



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

Judgment No. 2021-UNAT-1177

**Veronica Irima Modey-Ebi
(Appellant)**

v.

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

JUDGMENT

Before: Judge John Raymond Murphy, Presiding
Judge Dimitrios Raikos
Judge Sabine Knierim

Case No.: 2020-1503

Date: 29 October 2021

Registrar: Weicheng Lin

Counsel for Appellant: Ilias Abiodun Kazeem

Counsel for Respondent: André Luiz Pereira de Oliveira

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Veronica Irima Modey-Ebi, a former Deputy Regional Representative at the United Nations High Commissioner for Refugees (UNHCR) Regional Office (RO) in Pretoria, South Africa, contested before the United Nations Dispute Tribunal (UNDT) the High Commissioner's decision to dismiss her from service pursuant to Staff Rule 10.2(a)(ix) for serious misconduct. The UNDT dismissed the application. Ms. Modey-Ebi has appealed.

2. For the reasons set out below, we dismiss the appeal and uphold the Judgment of the UNDT.

Facts and Procedure

3. Ms. Modey-Ebi began her career with UNHCR in 1998 and worked in different UNHCR operations, in Kenya, Pakistan, Uganda, Tanzania, Sierra Leone and the Islamic Republic of Iran where she served as UNHCR Deputy Representative from 2010 to 2013. On 16 December 2013, she was appointed as the Deputy Regional Representative (Protection) (P-5) at UNHCR's RO in Pretoria, South Africa. On 1 January 2017, her position was upgraded to the D-1 level. On 1 September 2017, she was promoted to the D-1 level.

4. On 3 October 2017, the UNHCR Inspector General's Office (IGO) received allegations of misconduct implicating Ms. Modey-Ebi. Specifically, it was reported that she had abused her authority by instructing Mr. BK, Associate Protection Officer, and Mr. GB, Associate Protection Officer, to help with her private academic work and to complete a homework assignment for her child. On 4 December 2017, the IGO opened an investigation into the matter. The scope of the investigation was subsequently expanded to encompass new allegations of abuse of authority and office, breach of oath of office, creation, maintenance and failure to disclose conflicts of interest, engaging in unauthorized outside activities, continuously abusing UNHCR human and other resources to further her private interest, and making discriminatory and harassing comments towards several staff members.

5. During its investigation, the IGO interviewed Ms. Modey-Ebi as well as the following UNHCR staff members: Mr. GB; Mr. BK; Ms. ZS; Senior Regional Human Resources (HR) Officer, UNHC/RO Pretoria; Mr. GM, Associate Regional Resettlement Officer, UNHCR/RO Pretoria; Mr. GK, Senior Regional Protection Officer, UNHCR/RO Pretoria; Dr. MR, Senior Regional Protection Officer (Statelessness), UNHCR/RO Pretoria; Ms. ON, former UNHCR staff

member at the UNHCR/RO Pretoria; Ms. DC, Programme Officer, UNHCR Country Office (CO) South Africa; Ms. ES, Assistant Programme Officer, UNHCR/CO South Africa; Ms. SS, Chief Programme Section of the Central Emergency Relief Fund (CERF); Ms. CR, Assistant Representative Protection, UNHCR Branch Office (BO) Addis Ababa; Ms. BD, Deputy Representative, UNHCR, Kigali, Rwanda; Mr. AT, Senior Regional Registration Officer; Ms. SG, Associate Protection Officer, UNHCR Mbarara Sub-Office (SO), Rwanda; and Ms. NL, Senior Secretary, UNHCR/RO Pretoria.

6. On 2 July 2018, the IGO shared the Investigation Report with Ms. Modey-Ebi, who provided comments on 20 July 2018. On 3 August 2018, the IGO finalized its Investigation Report and transmitted it to the Division of Human Resources (DHR). The IGO concluded that Ms. Modey-Ebi had harassed and discriminated against staff members, and abused her authority, office, and resources. The Director of DHR reviewed the report and decided to institute disciplinary proceedings against Ms. Modey-Ebi for misconduct. By letter dated 17 September 2018 from DHR, Ms. Modey-Ebi was informed of the allegations of misconduct against her and was invited to provide her comments and observations within two weeks. She responded to the allegations of misconduct on 11 October 2018.

7. By letter dated 5 December 2018, Ms. Modey-Ebi was notified of the decision to dismiss her for serious misconduct. The letter specified that in deciding upon the sanction, the High Commissioner took into account the particular circumstances of the case, including aggravating and mitigating circumstances as well as the prior practice of the Secretary-General of the United Nations and UNHCR. As mitigating factors, the High Commissioner considered her long and satisfactory service record with very good performance appraisals, including of her management competencies, by multiple supervisors and reviewing officers and her unblemished disciplinary record. As aggravating circumstances, the High Commissioner considered that her position as a senior manager at the D-1 level carried a heightened responsibility to act as role model and uphold the highest standards of conduct in order to achieve an environment free from discrimination, harassment and abuse of authority; the fact that she committed a wide range of misconduct, breaching numerous obligations under the United Nations Charter, the Staff Regulations and Rules and other administrative issuances over a substantial period of time, aggrieving multiple staff members and members of the UNHCR affiliate workforce; the fact that she repeatedly placed her interests above UNHCR's interests; as well as the fact that she did not

fully comply with her obligation to cooperate with the investigation and made untruthful submissions to the IGO.

8. On 4 February 2019, Ms. Modey-Ebi filed an application challenging the High Commissioner's decision to dismiss her from service for serious misconduct. The parties informed the UNDT that an oral hearing was not required in determining this case and subsequently filed their closing submissions on 19 June 2020.

9. On 28 October 2020, the UNDT issued the Judgment dismissing the application. The UNDT concluded that clear and convincing evidence established thirteen allegations of misconduct, that the investigation process had complied with the applicable legal framework and the disciplinary measure of dismissal was proportionate. The proven allegations (discussed in more detail later in this Judgment) included: the harassment or abuse of her subordinates; instructing subordinates to do her child's school homework; abusing her subordinates by instructing them to do her personal chores or to prepare motivation letters in support of her various job applications; breaching the rules governing performance appraisals; instructing subordinates to carry out her academic work; using diplomatic channels and her status for her personal advantage and benefit; inappropriate communications with senior government officials in the host country; and disclosing official information to persons not entitled to it.

10. On 22 December 2020, Ms. Modey-Ebi filed an appeal and on 22 February 2021, the Secretary-General filed his answer.

Submissions

Ms. Modey-Ebi's Appeal

11. The UNDT erred in procedure such as to affect the decision of the case when the UNDT, without delivering reasoned decisions (a) allowed the Secretary-General's reply to her application which far exceeded the UNDT's page limit, but disregarded her "vital submissions" responding to the issues raised by the Secretary-General; (b) ignored her contention that the IGO interviewed her only by phone, unlike the witnesses interviewed in person; (c) relied on the e-mail record tendered by the Secretary-General without resolving the contention that the e-mail record had been doctored by the Secretary-General; and (d) failed to rule on Ms. Modey-Ebi's application for

costs. These errors she contends show that her right to a fair hearing and reasoned decision on material points was violated.

12. Moreover, the UNDT erred in fact resulting in a manifestly unreasonable decision when it found that the IGO did not violate her due process rights which respect to the conduct of the investigation, including *inter alia* its refusal to interview 22 witnesses suggested by Ms. Modey-Ebi; its ignoring of evidence proffered by Ms. Modey-Ebi demonstrating that the investigation had been conducted haphazardly or with lack of impartiality; and its ignoring of evidence that the procedure of interview by phone call without visual aid, used by the IGO, created difficulties in the interviews of Ms. Modey-Ebi which the IGO mischaracterized as failure to fully cooperate with the investigation.

13. The UNDT further erred when it found that the Secretary-General had adduced clear and convincing evidence establishing the allegations of misconduct when for the most parts, the witness testimonies were based on “opinions, malice or hearsay”.

14. With respect to the allegation that Ms. Modey-Ebi harassed Ms. DC, Ms. Modey-Ebi contends that the UNDT erred in relying on the evidence of Ms. ES and Ms. ZS as corroborating Ms. DC’s accounts of facts. Ms. ES could not accurately recall the incident, as she was not sure if everyone had been present at the meeting. Ms. ZS only joined the office in 2015 while the misconduct allegedly occurred in 2014, so her testimony was hearsay as she was not present at the meeting.

15. Turning to the allegation that Ms. Modey-Ebi harassed and discriminated against Dr. MR, Ms. Modey-Ebi contends that the UNDT erroneously relied on the testimony provided by Ms. SG, who purportedly had attended the meeting, hearsay evidence of Ms. SS and Ms. ZS, as well as Dr. MR’s “personal diary”.

16. As to the allegation that Ms. Modey-Ebi abused her authority by instructing Mr. GB to do her eight-year-old child’s homework, Ms. Modey-Ebi submits that there was no dispute that Mr. GB assisted her, but the dispute was about the nature and extent of the assistance. Ms. Modey-Ebi considered that it was voluntary assistance for technical aspects while Mr. GB testified that he was pressured to assist. The e-mail relied upon by the UNDT did not clarify the contention, and the hearsay evidence of Mr. AT and Dr. MR was “unhelpful”. Mr. GB’s testimony contradicts Ms. NL’s account of the facts, since Mr. GB

claimed that Ms. Modey-Ebi passed the instruction to him through Ms. NL while the latter testified that Ms. Modey-Ebi instructed both of them to do the homework and Ms. NL prepared the Google images. Also, the hearsay evidence constitutes circumstantial evidence of mobbing against Ms. Modey-Ebi in circumstances where the same set of witnesses gave hearsay evidence against her on multiple allegations.

17. As to the allegation that Ms. Modey-Ebi abused her authority by instructing Mr. GB and Mr. MK to accompany her during grocery shopping, to push her shopping cart, to carry her groceries to the car, and to carry her groceries inside her house, the UNDT relied on the content of Mr. GB's and Mr. MK's testimony which contained material contradictions on whether Mr. GB pushed the cart; whether there was a cart or Ms. Modey-Ebi only bought a few things; whether they entered Ms. Modey-Ebi's house; and whether they blew balloons and made decorations for a birthday.

18. With respect to the allegation that Ms. Modey-Ebi abused her authority by requesting Ms. ON to fix her shoes, bring her child shopping, take her child to the doctor, and pay her utility bills, Ms. Modey-Ebi contends that Ms. ON's testimony which the UNDT relied upon was tainted by improper motive. Ms. ON erroneously believed that Ms. Modey-Ebi had prevented her employment and was probably responsible for her poor appraisal with her present employer, a different United Nations organization.

19. As for the allegation that Ms. Modey-Ebi abused her authority by requesting staff to prepare her motivation letters, Ms. Modey-Ebi submits that the e-mail record the UNDT relied upon did not support the inference drawn by the UNDT. The UNDT disregarded Ms. MA's testimony, stating that she prepared Ms. Modey-Ebi's motivation letters on her own accord; the IGO failed to interview the concerned staff members to provide context and clarity; and Mr. GK and Mr. GB's testimony was not neutral, as they had other issues against her.

20. As to the allegations that Ms. Modey-Ebi misused her office by instructing staff to review, revise and contribute to her academic work, by instructing staff to prioritize her academic work over UNHCR work and by rewarding them, the UNDT ignored evidence of e-mail records tendered by Ms. Modey-Ebi in rebuttal of the inference drawn by the UNDT. The record did not show that staff drafted her PhD proposal, but instead provided minimal input. Moreover, there was no evidence that staff did not merit a recommendation and conversation on salary increase.

21. As to the allegation that Ms. Modey-Ebi requested staff members in other UNHCR offices where she had previously worked to obtain police clearance letters on her behalf, the UNDT relied on a set of e-mail exchanges to find the allegation established even though the IGO did not interview the recipients of the e-mail messages she sent for context.

22. The UNDT erred in relation to the allegation that Ms. Modey-Ebi breached her Oath of Office by accepting “boilerplate language in a letter of application” while there is no evidence that she actually sought or received any instruction from the South African government concerning the performance of her official duties at UNHCR.

23. As to the allegation that Ms. Modey-Ebi disclosed confidential IGO information to UNHCR staff who had no need to know that information, Ms. Modey-Ebi contends the UNDT relied on a “doctored” e-mail record in support of its finding while refusing to make a reasoned decision on Ms. Modey-Ebi’s serious allegation that the e-mail record was “doctored”.

24. The UNDT erred in law with respect to its interpretation and application of the UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority. The UNDT failed to apply Clauses 4.4.1 and 4.6.1.2 of the UNHCR Policy, which encourage prompt reporting of complaints and prescribe a one-year time limit for complaints to the IGO. The only basis for which an IGO will allow complaints after the regulatory time limit is if exceptional circumstances exist and in the present case, no evidence of exceptional circumstances was adduced. The UNDT should have expunged from the case records the allegations relating to the facts that occurred more than one year before February 2018.

25. The UNDT erred in law with respect to its interpretation and application of Article 100.1 of the United Nations Charter, Staff Regulations 1.1(b) and 1.2(e) and paragraph 8 of the Standards of Conduct. These provisions provide that a staff member must not seek or receive instructions from a government in the course of the performance of official duties. The UNDT erred in law, since there was no evidence showing that she had received any instruction from the South African government. Furthermore, the letter she had sent to the South African authorities relating to her application for permanent residency was not issued in the course of her duties.

26. The UNDT erred in law when interpreting Section 5.1 of Secretary-General's Bulletin ST/SGB/2004/15 (Use of information and communication technology resources and data). The UNDT failed to show how sharing the file with her husband amounted to "knowingly, or through gross negligence, creating false or misleading ICT data". The UNDT also failed to consider the fact that she had never shared any e-mail with her husband during several years of service and that singular incident had been warranted by the security situation at the time.

27. The UNDT erred in fact, resulting in a manifestly unreasonable decision when it found that there was no substantial indication of mobbing that a certain group conspired against her. The IGO did not investigate that Mr. BK testified that Mr. GK and Ms. SC had threatened him to testify against Ms. Modey-Ebi. The evidence before the UNDT showed that the IGO refused to interview witnesses suggested by her to at least explore this allegation, especially in light of the number of misconduct allegations against her.

28. The UNDT erred in fact, resulting in a manifestly unreasonable decision when it found that the contested decision was proportionate. There was no evidence that Ms. Modey-Ebi did not fully cooperate with the investigators. The UNDT found that some of the serious misconduct against Ms. Modey-Ebi had not been established but failed to consider how that finding affected the proportionality on the balance of the remaining allegations sustained by the UNDT, albeit wrongly.

29. Ms. Modey-Ebi asks that UNAT vacate the UNDT Judgment; order rescission of UNHCR's decision of 5 December 2018 terminating her employment; order her reinstatement with retroactive effect including payment of all emoluments, grade-steps and promotion to D-2 level; compensation for material, psychological and moral damages including loss of ability to maintain children; compensation for financial losses, including loss of health insurance and disposition of asset; reputational damage, including credit score; and costs in the amount of USD 20,000.

The Secretary-General's Answer

30. The UNDT correctly upheld the contested decision. Contrary to Ms. Modey-Ebi's contention, her right to a fair hearing and reasoned decision was not violated.

31. The IGO did not violate Ms. Modey-Ebi's due process rights by interviewing her by phone. None of the provisions of UNHCR/OG/2016/4 (Operational Guidelines on Conducting Investigations and Preparing Investigation Reports) establishes that an investigation's subject should be interviewed only in person. Moreover, she has not provided any substantial evidence supporting her allegation that her e-mail record had been doctored by the IGO; and she has not pointed out in her appeal any circumstance that even suggests that the Secretary-General made improper use of the proceedings of the Court, which would justify a finding that the UNDT erred by not awarding costs against the Secretary-General.

32. As to Ms. Modey-Ebi's contention that the UNDT disregarded the evidence that the procedure of interview by phone call without visual aid, used by the IGO, created difficulties in the interviews of Ms. Modey-Ebi but the IGO mischaracterized it as failure to fully cooperate with the investigation; and disregarded the fact that there was no evidence showing that she did not fully cooperate with the investigation, those claims are not correct and she has failed to demonstrate that the UNDT committed errors in procedure by not respecting her due process and fair trial rights. Moreover, both during the interviews and in her comments on the Investigation Report draft, she provided information that squarely contradicted the available documentary evidence. Staff members are under an obligation to uphold the highest standards of integrity, which include honesty and truthfulness, and to cooperate with duly authorized investigations under Staff Regulation 1.2 (b) and Staff Rule 1.2 (c), respectively. Hence, the UNDT correctly concluded that the disciplinary measure imposed was proportionate to the offense.

33. The UNDT correctly concluded that there was clear and convincing evidence establishing the facts and that the conduct constituted misconduct.

Considerations

34. In disciplinary cases the Appeals Tribunal will 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.

35. The issues in this appeal are entirely factual, most of which are resolved on the evidentiary record which in most respects establishes a pattern of misconduct justifying dismissal.

36. The first allegation of misconduct was that Ms. Modey-Ebi introduced Ms. DC, a newly appointed staff member, at a staff meeting stating that she did not really want her there as she was not her first choice and that she would have preferred the appointment of Ms. HM who had withdrawn her application. Ms. DC was humiliated and embarrassed by the introduction. The event was confirmed by two other staff members, Ms. ZS and Ms. ES. Ms. Modey-Ebi initially denied the allegation but later admitted she had welcomed Ms. DC upon her arrival and told her that the number one candidate (Ms. HM) had withdrawn her application and that Ms. DC was the number two preference.

37. Ms. ES attended the meeting and confirmed that Ms. Modey-Ebi had said Ms. DC had not been the first choice. Her inability to recall who all was present at the meeting is immaterial and does not detract from her credibility. Ms. ZS did not attend the meeting, but tendered hearsay evidence that Ms. DC reported to her what was said. Hearsay evidence amounting to a previous consistent statement is of limited value but is nonetheless admissible. In this instance it corroborates marginally the evidence of Ms. DC and Ms. ES, but gains added credibility from the concession of Ms. Modey-Ebi that she did inform Ms. DC that she was the number two preference.

38. The transgression here is not of an order to alone justify a severe sanction, but in light of the other transgressions it nonetheless forms part of a pattern of unethical and unbecoming behaviour.

39. The second allegation was that Ms. Modey-Ebi was abusive towards Dr. MR. During a meeting and in front of the other colleagues present, Ms. Modey-Ebi told Dr. MR that: i) she had done everything in her power to prevent his appointment; ii) UNHCR Headquarters had imposed Dr. MR on her despite her objections; iii) she did not need a Statelessness Officer; iv) Dr. MR was an academic whom she found unfit and unqualified for the position; and v) Ms. Modey-Ebi made a disparaging inaccurate remark about Dr. MR's nationality, saying that "the Boers were his people", which Dr. MR rebutted by informing her that he was German and not Dutch. Ms. SG confirmed Dr. MR's account. Dr. MR also kept a contemporaneous written record of the event. He prepared a written document to request the initiation of an informal process containing a

detailed description of the incident. This document alone is of considerable evidentiary weight establishing convincingly that the incident occurred.

40. The third instance of alleged misconduct is that Ms. Modey-Ebi abused her authority by instructing Mr. GB to do her eight-year-old child's homework. The UNDT relied on the testimony of various witnesses but most importantly that of Mr. GB and e-mail correspondence between Mr. GB and Ms. Modey-Ebi substantiating the facts, which Ms. Modey-Ebi essentially did not dispute. The investigation report contains copies of the homework done by Mr. GB and a message from Ms. Modey-Ebi that she and her daughter would develop the rest. Mr. GB explained that he felt pressured and feared the consequences of resisting the request.

41. The fourth allegation is that Ms. Modey-Ebi abused her authority by instructing Mr. GB and Mr. MK to accompany her during grocery shopping, to push her shopping cart, to carry her groceries to the car, and to carry her groceries inside her house. These events were described in a detailed, specific, and coherent manner by Mr. GB and Mr. MK and essentially were not denied by Ms. Modey-Ebi.

42. Fifthly, it is alleged that Ms. Modey-Ebi abused her authority by requesting Ms. ON to fix her shoes, bring her child shopping, take her child to the doctor, and pay her utility bills. Ms. Modey-Ebi's admitted that Ms. ON had paid her personal electricity bill and taken her daughter to see the doctor.

43. The sixth allegation is one of more serious misconduct. It is alleged that Ms. Modey-Ebi abused her authority by requesting Mr. GK, Mr. SD, and Ms. MA to draft, review, and amend letters of motivation for at least six job applications at UNCHR. E-mail correspondence incontrovertibly discloses that Ms. Modey-Ebi did indeed make such requests.

44. Regarding the allegation that Ms. Modey-Ebi breached the rules governing performance appraisals at UNHCR by instructing Mr. GK and Dr. MR to write the manager's comments for their performance appraisals, Ms. Modey-Ebi has not contested the UNDT's findings that the conduct was established and constituted misconduct.

45. Even more seriously, it is alleged that Ms. Modey-Ebi misused her office by instructing Mr. BK and Mr. GM to review, revise and contribute to her academic work; instructing Mr. BK to prioritize her academic work over UNHCR work; and rewarding them. A set of e-mails from Ms. Modey-Ebi's UNHCR e-mail account show that she had instructed Mr. BK and Mr. GM to

carry out substantive work preparing her Doctor of Laws proposal, that Ms. Modey-Ebi forwarded her professor's feedback to Mr. BR and Mr. GM, instructed them to work on it, coordinated their respective contributions, followed up with them as the deadline approached, and put significant pressure on Mr. BK to complete the work, as he was on a mission in Zambia. Ms. Modey-Ebi rewarded Mr. GM by recommending him for positions and instructing senior officials to explore any avenue to keep Mr. GM. She also asked for a salary increase for Mr. BK and placed him in a position that his supervisor found unnecessary and unjustified.

46. Ms. Modey-Ebi is alleged furthermore to have requested staff members in other UNHCR offices to obtain police clearance letters on her behalf through diplomatic channels which she needed for her application for a Green Card for the USA and to submit them via the UNHCR pouch. E-mail correspondence again indisputably shows that between September 2017 and March 2018 she requested staff members in the UNHCR offices where she had previously worked to obtain the police clearance letter for her and her husband, that she followed up multiple times, conveyed that the matter was urgent and a priority, and requested a staff member to use his contacts with national authorities to expedite the matter. The documentary evidence also established that she requested Mr. BK to prepare the curriculum vitae that she included in her application. The e-mail exchanges speak for themselves and are sufficient reliable proof of the misconduct.

47. Ms. Modey-Ebi furthermore breached her Oath of Office in an application for permanent residence in South Africa. She communicated in a letter to the South African Minister of Home Affairs that she would use her UNHCR position to work in close collaboration with South African missions abroad. She signed her letter of application not as a private citizen but as a Deputy Regional Representative of UNHCR. The letter also speaks for itself and indicates that she used her position to seek a personal benefit by offering inappropriate assurances inconsistent with her office and duties.

48. By making a written pledge to the Minister of a Member State that she would serve that country and make a substantial contribution to its national interest in her official capacity of Deputy Regional Representative (Protection), UNHCR, Ms. Modey-Ebi compromised her independence and impartiality inconsistently with her duties in terms of Staff Regulation 1.1(b) which provides that staff members shall make a written declaration witnessed by the Secretary-General or his or her authorized representative solemnly declaring and promising to exercise in all loyalty, discretion and conscience the functions entrusted to her as an

international civil servant of the United Nations, to discharge these functions and regulate her conduct with the interests of the United Nations only in view, and not to seek or accept instructions in regard to the performance of her duties from any Government or other source external to the Organization.

49. It is also not disputed that Ms. Modey-Ebi inappropriately forwarded to her husband an e-mail that she had addressed to the Director and Deputy Director of the Regional Bureau for Africa, including two UNHCR official mission reports in order to inform them of her conversations with the Deputy Minister of Home Affairs of South Africa concerning the situation of a group of refugees in the KwaZulu-Natal Province. Ms. Modey-Ebi did not contest the allegation but only gave explanations of why she acted the way she did, which did not negate the factual aspects of the allegation. The information retrieved by the IGO shows that on 15 April 2016, Ms. Modey-Ebi forwarded to her husband the e-mail that she had written on the same date to the former Director and Deputy Director of the UNHCR Regional Bureau for Africa in order to inform them of her conversations with the Deputy Minister.

50. Finally, Ms. Modey-Ebi disclosed confidential IGO information to UNHCR staff who had no need to know that information, including sharing information on a complaint of sexual misconduct with the subject of the complaint. This misconduct is established by an e-mail she sent on 25 May 2016 to Mr. PK, who was not part of the UNCHR team in South Africa, sharing with him a “correspondence relating to the manner in which a UNHCR implementing partner in South Africa had handled allegations of misconduct, including the original message by the Head of the Investigations Service of the IGO, dated 13 May 2016, as well as a note for the file prepared for the IGO”. The UNDT also relied on Dr. MR’s and Mr. GK’s statements to the effect that Ms. Modey-Ebi had also disclosed the information about a sexual misconduct complaint to them.

51. While some of the proven allegations against Ms. Modey-Ebi are less serious than others, cumulatively they reveal a pattern of unethical conduct indicating that Ms. Modey-Ebi is not suited for the senior position she held. Her behaviour reveals a lack of propriety and integrity. Staff Regulation 1.2(b) provides that staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. Staff Regulation 1.2(f) requires staff members to conduct themselves at all times in a manner befitting their status as international civil servants and not to engage in any activity that is incompatible with the proper discharge of their duties with the

United Nations. They shall avoid any action that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status. Likewise, Staff Regulation 1.2(g) obliges staff members not to 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. In addition, Staff Regulation 1.2(i) requires staff members to exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any government, entity, person or other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. Ms. Modey-Ebi's conduct was inconsistent with all of these duties.

52. Ms. Modey-Ebi's defence for the most part either quibbles with inconsequential aspects of the evidence or offers implausible and unsustainable justifications. The fact is that most of her misconduct is common cause and substantiated by the contemporaneous record of correspondence. Her claim that her e-mail record was doctored is fanciful and is not supported by any convincing evidence. In any event, that to which she admits is alone sufficient to establish that she is unsuited to the position she held.

53. The UNDT accordingly did not err in holding that the disciplinary measure imposed was proportionate to the offence. The established misconduct reveals a serious lack of judgement and arrogance that is inconsistent with the ethos of UNHCR and the behaviour required in the elevated position she occupied. In reaching his decision, the High Commissioner took into account the circumstances of the case, including aggravating and mitigating circumstances, as well as prior practice in relation to disciplining such misconduct. Ms. Modey-Ebi engaged in an egregious abuse of authority and violated the duties of independence, neutrality, and impartiality expected of an international civil servant. She breached trust to the extent that the continuation of an employment relationship became intolerable and infeasible. Dismissal was the only proportionate sanction.

54. The UNDT also correctly concluded that there were no procedural irregularities and that Ms. Modey-Ebi was afforded due process. The IGO interviewed Ms. Modey-Ebi and 15 witnesses. The IGO correctly considered that the persons who Ms. Modey-Ebi suggested to be interviewed would not be able to contribute material facts to the matters under investigation and would solely serve as character witnesses. As intimated, the common cause facts speak for themselves in this case. Moreover, Ms. Modey-Ebi did not call any of these witnesses before the

UNDT thus raising doubt about the relevance or value of any testimony they might have offered. There is no merit to Ms. Modey-Ebi's unsubstantiated accusations of partiality by the IGO.

55. The failure of the UNDT to rule on Ms. Modey-Ebi's application for costs is inconsequential. In terms of Article 10(6) of the UNDT Statute, the UNDT may only award costs where a party manifestly abused the proceedings before it. There is nothing on record which suggests that the High Commissioner abused the proceedings. He acted properly in defending an unmeritorious application of a staff member who had abused her position.

56. In the premises, the appeal stands to be dismissed.

Judgment

57. The appeal is dismissed and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Raikos
Athens, Greece

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 4th day of January 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar