



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

Judgment No. 2021-UNAT-1172

**Ravi Karkara
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Dimitrios Raikos Judge Jean-François Neven
Case No.:	2021-1508
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Mr. Karkara:	Self-represented
Counsel for Secretary-General:	Maryam Kamali

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Ravi Karkara, formerly with the United Nations Entity for Gender Equality and the Empowerment of Women, or UN Women for short, in New York, contested the decision to dismiss him from service for having committed sexual exploitation, sexual abuse, harassment, sexual harassment, and abuse of authority. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York rejected his application. For reasons set out below, we affirm.

Facts and Procedure

2. Mr. Karkara joined the United Nations in 2000. From 2008 to 2011, he worked at the United Nations Children’s Fund (UNICEF) during which he was in charge of the “Junior 8 Summit”. In 2015, Mr. Karkara was appointed as the Strategic Advisor to the Deputy Executive Director of UN Women. From 2016 until his dismissal for serious misconduct effective 14 September 2018, Mr. Karkara served as Senior Advisor, Strategic Partner and Advocacy to the Deputy Executive Director, UN Women, at the P-5 level.

3. Mr. Karkara’s case arose on 27 June 2017, when UN Women received a complaint, via its hotline e-mail address, from an Organizing Partner, United Nations Major Group for Children and Youth (MGCY), in which Mr. Karkara was accused of sexual misconduct and abuse of authority. The MGCY is a non-governmental organization (NGO) based in Canada. Attached to the complaint was a report dated 19 June 2017 prepared by a Mr. SL, in which Mr. SL, a member of the MGCY, accused Mr. Karkara of sexual misconduct and abuse of authority.

4. On 29 June 2017, the Office of Audit and Investigations, United Nations Development Programme (OAI), notified Mr. Karkara that he was subject of an OAI investigation against him regarding some allegations of sexual exploitation and abuse of authority.

5. On the same date, OAI also notified Mr. Karkara that he was required to hand over various electronic devices to OAI. OAI proceeded to seize Mr. Karkara’s electronic devices, except for Mr. Karkara’s personal iPhone 6, which he handed over to OAI approximately 24 hours later, on 30 June 2017.

6. On 8 August 2017, OAI notified Mr. Karkara of its investigation into allegations of his misuse of the UN Women's information and communication technology (ICT) resources to transmit and store pornographic materials.
7. On 9 August 2017, OAI interviewed Mr. Karkara.
8. Effective 7 September 2017, Mr. Karkara was placed on administrative leave with pay.
9. On 16 and 19 December 2017, OAI provided a draft investigation report and related exhibits for Mr. Karkara's review and comments, which he provided on 17 January 2018.
10. OAI thereafter conducted additional investigative activities including interviews of eight additional witnesses, site visits and further IT forensics analysis. On 29 March 2018, OAI interviewed Mr. Karkara for the second time.
11. On 2 and 6 August 2018, OAI sent Mr. Karkara an addendum to OAI's draft investigation report of 16 December 2017 to convey the results of an investigation into additional allegations of sexual exploitation and abuse filed by an anonymous victim (Victim 2). Mr. Karkara provided his comments on 17 August 2018.
12. On 7 August 2018, the Newsweek magazine reported that eight men had accused Mr. Karkara of sexual misconduct. In that article, several of the witnesses who had been interviewed by OAI were quoted in relation to the allegations against Mr. Karkara. This news piece was subsequently further covered by other news outlets.
13. On 23 August 2018, Mr. Karkara received the final investigation report. According to OAI, at least 30 persons, including those nominated by Mr. Karkara, had been either interviewed and/or requested for information during the course of the OAI investigation. In addition to seizing Mr. Karkara's ICT equipment, the OAI investigators had reviewed and analyzed emails, hard drives, mobile phones, external hard drive and relevant documents found on his devices. OAI found that Mr. Karkara had misused the UN Women's ICT resources to store and transmit pornographic images. OAI also found that the allegations of sexual exploitation and harassment and abuse of authority filed by Mr. SL and Victim 2 were substantiated. Furthermore, OAI found that Mr. Karkara had asked an intern, Mr. OA, to send him Mr. OA's selfies, which Mr. OA found "odd" and "inappropriate". In addition, OAI

did not find any evidence of collusion among the complainants and witnesses against Mr. Karkara. OAI's specific findings are summarized below.

Misuse of the UN Women's ICT resources to transmit pornographic images

14. As noted above, on 29 and 30 June 2017, OAI seized the various electronic devices from Mr. Karkara. A search and forensic analysis of an external hard drive that Mr. Karkara had kept in his office revealed pornographic images on it dating back to July 2011. During the investigation, OAI found that on three occasions in 2014, Mr. Karkara had sent images of male genitalia from his UN Women e-mail account to his personal e-mail account, and, on one occasion in 2016, he sent images of male genitalia from his personal e-mail account to his UN Women e-mail account. But OAI could not determine whether Mr. Karkara had transmitted pornographic images from his work phone or personal phone.

15. OAI concluded that Mr. Karkara had stored inappropriate images in the external drive kept in his office at UN Women and he had used it when working for UNICEF and the United Nations Human Settlement Programme (UN-Habitat) for backups. Moreover, he had transmitted four e-mails containing pornographic images to and from his UN Women account and his private e-mail account. OAI did not find Mr. Karkara's explanations credible.

Mr. SL

16. As noted above, on 19 June 2017, Mr. SL filed a report of sexual misconduct and abuse of authority against Mr. Karkara. This report was submitted to UN Women as an attachment to the complaint of 27 June 2017 filed by an Organizing Partner, MGCY. In addition to being an MGCY member, Mr. SL was the Executive Director of the Foundation for Environmental Stewardship (FES), an NGO registered in Canada.

17. Mr. SL first met Mr. Karkara in 2009, when he attended the Junior 8 Summit as a 16-year-old member of the Canadian youth delegation. Mr. Karkara was working for UNICEF at the time.

18. In 2012, Mr. SL started a youth-led sustainable development non-profit organization. In 2013-14, he got involved in the work of the United Nations and started having some interactions with Mr. Karkara, who was then working for UN Women as a consultant. In 2016, Mr. Karkara, who had become Senior Advisor, Strategic Partner and Advocacy to the

Deputy Executive Director of UN Women, invited Mr. SL to a few working groups that he co-chaired and, thereafter, Mr. SL and Mr. Karkara started a close working relationship.

19. In his report of sexual misconduct and abuse of authority of 19 June 2017, Mr. SL wrote that Mr. Karkara had repeatedly asked him what pornographic websites he (Mr. SL) had visited, what pornography he had watched, and how often he had masturbated. Mr. SL also wrote that Mr. Karkara had imitated sexual acts and made sexual noises and questioned why Mr. SL had not engaged in sexual activities and jokes. Mr. SL detailed several specific incidences of sexual misconduct: (a) Mr. Karkara had asked Mr. SL for oral sex through WhatsApp messages in August 2016 (screen shots of WhatsApp messages attached to Mr. SL's report); (b) Mr. Karkara had asked Mr. SL for a real kiss through WhatsApp messages in September 2016 (screen shots of WhatsApp messages attached to Mr. SL's report); and (c) Mr. Karkara had "grabbed [Mr. SL's] genitals" in Montreal on 1 December 2016, after they had both attended an event at the University of McGill and when he was in Mr. Karkara's hotel room.¹ In his report of 19 June 2017, Mr. SL also detailed numerous incidences of abuse of authority on the part of Mr. Karkara in respect of him and others.

20. During his interview with OAI on 29 June 2017, Mr. SL recalled an incident in June 2016 in Toronto, Canada, where he and Mr. Karkara had attended an event. After the event, he went with Mr. Karkara to the latter's hotel room. While there, Mr. Karkara asked Mr. SL to show his genitals and he allowed Mr. Karkara to touch his genitals searching for moles in the context of an astrology reading, which Mr. Karkara had subsequently e-mailed to Mr. SL. Mr. SL clarified that he did not include that incident in his report of 19 June 2017 because he had consented to Mr. Karkara's request and Mr. Karkara had not touched his genitals by force.

21. After Mr. SL gave his statement to OAI, he sent to the OAI investigators screenshots of his GPS time and location on 6-7 June 2016 as shown in the Google map timeline. They showed that Mr. SL was in Toronto on those two days. In his interview with OAI, Mr. Karkara mentioned that Mr. SL had come to his hotel room during the Toronto event.

¹ Mr. SL subsequently provided OAI with screenshots of his GPS time and location according to Google Maps on 1 December 2016. The screenshot reflected the timeline of Mr. SL's whereabouts on that date. It showed that Mr. SL was at McGill University between 7:04 pm and 9:15 pm, and at Hotel Omni Mont-Royal between 9:16 pm and 10:45 pm. Mr. SL also reported the Montreal incident to the Toronto Police on 28 July 2017. The Toronto Police confirmed to OAI that Mr. SL had reported the incident, but the Toronto Police in the Province of Ontario was not competent to investigate the incident that had taken place in Montreal in the Province of Quebec.

22. OAI found Mr. SL's version of events credible. In respect of the incident in Toronto, Mr. SL could recall that Mr. Karkara had offered to read a marking on his penis for astrological purposes. Mr. Karkara had indicated that he had an interest in astrology and admitted that he could read basic astrology. A factor that weighed in favor of Mr. SL's credibility was that, while the incident in Toronto was the most disturbing Mr. SL had experienced with anyone, he was willing to admit that he had consented to Mr. Karkara examining his genitals, when he could have easily just admitted that he had not consented to it.

Victim 2

23. Victim 2's name came up during OAI's interview of Mr. SL, when the latter told the OAI investigators that Victim 2 had also been subjected to "abuse of authority" by Mr. Karkara. Victim 2 himself decided to share and report the same kind of harassment to which Mr. Karkara had subjected him after he had learnt from the WhatsApp group chat about the allegations of sexual misconduct against Mr. Karkara. While agreeing to be interviewed, Victim 2 chose to remain anonymous. According to Victim 2, he was involved in the youth issues and worked on volunteer advocacy or resource mobilization. He was first introduced to Mr. Karkara in 2015 as they were both involved in youth issues, and he worked together with Mr. Karkara's team for an event sponsored by the Commission on the Status of Women (CSW) in March 2016.

24. Victim 2 stated that Mr. Karkara had sent him WhatsApp messages of a sexual nature, such as Mr. Karkara's private pictures of himself in a bath and pornographic videos or pictures, without Victim 2 ever requesting them, and asked Victim 2 to send Mr. Karkara a picture of Victim 2's "dick". But Victim 2 did not provide the OAI investigators with any evidence of such messages, nor did the OAI forensic specialist find the same in Mr. Karkara's personal or official phones.

25. Victim 2 recalled, during his interview with OAI, that either on the CSW Youth Forum day or the following day in 2016, both he and Mr. Karkara attended some workshops. During a break, Victim 2 went to a restroom followed by Mr. Karkara. There were only two of them in the restroom. Victim 2 then noticed Mr. Karkara approach him and say to him, "okay, show me", which Victim 2 understood to mean that Mr. Karkara was asking Victim 2 to show his genitals. And Mr. Karkara's comment that "you have smaller one" made Victim 2 feel

uncomfortable. Victim 2 remembered that this incident happened in a building on the Second Avenue, outside the United Nations premises.

26. The OAI investigators found out that the CSW Youth Forum did hold a two-day conference in New York, at the Salvation Army Building located between the Third Avenue and Lexington Avenue on 11 March 2016 and the Conference Building of the United Nations Secretariat on 12 March 2016. But a men's restroom located in the basement of the Salvation Army Building had only one functioning urinal for men during the CSW event in March 2016 as the other urinal was out of order at the time. OAI also visited the men's restrooms near the conference rooms in the Conference Building of the United Nations Secretariat where the CSW Youth Forum was held on 12 March 2016 and found that there were side-by-side urinals in those restrooms with no dividers.

27. OAI concluded that, while the statement of Victim 2 was not supported by corroborating evidence, no evidence of transmission of pornography by Mr. Karkara to Victim 2 was found on Mr. Karkara's iPhones 6 and 7, and Victim 2 did not provide feedback to OAI on whether he had obtained backups of the messages, Victim 2's testimony was credible as he was able to plausibly describe the nature of the pictures and videos that Mr. Karkara had sent him, and Mr. Karkara had saved Victim 2 as a WhatsApp contact. In addition, Mr. Karkara's requests to Victim 2 for the latter's photos were consistent with his pattern of conduct in other cases. In respect to the incident in the toilet, OAI found Victim 2's account credible, because he was able to plausibly explain what had transpired between him and Mr. Karkara at the toilet, and he had spoken about Mr. Karkara's conduct with a group of persons including Mr. SL. In the view of OAI, though there were discrepancies in the testimony of Victim 2, and he was not specific as to where the toilet was located, his testimony should not be disregarded. It should instead be weighed against the fact that Victim 2 is not a native New Yorker and was in New York just to participate in the CSW event.

Mr. OA

28. Mr. OA was an intern with the UN-Habitat for four months between May and August 2016. While attending meetings held at UN Women, he got acquainted with Mr. Karkara. Mr. Karkara took Mr. OA's number, became his mentor, assisted him in improving his social media profiles and provided him with information about the United Nations and its career opportunities. Mr. OA recalled that, on one occasion, Mr. Karkara had

driven him to an event in New Jersey and driven him back after the event. During the ride back, Mr. Karkara asked Mr. OA why he remained single, if he (Mr. OA) had masturbated a lot and what adult movies he (Mr. OA) had watched. Mr. OA took these questions as just “guy talk” between friends.

29. In the view of Mr. OA, Mr. Karkara “was nice” and “never really came off as a bad person”, but sometimes he made inappropriate remarks, such as messaging him at night to have a conversation and asking him to take his (Mr. OA’s) pictures. At Mr. Karkara’s request, Mr. OA sent Mr. Karkara a picture of himself doing laundry and another one eating with the family. At the beginning, Mr. OA was more confused than uncomfortable, but the more it happened the more uncomfortable he became. He showed the texts that Mr. Karkara had sent him late at night to two interns separately and asked them for advice as to whether it was appropriate for Mr. Karkara to do so and what he (Mr. OA) should do under the circumstance.

30. On the basis of the OAI investigation, on 29 August 2018, Mr. Karkara was charged with misuse of his position of authority to commit sexual exploitation and sexual abuse, harassment, sexual harassment and abuse of authority with respect to three individuals (Mr. SL, Victim 2 and Mr. OA). He was also charged with misuse of the UN Women’s ICT resources to obtain and distribute pornography to and from his UN Women e-mail account.

31. On 12 September 2018, Mr. Karkara provided his comments to the charge memorandum through his legal counsel.

32. On 14 September 2018, the Executive Director of UN Women notified Mr. Karkara of her decision to impose on him the disciplinary measure of dismissal with an immediate effect, having concluded that the established facts amounted to serious misconduct. In particular, the Executive Director concluded that it had been established “clearly and convincingly” that Mr. Karkara had committed sexual exploitation and sexual abuse, and sexual harassment with respect to Mr. SL and Victim 2, and harassment and abuse of authority with respect to Mr. OA. The Executive Director also concluded that Mr. Karkara had misused the United Nations ICT resources to obtain and distribute pornography to and from his UN Women e-mail account. She informed Mr. Karkara that, in determining the appropriate action, she had considered the nature and seriousness of his actions, the past

practice of the United Nations in matters of comparable misconduct, and whether any mitigating or aggravating factors applied to his case.

33. Mr. Karkara appealed the dismissal decision to the Dispute Tribunal.

34. In Judgment No. UNDT/2020/188 dated 5 November 2020, the Dispute Tribunal dismissed his application and upheld the disciplinary measure of dismissal. It examined whether the facts on which the disciplinary measure had been based had been established by clear and convincing evidence. The Dispute Tribunal found that the Administration had made a clear and convincing case that Mr. Karkara had transmitted pornographic images of male genitalia to and from his UN Women e-mail account. It also found Mr. SL's accounts with regard to the Toronto incident, the overly sexual WhatsApp exchanges, and the Montreal incident credible and established by clear and convincing evidence. In that regard, the UNDT concluded that Mr. Karkara's claims of conspiracy against him were without merit. Likewise, the Dispute Tribunal found Mr. OA's accounts credible and the misconduct of harassment, but not of abuse of authority, had been established by clear and convincing evidence. However, the Dispute Tribunal found that Victim 2's allegations about Mr. Karkara sending him WhatsApp messages of a sexual nature and the toilet incident were not established by clear and convincing evidence. The Dispute Tribunal concluded that Mr. Karkara had misused the UN Women's ICT resources, had sexually exploited, abused and harassed Mr. SL, and had harassed Mr. OA. In view of the "gravity of the offense"² committed by Mr. Karkara, the Dispute Tribunal determined that the sanction of dismissal was adequate and proportionate.

35. The Dispute Tribunal noted the inappropriate comments that the OAI investigators had made to Mr. Karkara during interviews, but was of the view that the OAI investigators had "otherwise conducted a thorough and fair investigation by interviewing additional witnesses identified by [Mr. Karkara], performing site visits as suggested by [Mr. Karkara], and exploring all other issues raised by [Mr. Karkara]".³ The UNDT also noted the breach of confidentiality by four witnesses when they spoke to news media about the OAI investigation, but found that the breach had not impacted the outcome of the investigation because OAI had sent the draft investigation report to Mr. Karkara (2 August 2018) before the first media report quoting the four witnesses appeared in public (7 August 2018). The UNDT therefore

² Impugned Judgment, para. 161.

³ *Ibid.*, para. 173.

concluded that “this is the case where there is clear and convincing evidence of grave misconduct, and the [Dispute] Tribunal considers that any procedural issues were rectified by the Tribunal’s *de novo* review of all the facts and a judicial review of all the aspects of the case”.⁴

36. On 6 January 2021, Mr. Karkara appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). The Secretary-General filed an answer on 22 March 2021.

37. On 16 June 2021, Mr. Karkara filed a motion for leave to submit as new evidence two letters captioned “Notice of Cease and Desist” that the Office of Legal Affairs (OLA) had sent to Mr. SL regarding the misuse of the United Nations name and emblem by Mr. SL’s organization and two letters that OLA had addressed to the Canadian Mission to the United Nations seeking the latter’s assistance in protecting the United Nations name and emblem. In Order No. 420 (2021) dated 11 August 2021, the Appeals Tribunal denied Mr. Karkara’s motion, finding that the evidence was of little relevance to the central issues of the case, and there were no exceptional circumstances justifying the admission of those letters into the record at this stage or for opening an additional line of factual enquiry.

Submissions

Mr. Karkara’s Appeal

38. Mr. Karkara requests that the Appeals Tribunal set aside the impugned UNDT Judgment, reject every charge of misconduct against him, and reinstate him to his previous position with UN Women. He also requests that the Appeals Tribunal order UN Women to rescind all disciplinary actions against him, pay him an amount equal to his full salary from the time he was placed on administrative leave without pay to the date of his reinstatement in addition to a refund of all matching pension contributions, and pay him an unspecified amount of damages for the “lifelong irreversible harm” to his reputation and career and the legal fees incurred.⁵

⁴ *Ibid.*, para. 175.

⁵ Mr. Karkara did not say when he was placed on administrative leave without pay. It is not clear if UN Women converted his administrative leave with pay to administrative leave without pay.

39. Mr. Karkara submits that the Dispute Tribunal ignored the Administration's violation of due process and confidentiality. Examples include OAI's failure to cross verify Mr. SL's evidence with the United Nations forensic team, and UN Women's violation of due process and confidentiality by issuing press statements before the completion of the investigation and discussing the details of the UNDT confidential process in an all-staff meeting.

40. Mr. Karkara also submits that OSLA initially pressured him to resign and then refused to represent him before the Dispute Tribunal. The United Nations legal system has abandoned him. The political bias and motivation have impacted any fair defence of his case from the beginning. Managing the public relations became the sole purpose for UN Women, in disregard of due process, principles of natural justice and the UNDT orders.

41. Mr. Karkara further submits that there is a clear incongruity between the UNDT's finding of bias in the OAI investigation and its conclusion that the witness statements that were a product of that bias were a sufficiently reliable basis for the disciplinary measure against him.

42. Mr. Karkara contends that the Dispute Tribunal denied him a fair and just proceeding. His 20-year affiliation with the Organization, his former supervisors' recommendations, and the absence of any complaints in his personnel file were all ignored. The UNDT Judge issued an order to ignore all his core witnesses who would have supported his arguments and would have given a true account of his character. Moreover, she denied Mr. Karkara an opportunity to cross examine the Executive Director of UN Women. She ignored the inconsistencies and gaps in the testimonies of unreliable witnesses, and failed to apply the same standard by which she had dismissed Victim 2's accounts to her review of Mr. SL's accounts. Moreover, the UNDT Judge cherry-picked the text between him and Mr. SL and twisted it out of context to suit the false fabricated narrative of harassment.

43. Mr. Karkara maintains that the UNDT overlooked the direct link between his confronting Mr. SL and the Complainant about their misuse of the United Nations name, brand, logo and affiliation and their collaboration and fabrication of the charges against him.

44. Mr. Karkara stresses that the process of establishing his guilt or wrongdoing was totally biased and lacking any formal basis. The *Conteh* Judgment issued by the UNDT on 6 November 2018, a day after the publication of the impugned Judgment, demonstrates the double standards applied by the Dispute Tribunal and its *ad hoc* nature.⁶

The Secretary-General's Answer

45. The Secretary-General requests that the Appeals Tribunal dismiss the present appeal in its entirety.

46. The Secretary-General submits that Mr. Karkara has not established any errors warranting the reversal of the impugned Judgment. The various challenges to the UNDT Judgment are the same as the arguments that he raised before the UNDT, regarding the credibility of the victims and that of UN Women, due process, confidentiality and his unblemished performance record.

47. As for Mr. Karkara comparing his case to that of *Conteh*, the Secretary-General submits that the facts of each sexual harassment case are specific. In the present case, the UNDT methodically reviewed each standard of review and considered all relevant factors including Mr. Karkara's long professional record with the United Nations.

48. The Secretary-General maintains that the UNDT correctly determined that the disciplinary sanction of dismissal was lawful, because the facts of Mr. Karkara's transmission of pornographic images to and from his UN Women e-mail account, his sexual harassment of Mr. SL and his abuse of authority towards Mr. SL and his harassment of Mr. OA, on which the disciplinary measure had been based, had been established by clear and convincing evidence.

⁶ *Conteh v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/189 dated 6 November 2020. Mr. Conteh, formerly with the Office of the United Nations High Commissioner for Refugees (UNHCR) in New Delhi, India, contested the decision to separate him from service for having engaged in sexual harassment and abuse of authority. The UNDT found misconduct established, but the sanction was disproportionate and ordered a lesser disciplinary measure of suspension without pay for 12 months. The UNDT also ordered that Mr. Conteh be placed on special leave with full pay after the 12-month suspension without pay or alternatively, he be paid two years' net base salary as in-lieu compensation. The Secretary-General appealed this UNDT Judgment to UNAT. The Appeals Tribunal reviewed the case during the 2021 Fall Session. It upheld the appeal and vacated the UNDT Judgment. See Judgment No. 2021-UNAT-1171 for detail.

49. The Secretary-General also maintains that the UNDT correctly determined that the established facts amounted to serious misconduct, that the sanction imposed on Mr. Karkara was proportionate to the gravity of the misconduct, and that Mr. Karkara's due process rights had been respected during the investigation and the disciplinary process.

50. The Secretary-General finally states that Mr. Karkara's claims that Mr. SL had deliberately turned to media that led to a "media trial" are unfounded. It was his own actions that led UN Women to have no choice but to impose the disciplinary measure of dismissal on him.

Considerations

51. Under the settled case law of the Appeals Tribunal,⁷ judicial review of a disciplinary case requires the UNDT to examine i) whether the facts on which the disciplinary measure is based have been established; ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected. When 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.

Whether clear and convincing evidence established that the Appellant committed the offences

52. The UNDT found that there was clear and convincing evidence that the Appellant had transmitted pornographic images (of male genitalia) to and from his UN Women e-mail account, that he had committed several offences against Mr. SL, and that he had also committed offences against Mr. OA. However, the UNDT found that the allegations by Victim 2 were not established by clear and convincing evidence.

53. We note that out of the three remaining sets of offences found by the UNDT (transmission of pornographic images, offences against Mr. SL and offences against Mr. OA), on appeal, the Appellant only challenges the UNDT's findings regarding the offences against Mr. SL but not the UNDT's findings regarding the transmission of pornographic images and

⁷ *Ladu v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-956, para. 15; *Bagot v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-718, para. 46; *Negussie v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-700, para. 18; *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 18.

his offences against Mr. OA. Consequently, the UNDT's findings on those two latter offences stand and the Appeals Tribunal will only examine whether the UNDT was correct in finding that there was clear and convincing evidence that the Appellant had committed the alleged offences against Mr. SL, namely, the incident in Toronto in June 2016, WhatsApp exchanges on 24 August and 6 September 2016 and the incident in Montreal on 1 December 2016.

WhatsApp exchanges between the Appellant and Mr. SL

54. With regard to the two WhatsApp exchanges, the UNDT found that their authenticity was not in dispute. For the 6 September 2016 WhatsApp exchange, the sexual meaning was plain as the Appellant told Mr. SL that they needed to kiss for real when they met. With regard to the 24 August 2016 WhatsApp exchange, the UNDT examined the exchange and the Appellant's and Mr. SL's statements during the oral hearing, and came to the conclusion that Mr. SL's account was credible and that the message was meant as a request for oral sex and to watch pornographic videos.

55. On appeal, the Appellant submits that the UNDT took the WhatsApp messages out of context and twisted their meaning to suit the false fabricated narrative of harassment, and that none of those messages had undergone a forensic review and their veracity was not established.

56. We agree with the UNDT that the content of the WhatsApp messages is not in dispute. During the oral hearing before the UNDT, the Appellant expressly admitted that the WhatsApp exchanges had taken place and that he had written those messages.⁸ On appeal, he does not deny that he wrote the messages; his submission that the messages did not undergo a forensic review and their veracity was not established is not sufficient in this respect especially given his statement during the oral hearing before the UNDT.

57. We also agree with the UNDT that the messages had a sexual content. This is evident for the 6 September 2016 message where the Appellant told Mr. SL that they needed to kiss for real when they met. We also accept the UNDT's interpretation of the 24 August 2016 WhatsApp exchanges as a request for having oral sex and watching pornographic videos. The Appellant, with respect to Mr. SL's response "You know I don't watch those", testified before the UNDT: "So -- I -- I clearly see that Mr [. SL] is misunderstanding what is being discussed

⁸ UNDT hearing transcript (22 July 2020), pages 89 ff.

here because I'm talking about [JT] and the videos linked to that, if at all. And the links -- and then I don't continue in that conversation, I say: 'K[...]s back, young men's partners and sustainable and gender equality and K[...]s (indiscernible)'.⁹ However, looking at the WhatsApp exchange, the Appellant did not end the conversation or talk about another topic at that point but answered: "Use imagination".

The incident in Toronto, Canada in June 2016

58. The UNDT held that there was clear and convincing evidence that the Appellant had touched Mr. SL's genitals searching for moles in the context of an astrology reading in a hotel room where he was staying. Considering the entire evidence, the UNDT found Mr. SL's account credible, noting that it was further corroborated by other evidence. The UNDT pointed to discrepancies in the Appellant's statements who, during the interview with OAI, had mentioned that Mr. SL had come to his hotel room, but before the UNDT denied that Mr. SL had come to his hotel room. The UNDT relied on Mr. SL's GPS information and the specific details he had given about the astrology reading which were corroborated by the Appellant's statement that astrology readings could be performed by looking for moles in the body parts, and he had done astrology readings for his close friends and family members. Finally, the UNDT mentioned that the Appellant stated that his colleagues and two of his cousins had been at the hotel, and that he had gone to another city to visit his cousin after attending the event in Toronto. When asked whether his colleagues and cousins could be called as witnesses, the Appellant stated that he could provide full names, but never did.

59. On appeal, the Appellant does not challenge these findings of the UNDT. His general submission that Mr. SL is not credible is not sufficient given the thorough assessment of the evidence by the UNDT, which did not solely rely on Mr. SL's statement, but also on other evidence including the behavior of the Appellant. Consequently, we find that the UNDT's finding of clear and convincing evidence is not put into doubt by the appeal, but it stands.

The incident in Montreal in December 2016

60. The UNDT held that there was clear and convincing evidence that the Appellant had grabbed Mr. SL's laptop, opened pornography websites, invited Mr. SL to watch pornography with him and grabbed his "crotch" after Mr. SL had declined the invitation and taken away

⁹ *Ibid.*, page 96.

his laptop. The UNDT found Mr. SL's account credible while the Appellant was found not credible. The UNDT further relied on Mr. SL's screenshots of GPS time and location on Google maps, a picture submitted by the Appellant and the witness statements by Mr. AK, Ms. KG, Ms. MS and Mr. JB.

61. On appeal, the Appellant submits that Mr. SL is not a credible witness. Mr. SL was not able to produce his laptop for verification of evidence but declared that it had been destroyed. In the Appellant's view, the destruction of the laptop was relevant because the laptop was central to Mr. SL's story about what had transpired in the hotel room. Had the laptop been preserved as requested by OAI, a forensic evaluation may have been able to determine whether the laptop was even present and used to access any pornographic websites. Also, Mr. SL only filed the complaint against the Appellant after the latter had accused the former of misusing the UN's name, values and branding for the MGCY, falsely calling themselves the UN MGCY, and he was later elected to a MGCY position. Mr. AK was also part of the conspiracy as were Ms. KG and Ms. MS. The UNDT ignored the inconsistencies and gaps in their testimonies and those in Mr. SL's testimony.

62. The Appellant further criticizes that the UNDT did not allow all his core witnesses who would have supported his arguments and given a true account of his character. It was especially unlawful not to hear Ms. LP and Mr. SM.

63. We find no merit in the Appellant's arguments.

64. Under the consistent jurisprudence of the Appeals Tribunal, the assessment of evidence is foremost in the hands and responsibility of the trial judge, and the Appeals Tribunal will not lightly interfere. In *Nyawa*, we held:¹⁰

The Dispute Tribunal has broad discretion under Article 18(1) of its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. This Tribunal is mindful that the Judge hearing the case had an appreciation of all the issues for determination and the evidence before it. We are satisfied that the UNDT conclusion is consistent with the evidence.

¹⁰ George M'mbetsa *Nyawa v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1024, para. 63.

65. And in *Ladu*:¹¹

... we repeat that this Tribunal considers that some degree of deference must be given to the factual findings by the UNDT as the court of first instance, particularly where oral evidence has been heard. The UNDT has the advantage of assessing the demeanour of each witness while he or she is giving evidence and this is critical for assessing the credibility of the witness and the persuasiveness of his or her evidence. This is exactly what happened in the present case in terms of [Mr. P.'s] new account of the events before the UNDT, which was correctly assessed by the UNDT as totally unconvincing.

... Moreover, as correctly argued by the Secretary-General, Mr. Ladu has failed to explain in what way the alleged UNDT's factual errors resulted in a manifestly unreasonable decision warranting the intervention of the Appeals Tribunal.

66. In the circumstances of the present case, we find the UNDT's reasoning persuasive, and the Appellant did not show that the UNDT's assessment of the evidence resulted in a manifestly unreasonable decision. Also, the UNDT did not make any errors with regard to the admissibility of witnesses.

67. The UNDT, in its Judgment, carefully examined whether Mr. SL's credibility was affected by the destruction of the laptop and/or whether there was a conspiracy against the Appellant. It came to the conclusion that the destruction of the laptop did not undermine Mr. SL's credibility, and there was no evidence that Mr. SL had fabricated the allegations against the Appellant with the assistance of Mr. AK, Ms. KG and Ms. MS. In this regard, the UNDT reasoned that the testimonies of Mr. AK, Ms. KG and Ms. MS provided some corroboration with Mr. SL's accounts, which the Dispute Tribunal already found to be supported by other evidence such as the WhatsApp messages and the GPS information, and that Mr. JB, who was not claimed to bear any ill will towards the Appellant, also corroborated Mr. SL's accounts. The UNDT found no evidence that Mr. SL had fabricated the allegations against the Appellant in order to get a position at the MGCY because he had already been involved in youth advocacy work and had worked with Mr. AK previously.

68. The UNDT also found the Appellant's accounts lacked credibility due to contradiction and inconsistencies. Before the hearing at the UNDT, he stated that he did not know that Mr. SL had been in attendance of the Montreal event and denied that Mr. SL had come to his

¹¹ *Ladu, op cit.* Judgment, paras. 32-33.

hotel room. However, a WhatsApp exchange between him and Mr. SL shows that the Appellant knew in advance that Mr. SL would attend the event, gave him his hotel information (“Hotel Omni Mont-Royal Pool”) and asked him to “[c]ome fast”.

69. We find no fault in the rejection of the Appellant’s witnesses by the UNDT. It was within the UNDT’s discretion not to hear Mr. SM and Ms. LP. As to Mr. SM, the UNDT found that it was not necessary to personally hear him as a witness as the UNDT had granted the Appellant’s request to present a tape-recorded conversation between Mr. SM and Mr. AK. With regard to both Mr. SM and Ms. LP, the UNDT found that the Appellant had presented them to provide evidence concerning his professional conduct towards him and others (Mr. SM), and his work responsibilities and performance (Ms. LP), which were irrelevant to the case. We agree with this finding. The Appellant presented Mr. SM and Ms. LP as character witnesses and did not show how they could have contributed to establishing or refuting the facts in question with respect to the incidents concerning Mr. SL in Montreal in December 2016. None of them was present at the time and place of that incident.

70. Finally, the Appellant submits that it was erroneous for the UNDT to ignore the findings by the New York State Office of Children and Family Services which, after a rigorous and unbiased investigation, had declared him free from any allegation that he posed a danger to his child or any other child. We find no merit in this argument. The investigation by the New York State authorities had a completely different topic than the disciplinary process examined by the UNDT, and its results therefore have no legal relevance for the present case.

Whether the established facts qualify as misconduct

71. The Appellant did not challenge, and we find no fault in, the UNDT’s finding that the established facts amounted to serious misconduct on the part of the Appellant, insofar we can refer to the UNDT Judgment.

Whether the sanction was proportionate to the offences

72. The matter of the degree of the sanction is usually reserved for the Administration which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of the administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and

procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures such as a sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy the victims and restore the administrative balance. That is why the Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. This rationale is followed without any change in the jurisprudence of this Tribunal.¹² The Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

73. Further, as we stated in *Samandarov*:¹³

... due deference [to the Administration's discretion to select the adequate sanction] does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. This obliges the UNDT to objectively assess the basis, purpose and effects of any relevant administrative decision. In the context of disciplinary measures, reasonableness is assured by a factual judicial assessment of the elements of proportionality. Hence, proportionality is a jural postulate or ordering principle requiring teleological application.

... The ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline. As already intimated, an excessive sanction will be arbitrary and irrational, and thus disproportionate and illegal, if the sanction bears no rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline. The standard of deference preferred by the Secretary-General, were it acceded to, risks inappropriately diminishing the standard of judicial supervision and devaluing the Dispute Tribunal as one lacking in effective remedial power.

74. In the present case, given the seriousness and degree of the Appellant's misconduct, the sanction of dismissal was not unreasonable, absurd, or disproportionate. The Appeals Tribunal finds that it was a reasonable exercise of the Secretary-General's discretion to

¹² *Nyawa op cit.* Judgment, para. 89; *Ganbold v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-976, para. 58; *Ladu, op cit.* Judgment, para. 39; *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, para. 41.

¹³ *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, paras. 24-25.

determine that the Appellant's misconduct rendered him unfit for further service with the Organization, and is satisfied that dismissal was neither unfair nor disproportionate to the seriousness of the offences. In this context, the Appellant violated the relationship of trust that had existed between him and the Organization. His conduct was particularly grave in light of the position he occupied, charged with the responsibility in relation to the young adults he worked with. As such, the Appeals Tribunal finds that imposing the sanction of dismissal was a reasonable exercise of the Administration's broad discretion in the present disciplinary case, a discretion with which it will not lightly interfere.

75. The Appellant's comparison of the impugned Judgment with the UNDT Judgment in *Conteh* is without merit.¹⁴ First, in cases of sexual misconduct, much will depend on the situation of the specific case. Second, in *Conteh*, on appeal by the Secretary-General, the Appeals Tribunal vacated the UNDT Judgment and found that the disciplinary sanction was proportionate. Consequently, contrary to the Appellant's contentions, there is no difference with regard to the issue of proportionality between the two judgments.

Whether the Appellant's due process rights were respected

76. In examining whether the Appellant's due process rights were violated during the investigation process, the UNDT applied the Appeals Tribunal's consistent jurisprudence, according to which,¹⁵

... only substantial procedural irregularities will render a disciplinary measure unlawful. Even a very severe disciplinary measure like separation from service can be regarded as lawful if, despite some procedural irregularities, there is clear and convincing evidence of grave misconduct, especially if the misconduct consists of a physical or sexual assault.

... Save exceptional cases involving major violations of due process rights, it is not sufficient for the UNDT to find procedural errors in a disciplinary process but, where necessary, it has to conduct a *de novo* review of the facts and a judicial review of the remaining aspects of the case. The requirement of a *de novo* review of the facts does not mean that the UNDT will have to re-hear all the witnesses of the investigation or to hear new witnesses. If there is sufficient and substantial evidence in the written record, the UNDT may also base its findings on this record. We find that by limiting its review to procedural aspects, the UNDT failed to exercise the jurisdiction vested in it.

¹⁴ For *Conteh*, see footnote 6.

¹⁵ *Sall*, *op cit.* Judgment, paras. 33 & 39.

77. The UNDT found that the main requirements of due process were met as the Appellant had been notified of the formal allegations of misconduct, had been given the opportunity to respond to those allegations, and had been informed of the right to seek the assistance of counsel in his defense.

78. However, as the Appellant had raised other issues, the UNDT went on to examine whether those issues constituted substantial procedural irregularities rendering the disciplinary sanction unlawful.

79. As to the Appellant's submission that the OAI investigators had failed to conduct their investigations in an objective manner but presumed him guilty from the beginning, the UNDT found that, despite some inappropriate questions and comments, the investigators had conducted a thorough and fair investigation by interviewing additional witnesses identified by the Appellant, performing site visits as suggested by the Appellant, and exploring all other issues raised by him.

80. On appeal, the Appellant submits that there is clear incongruity between the UNDT's finding that there was bias in the investigation, and on the other hand accepting the witness statements that were a product of that bias as a sufficiently reliable basis for the disciplinary actions taken against him.

81. This argument has no merit for two reasons. First, the UNDT did not find that the disciplinary investigation was biased. As described above, the UNDT found that the main requirements for due process had been met, and that the investigators, despite some inappropriate questions and comments, had conducted a fair investigation. Second, the UNDT undertook a *de novo* review of the facts and reheard several witnesses, and its finding on the evidence was thus mainly based on its own impressions from the oral hearing and not only the witness statements of the investigation process conducted by OAI.

82. As to the Appellant's submission that four witnesses breached the confidentiality requirement despite OAI's instructions, the UNDT found that although during the interviews, the OAI investigators had cautioned the witnesses that investigations were strictly confidential and that interview participants should not discuss the interview or the subject matter with any third party, four witnesses had spoken to the news media and discussed the subject matter of the investigation. However, the UNDT found that this breach of

confidentiality did not impact the outcome of the investigation because the investigators had already completed the investigation and provided draft investigation reports to the Appellant before the first media report was published in August 2018. Also, Mr. SL had already discussed the matter before filing his complaint, and it was widely discussed at a youth meeting before the investigation had even begun. Consequently, there was already widespread discussion and interest about the investigation. Further, the UNDT found that there was clear and convincing evidence for misconduct and any procedural issues had been rectified by its own *de novo* review.

83. On appeal, the Appellant submits that the witnesses' conduct is evidence of their unethical motivations and lack of honesty, and that the UNDT failed to take this into account in the Judgment.

84. These submissions do not put the UNDT's findings into doubt. As already stated above, the UNDT, after a careful and thorough examination of the evidence, came to the conclusion that there was clear and convincing evidence for serious misconduct, and the Appeals Tribunal cannot detect any error in this finding. The Appellant does not address the other arguments put forward by the UNDT, namely that the breach of confidentiality by the witnesses had no impact on the disciplinary investigation and that the UNDT undertook a *de novo* review of the facts including rehearing all four witnesses in question.

85. Finally, the Appellant submits that the UNDT failed to take action on a confidentiality and due process violation by the Executive Director of UN Women, who, in an all staff meeting on 21 January 2019, published and discussed the details of the case, thus violating UNDT Order No. 247 (NY/2018) issued on 13 December 2018 that the application and all materials and submissions remain under seal and that UN Women "shall not disclose, use, show, convey, disseminate, copy, reproduce or in any way communicate the under seal filings or documents, ..." He further complains that the UNDT denied him the opportunity to cross examine the Executive Director of UN Women.

86. We understand that the Appellant wants to submit that the UNDT committed an error of procedure. However, under Article 2(1)(d) of the UNAT Statute, the Appeals Tribunal is only competent to hear and pass judgment on an appeal filed against a judgment rendered by the Dispute Tribunal in which it is asserted that the Dispute Tribunal has committed an error in procedure, such as to affect the decision of the case. We do not find

that the UNDT committed such an error. The UNDT decided not to hear the Executive Director of UN Women because any issues relating to the investigation process and due process could be answered by Ms. JA, who conducted the investigation as well as the investigation documents in the file. The Appellant does not explain on appeal why the UNDT's reasoning was erroneous and why it was necessary to hear the Executive Director in addition to Ms. JA. Further, as the UNDT undertook a *de novo* hearing, and the matter had long been known and discussed within UN Women, the procedural actions of the UNDT in this respect had no impact on the outcome of the case.

87. However, we agree with the Appellant that the Executive Director of UN Women apparently violated UNDT Order No. 247 (NY/2018) by disclosing and discussing details of the proceedings in an all staff meeting on 21 January 2019. Therefore, we find it necessary to refer the case to the Secretary-General of the United Nations for further examination and possible action to enforce accountability under Article 9(5) of the UNAT Statute.

Judgment

88. The appeal is dismissed and Judgment No. UNDT/2020/188 is affirmed.
89. The case is referred to the Secretary-General under Article 9(5) of the UNAT Statute.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Raikos
Athens, Greece

(Signed)

Judge Neven
Brussels, Belgium

Entered in the Register on this 30th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar