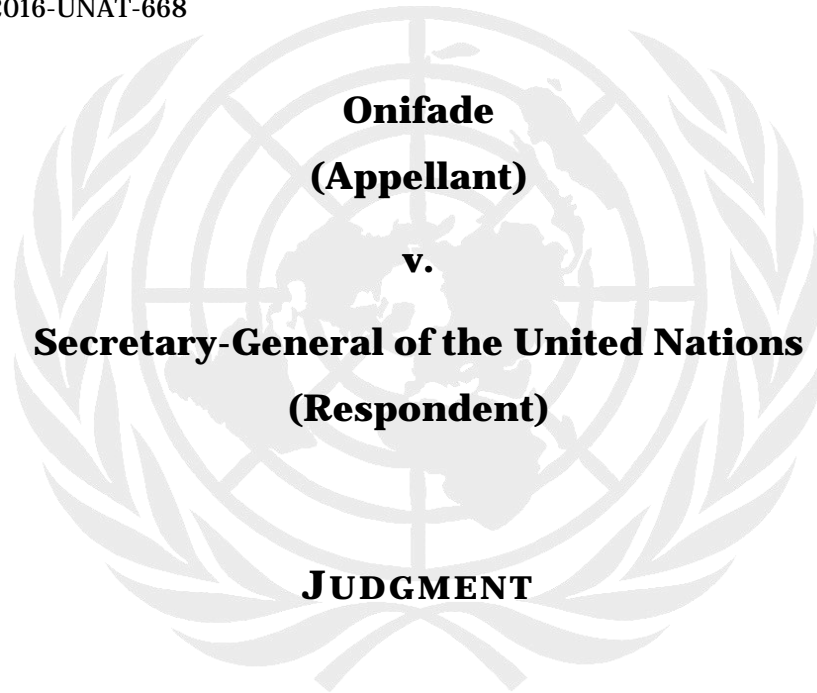




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-668



Before: Judge Sophia Adinyira, Presiding
Judge Rosalyn Chapman
Judge Richard Lussick

Case No.: 2016-879

Date: 30 June 2016

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Ernesto Bondikov

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal has before it an appeal by Mr. Adebimpe Abraham Onifade of Judgment No. UNDT/2015/101, rendered by the Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 29 October 2015, in the case of *Onifade v. Secretary-General of the United Nations*. On 22 December 2015, Mr. Onifade filed his appeal and, on 7 March 2016, the Secretary-General filed his answer to the appeal.

Facts and Procedure

2. Before the Dispute Tribunal, Mr. Onifade challenged the disciplinary measure imposed on him of separation from service with compensation in lieu of notice and with termination indemnity.

3. The following facts are taken from the Dispute Tribunal's Judgment:¹

... The Applicant joined the Organization on 23 February 2001, at the P-3 level, on an Appointment of Limited Duration ("ALD") with the United Nations Office of the Humanitarian Coordinator for Iraq ("UNOHCI"). He served UNOHCI until 16 November 2003, when his ALD expired. He was reappointed on 26 December 2006, at the P-3 level, to the United Nations Mission in Sudan, and served the Organization continuously and without incident from that date until 30 July 2014, when he was separated from service following the conclusion of a disciplinary process.

... On 3 November 2012, upon his promotion to the P-5 level, the Applicant commenced duties as State Coordinator of Warrap State with the United Nations Mission in the Republic of South Sudan ("UNMISS"). The Applicant was stationed in Kuajok, South Sudan.

... In his role as State Coordinator, the Applicant had the delegated authority to approve movement of personnel forms ("MOPs"), for travel of both United Nations and non-United Nations personnel on UNMISS assets.

... In March 2013, the Applicant invited Ms. M, a Civilian Police Officer with the African Union-United Nations Hybrid Mission in Darfur ("UNAMID") to visit him because he claimed he needed support while he was suffering from some medical issues. She agreed to visit the Applicant, but was unable to complete the electronic MOP for travel to Kuajok.

¹ Impugned Judgment, paras. 6-20 and 22-39 (footnotes omitted).

... On or about 11 March 2013, the Applicant prepared an MOP for Ms. M to travel on a United Nations flight from Juba, South Sudan, to Wau, South Sudan, on 15 March 2013. On the MOP, the Applicant stated that Ms. M was travelling by virtue of her association with an organization by the name of “Peace Alliance”. In the field provided for the endorsement of the [traveller’s] head of organization, that is, Peace Alliance, the Applicant provided and signed his name.

... The Applicant also provided and signed his name as the approving officer for the MOP and stamped the form using a stamp that identified him as “State Coordinator”.

... In conjunction with the MOP, the Applicant prepared and submitted, on behalf of Ms. M, a General Release from Liability in Connection with Travel by Third Parties on UN-Provided Aircraft form (the “general release form”). This purported to release the Organization from all risks and liabilities for any loss, damage, injury, or death sustained by the traveler during the course of travel. In this document he again stated that Ms. M was affiliated with “Peace Alliance”.

... On 15 March 2013, on the basis of the MOP and general release form, Ms. M travelled on a United Nations flight from Juba to Wau. There was no security or safety incident during the flight.

... From 15 to 27 March 2013, Ms. M stayed with the Applicant in his UNMISS-provided residence. The Applicant neither requested nor obtained authorization for a temporary occupant to stay in his residence, and claims that he was unaware of the need to do so. There was no security or safety incident during Ms. M’s stay at Applicant’s accommodation.

... On or about 21 March 2013, the Applicant prepared another MOP and general release form for Ms. M to travel from Kuajok to Juba on 27 March 2013. The Applicant again stated that Ms. M was travelling by virtue of her supposed affiliation with “Peace Alliance”, endorsed the MOP as head of the traveller’s organization and approved the MOP in his capacity as approving officer.

... On 27 March 2013, the Applicant and Ms. M travelled from Kuajok to Juba on an UNMISS flight. There was no safety or security incident during the flight.

... On 9 April 2013, the Office of Internal Oversight Services (“OIOS”) received a report of possible misconduct with regard to the foregoing matter.

... On or about 22 April 2013, the Applicant, of his own accord, publicly disclosed, admitted to, and apologized for his actions during a Town Hall meeting. The Respondent alleged that according to a witness present at the meeting he made statements in an apparent attempt to excuse his behaviour.^[2]

² The Dispute Tribunal ruled that this hearsay evidence was unreliable and had no probative value.

... On 5 June 2013, the matter was referred by OIOS to the Department of Field Support (DFS), UNHQ, for “appropriate action”. The letter of referral stated that upon DFS’ acknowledgment of receipt of the referral, OIOS would “consider the matter closed”.

... On 2 July 2013, DFS/UNHQ referred the matter to UNMISS. On 8 July 2013, the UNMISS Conduct and Discipline Team (“CDT”) referred the matter to the UNMISS Special Investigations Unit (“SIU”) for investigation.

...

... The Applicant was interviewed twice by SIU investigators during the course of the investigation, on 22 July 2013 and on 24 July 2013. The SIU investigators also interviewed Ms. M and six other individuals.

... The Applicant’s interviews were recorded in the form of statements which he signed as a true and accurate record of the interview. At the beginning of each of his statements it is recorded: “My name is [the Applicant], State coordinator of Warrap State. I am making this statement with no objection to the Chief of SIU Unit.... In regard to an incident of possible misconduct in 2013 at UNMISS Kuajok State Headquarters”.

... In his first interview, the Applicant admitted to filling out the 11 March 2013 MOP incorrectly and allowing Ms. M to stay at his UNMISS-provided residence without having sought authorization. He stated that he was not aware at the time of the rules requiring him to do so.

... The Applicant also told the investigator:

The copy of an MOP you showed me labeled (DR-1) is a true copy of the UNMISS NON-UN MOP that I prepared for Ms. M.

In part 1 of the MOP **Traveler’s Details**, I inserted [Ms. M’s] names, under the heading Organization: I inserted “Peace Alliance”, under the heading Grade/Rank/Title: I inserted “Admin” and under the heading Purpose of Travel: I indicated “Leave” under the heading Signature: I authored the name in my handwriting [Ms. M]; this is not [Ms. M’s] signature. I completed the form according to her consent.

In Part 3 of the MOP **Head of Organization Endorsement**: I affixed my name, title and signature in my handwriting and stamped it with my official office stamp. I am not the Head of Peace Alliance nor am I affiliated with them.” (Emphasis in original).

... In his second interview, the Applicant explained that he had stated that Ms. M was affiliated with “Peace Alliance” at her suggestion after her first MOP, which noted her affiliation with UNAMID, had been rejected.

... During her interview by SIU investigators, Ms. M said that: (i) she was not affiliated with “Peace Alliance”; (ii) the Applicant had inserted the name “Peace Alliance” without her permission; (iii) she did not know why the Applicant had

used the name “Peace Alliance”; and (iv) given her position as a police officer in her home country, she was not allowed to be affiliated with any non-governmental organization. She also told the investigator that she did not object to the Applicant signing her name on the MOP and General Release form because he was her good friend and had her permission to sign her name on “any document”.

... The investigation report was completed on 10 August 2013.

... By memorandum of 18 September 2013, the Special Representative of the Secretary-General (SRSG) of UNMISS sent the SIU investigation report and CDT conclusions and recommendations to the Under-Secretary-General of DFS (USG/DFS). A copy of the report was not sent to OIOS.

... On 3 April 2014, the Chief, Human Resources Policy Service, Office of Human Resources Management (HRPS/OHRM) sent the Applicant a letter containing the formal allegations of misconduct. Specifically, it was alleged that:

- a. On or about 11 March 2013, he knowingly included false information in an MOP that he prepared on behalf of Ms. M and approved in his official capacity;
- b. On or about 21 March 2013, he knowingly included false information on an MOP that he prepared on behalf of Ms. M and approved in his official capacity;
- c. From approximately 15 to 27 March 2013, the Applicant allowed Ms. M to reside in his UNMISS-provided residence, without requesting or obtaining the required authorization.

... The Applicant was informed that, if established, his conduct would constitute a violation of staff regulations 1.2(b), which requires staff members to uphold the highest standards of efficiency, competency and integrity; and 1.2(g) which states that staff members shall not use their office...for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour....; former staff rule 1.2(h) which prohibits, inter alia, the intentional alteration or falsification of official documents entrusted to them by virtue of their functions. In addition, under paragraph 16 of UNMISS Administrative Instruction No. 008/2011, it would be in violation of his obligation as a United Nations official who approves MOPs to ensure that travel policies are complied with and paragraph 2.3 of UNMISS Administrative Instruction No. 005/2011 which requires written authorisation to have a temporary occupant in an assigned accommodation.

... The letter included the referral memorandum from the Assistant[] Secretary-General of DFS, dated 27 November 2013, the SIU Investigation report, the SRSG’s cover memorandum to the investigation report and the Applicant’s personnel action history.

... The Applicant was requested to provide any written statements or explanations in response within two weeks and was informed of his right to request more time and of the availability of the assistance of the Office of Staff Legal Assistance (OSLA).

... On 6 May 2014, the Applicant responded with a written submission concerning the alleged misconduct, citing as mitigating factors for his behaviour the severe emotional, physical, and psychological problems from which he was suffering and the medications he was taking, the difficult living and working conditions he was experiencing, and perceived racial tensions, all of which he claims may have clouded his judgment. He referred to his voluntary disclosure of his error, satisfactory performance reports, repayment of the cost of the accommodation charges of Ms. M, his readiness to repay the cost of Ms. M's air transportation, his newness on the job and lack of staff support, positive references from the Governor of Warrap State and colleagues. He also said that he had instituted more rigorous screening of MOPs. He likewise expressed remorse for his actions and requested leniency in light of his circumstances.

... By letter dated 30 July 2014, the Applicant was notified that the Under-Secretary-General for Management (USG/DM), on behalf of the Secretary-General, had concluded that the allegations against him were established by clear and convincing evidence and had decided to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity.

... The USG/DM noted that the measure for a staff member's failure to comply with the provisions of UNMISS Administrative Instruction No.005/2011 may be limited to administrative measures however his misconduct was not limited to violations of that Administrative Instruction but also staff regulations 1.2(b) and (g), former staff rule 1.2(h) and UNMISS Administrative Instruction No. 008/2011.

... The decision letter listed the established facts and the conclusion based on these facts that this conduct violated staff regulations, a former staff rule and two administrative instructions. It stated that the USG/DM on behalf of the Secretary-General had considered the past practice of the Secretary-General in similar cases, the circumstances of the Applicant's case and aggravating and mitigating factors.

... The mitigating factors included the stress that the Applicant was experiencing at the time due to the difficult working conditions of the mission, the subsequent payment of Ms. M's accommodation charges; his offer to pay for her flight costs; his cooperation with the investigation and admissions; his publically expressed remorse and his records of positive performance.

... The aggravating factors included his abuse of trust as the P-5 head of office and approving officer; that his conduct prevented the Organization from accurately determining the purposes for which air assets were being used and that his conduct involved a fundamental lapse in integrity.

4. On 10 July 2014, Mr. Onifade filed an application with the Dispute Tribunal contesting the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity. On 15 October 2014, the Secretary-General filed his reply to the application. The parties agreed that the case could be decided on the papers.

5. On 29 October 2015, the Dispute Tribunal issued Judgment No. UNDT/2015/101, which dismissed the application in its entirety. The Dispute Tribunal rejected Mr. Onifade's claims that he was not accorded due process and procedural fairness during the investigation. The Dispute Tribunal found that the investigation was not *ultra vires* as there was no evidence of improper delegation or referral of the allegation for investigation by either OIOS or the CDT, UNMISS. Mr. Onifade's allegations that the individuals who reported his misconduct, investigated him, and were interviewed during the investigation were improperly motivated were not supported by evidence. The investigation was carried out in accordance with the correct procedures.

6. The Dispute Tribunal found that the material facts relied upon by the decision-maker were established by clear and convincing evidence. The facts established to a high degree of probability that Mr. Onifade had breached Staff Regulation 1.2(g). He used his position as State Coordinator at the P-5 level to obtain a private gain for himself, namely an unauthorized extended visit to the Mission by a friend. He intentionally falsified documents entrusted to him by virtue of his office, in breach of former Staff Rule 1.2(h). Finally, the Dispute Tribunal found that the disciplinary measure was proportionate. The measure was consistent with the Secretary-General's practice in disciplinary matters, the aggravating and mitigating circumstances were taken into account, and the measure was reasonable in light of the nature of the misconduct.

7. Mr. Onifade filed his appeal on 22 December 2015, during the winter recess. The Secretary-General filed his answer to the appeal on 7 March 2016.

8. On 10 March 2016, Mr. Onifade filed a motion for leave to reply and file additional pleadings in response to the Secretary-General's answer. On 17 March 2016, Mr. Onifade filed his additional pleadings. On 21 March 2016, the Secretary-General filed observations on Mr. Onifade's motion.

Submissions

Mr. Onifade's Appeal

9. The Dispute Tribunal erred in law by finding that the Chief of CDT, UNMISS had delegated authority to initiate the investigation into possible misconduct. The Dispute Tribunal improperly relied upon the OIOS Investigation Manual, which is not part of the legal framework governing disciplinary procedures. Only the SRSG of UNMISS has the delegated authority to request an investigation under the applicable legal framework.

10. The Dispute Tribunal also erred by failing to find that there were other procedural irregularities. Key steps in the investigation and disciplinary processes were not taken by the officials who were required to take them: the investigation report was sent to the USG/DFS instead of the ASG/OHRM; the USG/DFS did not personally sign the memorandum transmitting the investigation report to the ASG/OHRM; the ASG/OHRM did not personally take the decision to initiate disciplinary proceedings against him; and he was informed of the disciplinary measure in a letter signed by the Officer-in-Charge of OHRM, not the ASG/OHRM.

11. Further, the Dispute Tribunal failed to find that the USG/DFS's referral of his case to the ASG/OHRM for "disciplinary action" breached his right to respond to the allegations of misconduct. In addition, the Dispute Tribunal failed to "scrutinize the overwhelming involvement of OIOS ... which was decisive subterfuge and miscarriage of justice".

12. The Dispute Tribunal made an error of procedure by denying his request for production of additional evidence in Order No. 309 (NBI/2015). The Dispute Tribunal undermined the rule of law by not ordering the production of documents by OIOS; by rejecting his request for expert evidence on proportionality; and by ordering the Secretary-General to file documentary evidence from OIOS on an *ex parte* basis.

13. The Dispute Tribunal erred by finding that he had prepared and approved false MOPs. Mr. Onifade reiterates that the staff members in UNMISS who reported him for misconduct and who carried out the investigation were motivated by personal agendas.

14. Mr. Onifade requests the production of evidence and information regarding various steps in the investigation and disciplinary processes, under Article 8(1) of the Appeals Tribunal Statute. Mr. Onifade also requests an oral hearing “to defend the injustice meted out on him”.

15. Mr. Onifade requests that the Appeals Tribunal rescind the decision to separate him from service, reinstate him, and order the removal of all records relating to the disciplinary process from his official status file.

The Secretary-General’s Answer

16. The Dispute Tribunal correctly upheld the disciplinary measure imposed upon Mr. Onifade. There was overwhelming uncontested evidence of Mr. Onifade’s actions, which he also admitted. The Dispute Tribunal correctly found that the facts were established by clear and convincing evidence, the finding of misconduct was warranted, and the sanction was proportionate.

17. Mr. Onifade’s claims that the investigation was motivated by racial bias and other improper motives are an attempt to re-litigate allegations that were rejected by the Dispute Tribunal. Mr. Onifade has not identified any error by the Dispute Tribunal in this respect.

18. The Dispute Tribunal correctly found that the investigation was not *ultra vires*. Under the terms of reference common to field missions, the CDT acts as principal adviser to the head of mission on all conduct and discipline issues, and is authorized to transmit complaints of misconduct to the appropriate bodies for investigation. The UNMISS CDT, as the conduct and discipline adviser to the SRSG, and acting under her authority, referred the allegations of misconduct for investigation by the UNMISS SIU. In the alternative, the authority of the SRSG was not usurped as she herself referred the case for further action to the USG/DFS following the completion of the investigation by the UNMISS SIU.

19. In any event, Mr. Onifade has failed to show any harm to his due process rights that warrants a reversal of the disciplinary measure. The Dispute Tribunal found that the investigation was carried out properly and his due process rights were observed during the disciplinary process. The established facts constitute misconduct and the sanction imposed was proportionate.

20. Mr. Onifade has improperly raised new arguments in his appeal that he did not make before the Dispute Tribunal. Mr. Onifade's new claims regarding the referral of the matter for further action by DFS to OHRM, the internal disciplinary review performed by OHRM, and the validity of the 30 June 2014 letter informing him of the disciplinary measure should not be considered by the Appeals Tribunal.

21. The Dispute Tribunal acted within its discretion in its evidentiary rulings. Mr. Onifade has not established how the evidence he sought to be produced would have affected the outcome of the case.

22. Mr. Onifade's motion seeking the production of additional evidence has no merit. There are no exceptional circumstances that warrant the receipt of additional evidence under Article 2(5) of the Appeals Tribunal Statute.

23. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment.

Mr. Onifade's additional motion

24. On 10 March 2016, Mr. Onifade filed a motion in which he seeks leave to respond to the Secretary-General's "belated" answer to the appeal. He also requests that the Appeals Tribunal conduct a *de novo* review of the case. On 17 March 2016, Mr. Onifade filed additional pleadings in response to the answer.

25. In his Observations filed on 21 March 2016, the Secretary-General opposes the motion. He states that the answer to the appeal was not filed late and there are no exceptional circumstances that warrant the filing of additional submissions by Mr. Onifade. It is well-established that the Appeals Tribunal does not have competence to hear cases *de novo*.

Considerations

Preliminary issues

Mr. Onifade's motions for leave to respond to the answer to the appeal and request for production of documents and evidence

26. Articles 8 and 9 of the Appeals Tribunal Rules of Procedure (Rules) respectively provide for an appellant to submit an appeal form accompanied by a brief, and for a respondent to submit an answer accompanied by a brief. However, under Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1, we may grant leave to file additional pleadings after the filing of the answer if there are exceptional circumstances for doing so. We find that there are no such exceptional circumstances, as Mr. Onifade merely expresses his disagreement with the statements made by the Secretary-General in his answer, and seeks to reiterate or supplement the arguments put forward in his appeal.

27. In his motion filed on 10 March 2016, Mr. Onifade incorrectly asserts that the Secretary-General did not file his answer within the 60-day time limit set out in Article 9 of the Rules. In accordance with Article 29 of the Rules on calculation of time limits, the deadline for the Secretary-General to file his answer was 7 March 2016. The Secretary-General filed his answer on that day.

28. In his appeal, Mr. Onifade requests an order for production of documents and additional information by the Secretary-General. Article 8(1) of the Appeals Tribunal Statute (Statute) provides that this Tribunal “may order production of documents or such other evidence as it deems necessary, subject to article 2” of the Statute. Under Article 2(5) of the Statute, “[i]n exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence ... it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings”. Save for these limited circumstances, all evidence is to be submitted to the first instance Tribunal.³

³ *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 51.

29. We do not find any exceptional circumstances that would require this Tribunal to order the production and receipt of additional evidence. Nor is it in the interest of justice and the expeditious resolution of the case. We note that Mr. Onifade did not request an order for production from the Dispute Tribunal of some of the categories of documents that he now seeks to be produced. As we have consistently emphasized: “The UNDT is not a dress rehearsal”.⁴ Furthermore, based on the issues properly raised by Mr. Onifade in his appeal, the documents and information he requests would not affect the decision in the case.

30. We accordingly refuse both requests.

Mr. Onifade’s request for an oral hearing

31. Mr. Onifade’s request for oral hearing is also denied under Article 8(3) of the Statute and Article 18(1) of the Rules. Mr. Onifade’s brief sufficiently sets out his arguments on appeal and, therefore, we consider that an oral hearing would not assist in the expeditious and fair disposal of the case.

Merits of the appeal

32. In disciplinary cases, the role of the Dispute Tribunal, as established by the consistent jurisprudence of the Appeals Tribunal, is as follows:⁵

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 proportionate to the offence”. And, of course, “the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred”. “[W]hen termination is a possible outcome, misconduct must be established by clear and convincing evidence”, which “means that the truth of the facts asserted is highly probable”.

⁴ *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056, para. 1.

⁵ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29 (footnotes omitted), quoting, *inter alia*, *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098, para. 30; *Liyanarachchige v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-087, para. 17 (English translation); and *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 30.

33. The primary issue raised by Mr. Onifade's appeal is whether the UNDT erred in concluding that the investigation of Mr. Onifade for possible misconduct was not *ultra vires*.

34. The authority to take a decision to investigate a staff member for possible misconduct is governed by Staff Rule 10.1 (Misconduct) and ST/AI/371/Amend.1 (Revised disciplinary measures and procedures). Staff Rule 10.1(c) provides that:

The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

35. Paragraph 2 of ST/AI/371/Amend.1 provides, in part, as follows:

Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake an investigation.

36. The head of the UNMISS mission is the SRSG and therefore, as the head of office, the SRSG has the delegated authority to request an investigation into possible misconduct committed by staff under ST/AI/371/Amend.1.

37. Mr. Onifade submits that the Dispute Tribunal erred in law by finding that the Chief of CDT, UNMISS had delegated authority to initiate the investigation into his possible misconduct. He argues that under the applicable legal framework, it is only the SRSG, the head of the UNMISS mission, who has the delegated authority to request an investigation.

38. It is clear on the facts that the SRSG did not initiate the investigation, but rather the Chief of CDT, UNMISS did. We take note that, under the terms of reference common to field missions, the CDT acts as principal adviser to the head of mission on all conduct and discipline issues, and is authorized to transmit complaints of misconduct to the appropriate bodies for investigation.⁶ We therefore hold that the CDT by the nature of its duties had the authority to act in the way it did by referring the complaint to the SIU to conduct the investigation. Nevertheless, the SRSG was required to take the decision to initiate the investigation.

⁶ Code Cable to Heads of Missions from the then Under-Secretary-General for Peacekeeping Operations dated 4 June 2007, and Report of the Secretary-General entitled "Comprehensive report prepared pursuant to General Assembly resolution 59/296 on sexual exploitation and sexual abuse, including policy development, implementation and full justification of proposed capacity on personnel conduct issues" issued on 24 May 2006 (A/60/862, para. 39 and annex B).

39. We accept the argument of the Secretary-General that, following the completion of the investigation by the UNMISS SIU, the SRSG ratified the action of the Chief of CDT by subsequently referring the case to the USG/DFS for further action.⁷

40. From the foregoing, we affirm the decision by the Dispute Tribunal that the investigation was not *ultra vires*. Even if the initiation of the investigation gave rise to a procedural irregularity, there was overwhelming uncontested evidence of Mr. Onifade's actions, which he also admitted.⁸ In addition, the investigation was carried out properly and Mr. Onifade's due process rights were respected during the investigation and disciplinary stages. Furthermore, the Dispute Tribunal correctly found that the facts were established by clear and convincing evidence, the finding of misconduct was warranted, and the sanction was proportionate.

41. Mr. Onifade further raises issues of procedural irregularities by the UNDT for refusing his requests for the production of documents and evidence from OIOS. It is our consistent jurisprudence that case management issues, including the question of whether to call a certain person to testify or to order the production of documents, remain within the discretion of the UNDT and do not merit a reversal except in clear cases of denial of due process of law affecting the right to produce evidence by a party. Mr. Onifade has not established how the evidence he sought to be produced would have affected the outcome of the case.⁹

42. We therefore hold that the Dispute Tribunal acted within its discretion in its evidentiary rulings.

43. Overall, Mr. Onifade has not raised any cogent arguments to warrant a reversal of the UNDT Judgment. Most of the arguments are mere repetitions of arguments unsuccessfully raised before the Dispute Tribunal and Mr. Onifade has not identified any error by the Dispute Tribunal in this respect. We also reject Mr. Onifade's new arguments on appeal regarding the lawfulness of the disciplinary measure. As we have consistently held, an

⁷ *Ortiz v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2012-UNAT-231, para. 41.

⁸ *De Kermel v. Secretary-General of the International Maritime Organization*, Judgment No. 2012-UNAT-239, para. 50.

⁹ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 20.

appellant may not raise an argument on appeal that ought to have been raised before the first instance Tribunal.¹⁰

44. The appeal is without merit.

Judgment

45. The appeal is dismissed. Judgment No. UNDT/2015/101 is affirmed.

¹⁰ *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 31, citing *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Lussick

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar