



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

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Judgment No. 2022-UNAT-1256

**Gonzalo Ramos  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Martha Halfeld, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1604
Date of Decision:	1 July 2022
Date of Publication:	12 August 2022
Registrar:	Weicheng Lin

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Counsel for Appellant:	Marcos Zunino, OSLA
Counsel for Respondent:	Amanda Stoltz

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Mr. Ramos, a former Security Adviser at the United Nations Department of Safety and Security (UNDSS) based in Kingston, Jamaica, filed an appeal against the Judgment issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) that dismissed his application whereby he contested the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice, and with termination indemnity. Mr. Ramos was found to have committed misconduct by sexually harassing AA,<sup>1</sup> a staff member of an international organization based in Kingston, during a residential security inspection of her apartment there, while he talked in Spanish to AA, so that BB, a security inspector with the same international organization as AA's and an English native speaker also present during the inspection, could not understand the conversation.
2. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the UNDT Judgment in its entirety.

**Facts and Procedure**

3. Mr. Ramos joined the Organization on 30 June 2007. During the material time, he was Security Advisor in the UNDSS based in Kingston, Jamaica.
4. In the afternoon on 30 August 2018, at around 2:10, Mr. Ramos undertook a residential security inspection, in his capacity as the DSS Security Adviser at the duty station, of an apartment that AA was renting in Kingston. Mr. Ramos, AA and BB were all present at the inspection. Mr. Ramos and AA were mostly talking to each other in Spanish. AA had studied Spanish in college and lived in Colombia for a year. BB went around to examine the perimeter fencing of the complex and the emergency exit in the hallway, and Mr. Ramos inspected the kitchen, the living room and the bedroom with AA alongside while asking her questions and checking the boxes on a questionnaire. At the end of the inspection, Mr. Ramos gave AA his phone number. The entire inspection lasted approximately 20 to 30 minutes.

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<sup>1</sup> Throughout the text, the victim and witnesses are anonymized for their privacy protection. The Appeals Tribunal adopts the designation system that the Dispute Tribunal used by assigning a double alphabet in uppercase letters to each individual other than Mr. Ramos, whose name appears in the Judgment.

5. BB stayed behind at AA's request, after Mr. Ramos had concluded the inspection and left the apartment. According to BB, who was subsequently interviewed by the Office of Internal Oversight Services (OIOS), AA looked very frightened as she asked him to go upstairs with her. Once there, she told BB that Mr. Ramos had asked her about her bedroom, and whether her boyfriend would come over. Moreover, Mr. Ramos offered to come over to her apartment to cook for her saying he was a very good cook, and he referred to her bed as where she made the fire. When told that her boyfriend cooked for her, Mr. Ramos asked AA whether her boyfriend came every night because he could cook on a night that her boyfriend was not there. Again, according to BB, he had actually heard something about "pretty, like very pretty" and AA had told him that Mr. Ramos had said she was attractive and a nice lady.

6. Later that afternoon on 30 August 2018, CC, a friend of AA's working for another international organization in Kingston, texted AA via WhatsApp. CC knew Mr. Ramos professionally. The text exchange between CC and AA took place between 4:45 pm and 5:39 pm; it paused until 8:01 pm, when CC texted a message. The exchange resumed between 10:01 pm and 10:09 pm and again between 12:28 am and 1:02 am next morning on 31 August 2018. The text messages written in Jamaican Patois are reproduced below.

30 August 2018

CC (4:45 pm): Coming with me today?

AA (5:14 pm): No me home

CC (5:15 pm): Oh

AA (5:15 pm): Gonzolo come do security check

AA (5:15 pm): Say place no safe

CC (5:15 pm): Whatevrr!!

AA (5:17 pm): Him a look me bad bad

AA (5:32 pm): Him want to come have dinner at my house

CC (5:34 pm) A so him thirsty

AA: (5: 37 pm): Yeah

AA (5:38 pm): Him say him we come cook for me and him we bring everything

AA (5:39 pm): He inspected my bedroom and ask if this is where all the actions occur and if this is where a fire would start

AA (5:39 pm): Him ask me if no fire no gwan pon d couch

CC (8:18 pm): No thats sexual harassment.

AA (10:01 pm): Yeah it got very uncomfortable

AA (10:01 pm); All of this taking place in Spanish

AA (10:02 pm): So [BB] not full aware

AA (10:09 pm): He ask me if I used the stove a lot. I told him no because my boyfriend cooks for me. Him say he will come cook for me and I shouldn't worry because he will bring everything. Me say oh really and him say yes. So me say yeah man hoping he was joking cuz from what I can remember him married. Is when the inspection done and him repeat it and ask me when him can come like which date me see say d man serious. So me tell him my schedule is crazy and would not allow for a meet up. Him then proceed to say if it is because my boyfriend would get jealous? If it is that I am not allowed friends. I said no my bf would never get jealous over a "friend". I am allowed to have friends like everyone else

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31 August 2018

CC (12:28 am): I can imagine. Good thing he never come alone.

AA (12:50 am): Yrp

AA (12:51 am): When him a tell (BB) fi leave me mek sure signal [BB] and tell him no leff me wid him

AA (12:52 am): So [BB] stayed until he left and then I explained to [BB] what was happening when d man a talk pure Spanish

CC (12:53 am): Lawd gee. U have to be firm with him. Him never say those things to me but he always felt creepy and a stare inna u eyes or dig out u hand middle

CC (12:54 am): Once my lady boss ask him, say that she aware that he makes inaptopritae comments and gestures and I shouldn't be afraid to report it

CC (12:54 am): But dem nah go support u, if u do that, so I just avoid him and keep seriuos face

CC (1:00 am): Is him authority figure him a try use as influence, cus who cudda want him?

AA (1:02 am): Me say massah

7. By e-mail dated 31 August 2018 to EE, Director of Administrative Services at AA's workplace, copying BB, AA stated that she wished to "put on record" that during the inspection, Mr. Ramos "at times made [her] feel rather uncomfortable with his inappropriate sexualized comments and advances which were made in Spanish and outside of the hearing of [BB]".

8. Also on 31 August 2018, upon her return to office, AA met with DD, who was AA's supervisor, and gave the latter a verbal account of the incident during the residential security inspection.

9. Again, on 31 August 2018, Mr. Ramos presented his Residential Security Measures (RSM) inspection report to the international organization for which AA was working, with a copy to AA among others, saying that the UNDSO found that AA's residence was not recommended for occupancy.

10. On either 31 August 2018 or 1 September 2018, AA met with CC in person and further shared her thoughts and feelings about the residential security inspection.

11. According to AA, on 14 September 2018, she went to the Head of her organization to report the incident, and to seek advice and counsel on the appropriate way forward.

12. On 26 October 2018, AA filed a complaint of inappropriate behavior against Mr. Ramos, stating that, during the residential security inspection, Mr. Ramos had "consistently displayed unprofessional behaviour and inappropriate sexual advances towards [her]". She recounted what had happened between her and Mr. Ramos, between her and BB, and between her and CC.

13. On 4 December 2018, OIOS received a report of possible prohibited conduct implicating Mr. Ramos. That report was based on AA's complaint of 26 October 2018.

14. On 28 June 2019, OIOS issued an investigation report, finding that, during the residential security inspection of AA's apartment on 30 August 2018, Mr. Ramos had made an unwanted comment on AA's physical appearance, offered to cook for her and wanted to compete in a cooking contest with her boyfriend. Moreover, he had made unwelcome remarks in AA's bedroom about fire and the action occurring there and about her bed being small. Additionally, he had asked AA if her boyfriend would be jealous if she had friends and offered again at the end of the inspection to return and cook for her. OIOS also found that Mr. Ramos' comments and actions had left AA feeling uncomfortable and unsafe in her home, as she feared that Mr. Ramos might return to her residence when she was alone. OIOS concluded that, on the basis of the evidence gathered including the interviews of AA, Mr. Ramos and other witnesses and the review of relevant documentation, AA's account of the incident was credible,

and Mr. Ramos' account regarding the unwelcome comments lacked credibility. OIOS referred Mr. Ramos' case to the Office of Human Resources (OHR) for appropriate action.

15. In a memorandum dated 27 August 2019, the Director of the Administrative Law Division, OHR, charged Mr. Ramos with making unwelcome comments and/or advances, including one or more of a sexual nature, to AA while conducting a security assessment of her apartment in his official security capacity.

16. On 24 October 2019, Mr. Ramos submitted a response, denying the allegations of misconduct against him. In his view, none of the allegations were based on facts and OIOS had failed to conduct a fair and professional investigation, but had rushed to conclusions without a solid shred of evidence. He argued that AA, BB and CC disliked him and all of them harbored motives to damage his reputation, as AA did not get what she wanted in terms of a security certification of the apartment she had already rented, BB had failed to cooperate with the UNDSS and Mr. Ramos had brought the issue to the attention of BB's supervisors on more than one occasion, and CC had previously applied to a post but had not been selected by the reviewing panel of which Mr. Ramos was a member. Mr. Ramos maintained, contrary to the allegations, that BB had been present at all times during the inspection, that Mr. Ramos had continued to speak Spanish with AA because AA had said to him (Mr. Ramos) that her Spanish was not fluent and she needed to practice it, that Mr. Ramos had made a comment that AA's apartment was nice and the place could be recommended to others only as a compliment, because he did not want to hurt any feelings, that Mr. Ramos did say to AA that he was a very good cook, but never said that he would cook for her alone or implied anything else, and that he did exclaim "wow! This is where the fire starts", when he was referring to the flammables all over her bedroom and the possibility of a fire starting there. Mr. Ramos concluded by saying that he did not make any unwelcome comments and/or advances towards AA, and that it was possible for AA to have misunderstood and misinterpreted him due to her level of understanding in Spanish.

17. By letter dated 15 November 2019 (sanction letter), the Assistant Secretary-General for Human Resources (ASG/OHR) advised Mr. Ramos of the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (USG) to separate him from service with compensation in lieu of notice and with termination indemnity, on the basis of clear and convincing evidence that he had made unwelcome comments and/or advances, including one or more of a sexual nature, to AA during a security assessment of her apartment on

30 August 2018, in violation of Staff Regulations 1.2(a) and 1.2(f), Staff Rule 1.2(f), and ST/SGB/2008/5 titled “Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”.

18. The ASG/OHR recalled the procedural history of the case and concluded that both AA and BB had provided largely consistent account of the incident, whereas Mr. Ramos’ account of the incident was not credible, and his explanations of his conduct lacked consistency. Moreover, the ASG/OHR found that Mr. Ramos had been afforded due process throughout the investigation and subsequent disciplinary process. The ASG/OHR informed Mr. Ramos that, in determining the appropriate action, the USG had taken into account the Secretary-General’s past practice in relevant cases and considered whether any mitigating or aggravating factors applied to his case. The ASG/OHR further informed Mr. Ramos that, in light of the nature of his conduct, his name would be added to the Organization’s ClearCheck database.

19. On 12 February 2020, Mr. Ramos filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) to contest the decision to separate him from service.

*The UNDT Judgment*

20. On 14 July 2021, the UNDT issued Judgment No. UNDT/2021/082, rejecting Mr. Ramos’ application. The UNDT probed the issues that Mr. Ramos had raised in respect of the motive and credibility of the complainant and witnesses, the investigative findings and the legal conclusions. The Dispute Tribunal found that the USG had failed to consider the issue of AA’s Spanish language skills when assessing the facts, as that was a relevant circumstance and the disciplinary sanction was essentially based on what Mr. Ramos had said to AA in Spanish and the reasonableness of her emotional reaction thereto. The UNDT also found that the USG had made a procedural error when she had failed to explicitly state which category of misconduct under ST/SGB/2008/5 that Mr. Ramos was found to have committed following a finding of misconduct. But the Dispute Tribunal otherwise rejected Mr. Ramos’ challenge of the credibility of AA and other witnesses,<sup>2</sup> and found that AA’s account was credible,<sup>3</sup> that the factual findings set out in the sanction letter had been proved by clear and convincing

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<sup>2</sup> Impugned Judgment, para. 31.

<sup>3</sup> Paragraph 70 of Judgment No. UNDT/2021/082 says: “... the Tribunal finds that the Applicant’s account is credible and ...”. This is clearly a typo. Logically, the sentence should read “... the Tribunal finds that AA’s account is credible and ...”.

evidence,<sup>4</sup> and that the USG had acted within the scope of her discretion when concluding that Mr. Ramos had committed misconduct during the residential security inspection in the form of sexual harassment.<sup>5</sup>

*Procedure before the Appeals Tribunal*

21. On 9 September 2021, Mr. Ramos appealed Judgment No. UNDT/2021/082 to the Appeals Tribunal, and the Secretary-General submitted an answer on 16 November 2021.

**Submissions**

**Mr. Ramos' Appeal**

22. Mr. Ramos requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety, rescind the separation decision and remove all adverse material from his file. Alternatively, Mr. Ramos requests that the Appeals Tribunal award him, at a minimum, two years' net base salary as compensation. He further requests that, in any case, the Appeals Tribunal order that his name be removed from the ClearCheck database.

23. Mr. Ramos submits that the UNDT erred in fact in rejecting his arguments concerning the ulterior motive and credibility of AA, BB and CC, and in finding that the factual findings set out in the sanction letter had been proven by clear and convincing evidence.

24. Regarding the credibility of AA, BB and CC, Mr. Ramos argues that AA's testimony before the UNDT showed that she was upset by his negative security assessment of her apartment, and that, by complaining that Mr. Ramos had behaved inappropriately, AA could expect to obtain security allowances to which she was not entitled due to the lack of compliance of her residence. This indeed happened when AA's organization approved the allowances for her despite 16 security deficiencies that he had identified in his RSM report. In his view, AA's complaint was, in all likelihood, a factor in her organization's determination to ignore the expert assessment of the UNDSS and grant her the security allowances. Moreover, AA's prior experience of sexual harassment admittedly influenced her account and should have called into question the reliability of her account. Contrary to the UNDT's conclusion that the contradictions in AA's account were "insignificant details", those contradictions were

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<sup>4</sup> *Ibid.*, para. 71.

<sup>5</sup> *Ibid.*, para. 77.



significant for the credibility of her account. As for BB, Mr. Ramos contends that BB was biased and his motive was tainted. In his view, BB harbored animosity towards him, as he had on several occasions alerted BB's supervisors about BB's dereliction of duties. Moreover, BB resented the use of Spanish and made derogatory comments about the people from Spanish-speaking countries. In violation of the applicable rules, BB prepared a parallel report concerning the security of AA's apartment which unlawfully undermined Mr. Ramos' assessment and benefitted AA. Regarding CC, Mr. Ramos maintains that the fact that CC was a close friend of AA's committed to supporting AA affected her reliability as a witness. Mr. Ramos noted that CC had spread unsubstantiated rumors against him, thus showing animosity towards him.

25. As for the UNDT's conclusion about the factual findings in the sanction letter being proven by clear and convincing evidence, Mr. Ramos contends that the evidence in the record does not support the UNDT's findings that AA appropriately understood everything Mr. Ramos had said to her in Spanish, that he had described AA as "bonita", that his passing and innocuous comment on his cooking skills and a hypothetical cooking competition in jest had an improper sexual innuendo, and that his reference to a "fire" when inspecting AA's bedroom had an improper sexual innuendo. The Dispute Tribunal ignored the implausibility in AA's account that Mr. Ramos would tell her that her apartment was not safe, but immediately insist on coming and cooking for her in the apartment. Mr. Ramos maintains that those factual errors resulted in a manifestly unreasonable decision as they amounted to finding AA's account established, despite its implausibility and lack of corroboration.

26. Mr. Ramos maintains that the UNDT erred in law in its application of the standard of proof. While the Dispute Tribunal knew the correct standard of clear and convincing evidence, the UNDT actually applied the lower standard of balance of probability, as it did not evaluate whether the evidence was unequivocal, manifest, and persuasive to the high standard appropriate to the gravity of the accusation and the severity of the consequence. Examples include the UNDT's findings of "most credible", "established" and "credible" in respect of AA's testimony about Mr. Ramos' comments on her physical appearance, in the kitchen and in the bedroom, without explanation or corroboration, and despite all the countervailing evidence.

27. Mr. Ramos also maintains that the UNDT erred in law in concluding i) that the contested decision was lawful despite its finding that the USG had not taken the relevant matters of AA's Spanish language skills and his alleged comments on AA's physical appearance

into consideration, ii) that the USG had acted within the scope of her discretion when concluding that he had committed sexual harassment, despite having made a serious irregularity of failing to state which category of misconduct he was found to have committed, and iii) that the sanction was proportionate, despite its finding that his case would fit in the category of less severe cases, while impermissibly speculating about the objective of the sanction and considering his conduct during the UNDT process as part of its evaluation of the proportionality of the sanction.

### **The Secretary-General's Answer**

28. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment, uphold the contested decision, and dismiss Mr. Ramos' appeal in its entirety.

29. The Secretary-General submits that the UNDT correctly determined that the factual findings in the sanction letter had been proven by clear and convincing evidence. That determination was appropriately based on the evidence before the Dispute Tribunal and on its assessment of the credibility of the witnesses and the plausibility and persuasiveness of their testimony and was entirely within the discretion of the Dispute Tribunal. The fact that some of AA's oral evidence was not supported entirely by corroborating evidence did not, by itself, mean that it was without evidentiary value. Mr. Ramos has failed to show that the UNDT had erred in such assessment, let alone that such errors had resulted in a manifestly unreasonable decision. In this regard, the Secretary-General also submits that the UNDT applied the requisite standard of proof in the present case.

30. The Secretary-General maintains that it was not an error for the UNDT to consider that the facts had been established even after finding that the USG had not included explicit reference to two specific matters in the sanction letter. The UNDT correctly concluded that the USG had acted within the scope of her discretion when determining that the established facts legally amounted to serious misconduct. Mr. Ramos has failed to establish any reversible error in respect of the UNDT's statement that his conduct could reasonably be categorized as a "pattern of behaviour" or be perceived to cause offence. It is not relevant to the disposition of the case whether Mr. Ramos' comments and remarks containing inappropriate sexual innuendo during the residential security inspection were considered to constitute a "pattern of behaviour" or a "single incident". AA's testimony, given under oath during her OIOS interview

and later during the UNDT hearing, clearly demonstrates that she found Mr. Ramos' sexually suggestive comments inappropriate and unwelcome.

31. The Secretary-General also submits that the Dispute Tribunal correctly determined that the sanction was proportionate and it did not fall outside the scope of his discretion. He believes that considering the seriousness of Mr. Ramos' actions and his exploitation of a security inspection to engage in sexual harassment of a junior staff member, when he was vested with a particular power and authority towards AA, the disciplinary measure imposed on him was neither obviously absurd nor flagrantly arbitrary. The Secretary-General notes that the sanction imposed on Mr. Ramos was not the most severe available, as it allowed him to receive some emoluments, namely, termination indemnity and compensation in lieu of notice.

### **Considerations**

32. The main issue for consideration and determination in the present appeal is whether the UNDT erred in law or in fact resulting in a manifestly unreasonable decision, when it found that the decision to impose on Mr. Ramos the disciplinary measure of separation from service, with compensation in lieu of notice, and with termination indemnity, because he had violated Staff Regulations 1.2(a) and 1.2(f), Staff Rule 1.2(f) and ST/SGB/2008/5, was lawful.

33. The contested decision was the outcome of a complaint filed by AA. OIOS undertook an investigation which led to the finding that Mr. Ramos had engaged in prohibited conduct while carrying out a residential security inspection at AA's residence on 30 August 2018, including making unwelcome comments to her, some of which were of a sexual nature, thus resulting in AA feeling uncomfortable and unsafe at her home.

34. Staff Regulations and Rules of the United Nations (ST/SGB/2018/1; 1 January 2018), stipulate in relevant parts the following:

#### **Regulation 1.2**

##### **Basic rights and obligations of staff**

##### **Core values**

(a) Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members

shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them;

...

(f) ... [Staff members] shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations

...

**Staff Rule 1.2**

**Basic rights and obligations of staff**

...

**Specific instances of prohibited conduct**

(f) Any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited.

35. In turn, Section 1 of the Secretary-General's Bulletin on Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5) provides the definition of sexual harassment as *any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another*, when such conduct interferes with work, is made a condition of employment or *creates an intimidating, hostile or offensive work environment*. While typically involving a pattern of behaviour, *it can take the form of a single incident*. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders. ST/SGB/2008/5 also stipulates the following:

**Section 2**

**General principles**

2.3 In their interactions with others, all staff members are expected to act with tolerance, sensitivity and respect for differences. *Any form of prohibited conduct in the workplace or in connection with work is a violation of these principles* and may lead to disciplinary action, whether the prohibited conduct takes place in the workplace, in the course of official travel or an official mission, or in other settings in which it may have an impact on the workplace.

**Section 3****Duties of staff members and specific duties of managers, supervisors and heads of department/office/mission**

3.1 All staff members have the obligation to ensure that they do not engage in or condone behaviour which would constitute prohibited conduct with respect to their peers, supervisors, supervisees and other persons performing duties for the United Nations.

36. A finding of sexual harassment against a staff member of the Organization is a serious matter. Such a finding will have grave implications for the staff member's reputation, standing and future employment prospects. For that reason, the UNDT may only reach a finding of sexual harassment on the basis of sufficient, cogent, relevant and admissible evidence permitting appropriate factual inferences and a legal conclusion that all the elements of sexual harassment have been established in accordance with the standard of clear and convincing evidence. In other words, the sexual harassment must be shown by the evidence to have been highly probable. To ensure the satisfaction of the standard of proof in disciplinary cases, the UNDT ordinarily will be obliged to convene an oral hearing at which the alleged wrongdoer will be afforded an opportunity to face and cross-examine those who accuse him or her of misconduct.<sup>6</sup>

37. Hence, before concluding that there has been sexual harassment, there has to be sufficient, credible and reliable evidence proving a high probability that the perpetrator: i) made a sexual advance; ii) made a request for a sexual favour; iii) verbally or physically engaged in conduct or behaviour of a sexual nature; or iv) made a gesture of a sexual nature. In addition, the advance, request, conduct or gesture must be shown to have been unwelcome; might reasonably have been expected or perceived to cause offence or humiliation to another; or have caused an intimidating, hostile or offensive work environment.<sup>7</sup>

38. Sexual harassment can encompass numerous types of conduct, some overtly sexual in nature and others more subtle. There is a wide spectrum of conduct that can be defined as sexual harassment and its determination is entirely context specific. Whether a particular type of conduct constitutes sexual harassment will depend on a number of factors and the circumstances of each case. Importantly, a determination of whether a particular type of

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<sup>6</sup> *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1210, paras. 37-38.

<sup>7</sup> See *ibid.*, para. 35.

conduct is sexual in nature does not turn on the intentions of the perpetrator but on the circumstances surrounding the conduct, the type of conduct complained of, the relational dynamics between the complainant and the perpetrator, the institutional or workplace environment or culture that is generally accepted in the circumstances, and the complainant's perception of the conduct.<sup>8</sup> The conduct does not have to be intentional to be of a sexual nature.<sup>9</sup>

39. Furthermore, sexual harassment does not require that the alleged harasser was aware of the offending character of his or her behaviour and was put on notice, which would otherwise preclude a single incident from constituting sexual harassment.<sup>10</sup> The fact that the sanction letter referred to Mr. Ramos having committed "harassment, including sexual harassment" was the reason why the UNDT rejected any irregularity in the sanction letter which did not explicitly state which category of misconduct Mr. Ramos was found to have committed under ST/SGB/2008/5. Contrary to Mr. Ramos' contention, in so doing, the UNDT did not exceed its competence by putting itself in the Secretary-General's position, but rather interpreted the content of the sanction letter beyond its mere language in a systematic manner. In this sense, the Appeals Tribunal is satisfied with the fact that Mr. Ramos was fully appraised of the charges against him and was afforded ample opportunity to defend himself, both during the disciplinary procedure and judicial proceedings.

40. In reaching its conclusion that the Organization had acted properly (lawfully and reasonably), the UNDT, after having had three consecutive days of oral hearings and heard all oral evidence presented by the parties including Mr. Ramos, AA, BB, CC and DD, in more than nine hours of recordings, found the following, among other things:

- i) Mr. Ramos' challenges to the credibility of the witnesses: AA, BB, CC and DD were rejected;

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<sup>8</sup> *Appellant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1137, paras. 57-58. See also *Hallal v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/046, para. 51 (affirmed on appeal).

<sup>9</sup> *Appellant, op cit.*, Judgment No. 2021-UNAT-1137, para. 56.

<sup>10</sup> *Andry Adriantseho v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1146/Corr.1, para. 44.

- ii) At least part, if not the majority, of the inspection was conducted in Spanish, Mr. Ramos being a Spanish native speaker and AA being fluent in Spanish, even though BB could not understand Spanish;
- iii) Mr. Ramos referred to AA's physical appearance as "bonita" at the beginning of the inspection, after having asked her whether she lived alone and described her status as "solita, solita" (meaning "alone, alone");
- iv) Mr. Ramos made comments and proposals with an improper sexual innuendo during the inspection in the kitchen when he praised his own cooking skills as better than those of AA's boyfriend and when he proposed a cooking competition with AA's boyfriend under the pretext that he was "joking while working" ("bromeando mientras trabajando");
- v) Mr. Ramos also made comments and proposals of an improper sexual nature in the bedroom, stating that "this is where the fire starts" or in another version "this is where the action takes place" after seeing AA's bed and underwear, which made him think of her having sex with her boyfriend. The UNDT highlighted that this fact had been acknowledged by Mr. Ramos during the OIOS interview (even though he later unconvincingly tried to explain to the UNDT that he was referring to a fire hazard in the bedroom), and had been corroborated by the consistency of AA's account of events to BB, CC and DD after the inspection;
- vi) Mr. Ramos' assessment of AA's apartment, whereby it was not recommended for occupancy according to the residential security measures, was ultimately overruled. It is an undisputed fact that Mr. Ramos' role was only advisory and that the decision rested with AA's workplace authorities; thus, Mr. Ramos' challenge to the credibility of AA's testimony in this regard was baseless, since there was no possible ulterior motive.

41. In his appeal, Mr. Ramos mainly repeats the points already discussed and rediscussed at the UNDT level. Even the headings of his appeal, presented in a small font size, are basically the same as those used at the first instance level. Therefore, from the outset, the Appeals Tribunal recalls that a party cannot merely repeat on appeal arguments that did not

succeed before the UNDT. As already noted in *Krioutchkov*<sup>11</sup> and *Aliko*,<sup>12</sup> the Appeals Tribunal is not an instance for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. This is because “[i]n the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal”.<sup>13</sup> When it comes to an alleged error of fact, the appellant has the burden to convince the Appeals Tribunal that it resulted in a manifestly unreasonable decision.<sup>14</sup> This has not been the case here and most of the appeal could be dismissed on this simple basis.

42. The Appeals Tribunal heard the recordings of the UNDT hearings annexed to the appeal, plus the one in which Mr. Ramos gave his oral evidence. The Appeals Tribunal finds that the UNDT did not err in any of its factual findings and did not err in its legal conclusion that the administrative decision of the Organization to impose on Mr. Ramos the disciplinary measure of separation from service, with compensation in lieu of notice, and with termination indemnity, was lawful, proportionate, and reasonable. Mr. Ramos has not established any grounds of appeal in this regard. Nor has he established any relevant facts in his favour when cross-examining the witnesses.

43. It is undisputed that there was no physical contact with AA during the inspection, that the inspection was the only opportunity where Mr. Ramos and AA met, and that the crux of the matter is whether the utterances which were said by Mr. Ramos in Spanish during the inspection could have had a sexual connotation. It is also undisputed that, although BB was present during the entire inspection, he could not understand the parts of the conversation between Mr. Ramos and AA which were crucial for the determination of whether there was sexual harassment, since they were held in Spanish.

44. As follows from the definition of sexual harassment cited above, sexual harassment can happen in a *single incident* (even a minute could theoretically suffice for this) and regardless of any physical contact. Unwelcome verbal conduct can amount to sexual harassment, and the

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<sup>11</sup> *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

<sup>12</sup> *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

<sup>13</sup> *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346, para. 23.

<sup>14</sup> Article 2(e) of the Appeals Tribunal Statute.



Appeals Tribunal is persuaded that the UNDT correctly assessed that this was what occurred in the present case.

45. From the oral evidence before the UNDT, it can be understood that regular inspections of residential accommodations of staff members working for international organizations in Kingston, Jamaica, as in the case of AA, are held in coordination with the inspectors from the UNDSS, where Mr. Ramos worked. The purpose of these inspections is to see whether the premises of the residence meet certain standards, as well as to check if safety and security measures are in place, in terms of the location, residence and features, with the consequence that certain security may be offered by the Organization, including an alarm and a panic button, should the residence be recommended to be equipped with such devices. If the residence is finally considered recommended for occupancy, certain costs related to the residence, including security, would be borne by the relevant organization and not the staff member.

46. Regarding the possible existence of an ulterior motive in AA's account of events, since Mr. Ramos had told her that her apartment would not be approved for occupancy, the Appeals Tribunal finds no error in the UNDT assessment of the totality of the oral evidence within the context provided by the parties. The UNDT thus correctly found that AA's testimony was consistent with that of the others and that the possible disagreements in the accounts of AA, BB and CC were all insignificant details and easily explained by the passage of time between the occurrence of the relevant facts and the time of the interviews.<sup>15</sup> Moreover, AA raised the complaint before the result of the inspection became official, thus the "ulterior motive" did not exist at the time when the complaint was made.

47. Mr. Ramos' insistence on AA's lack of credibility is hence without merit. The mere fact that Mr. Ramos was assessing her residence and told her in Spanish that he would not recommend the place from a security standpoint does not invalidate AA's testimony. Nor does the fact that Mr. Ramos' non-recommendation of her residence was ultimately overruled by the decision-maker, AA's employing organization, after she had filed her complaint. If Mr. Ramos' reasoning were correct, he would have carte blanche that could shield his behaviour and invalidate any testimony against him during his inspections.

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<sup>15</sup> Impugned Judgment, para. 24.

48. Moreover, Mr. Ramos' non-recommendation report directly contradicted what he had said just before in English so that BB could understand. In this regard, BB testified to the UNDT that he was surprised by the fact that Mr. Ramos' official report did not recommend AA's residence for occupancy, because Mr. Ramos had said the opposite in English during the inspection. Specifically, BB recalled Mr. Ramos as saying to him in English that "this place is a nice place, [he liked] this place and would recommend it to other people who come to Kingston and would like to stay". Although Mr. Ramos had spoken highly of the residence, his report eventually stated that the residence was not approved for occupancy and had sixteen recommendations, which was why BB was "taken aback" by the report.

49. The absolute contradiction between what Mr. Ramos had said in English during the inspection and his subsequent report serve to reinforce AA's claim that Mr. Ramos said one thing in English (that he would recommend the residence) and the complete opposite in Spanish (that the place was not safe and thus would not be approved). Mr. Ramos' conduct during the residential security inspection indeed created an intimidating, hostile or offensive work environment, as defined by Section 1(1.3) of ST/SGB/2008/5.

50. Moreover, although not raised by AA, a different version of the events could hypothetically have been conceived, namely, Mr. Ramos not recommending AA's residence for occupancy as "revenge" for her not welcoming his advances, and this line of reasoning would be fully consistent with Mr. Ramos' tenacious follow-up of his report, by means of various email exchanges where he used bold and capital letters in an attempt to enhance his non-approval of AA's residence. However, the truth is that even Mr. Ramos in his testimony before the UNDT acknowledged that, if the residence was not endorsed for security reasons, international staff, such as AA, could sign a liability waiver, under which they affirm they understand the negative recommendations and assume the responsibility for not leaving the place. Therefore, there was no reason to suspect that AA had any ulterior motive behind her complaint against Mr. Ramos.

51. In light of the issues raised on appeal that AA's testimony was contradictory on whether she was already living in the property or that she was still looking to rent it when the inspection took place, the Appeals Tribunal is certain that AA was already living there and that any possible reference otherwise was just a lapse with no bearing on the broad situation. Whether or not AA complied with the rules which provide that the inspection should take place before the staff member moves into the property is something that has no consequence for the present

case. Moreover, AA's testimony evidenced that although it would be advisable to obtain security clearance before moving into the residence, as a Jamaican, and thus a local, she knew the neighbourhood and her landlord was aware of the fact that she needed security clearance for the rental of the property.

52. Furthermore, the written evidence on the record shows that BB, in his capacity of security officer, commented on Mr. Ramos' recommendations and report, often rebutting them as "recommended but not mandatory". During his testimony before the UNDT, BB denied having accommodated AA's security interests by lowering the standard of recommendations. He also gave information about some other residences with similar problems having been approved in the past. The fact that the final approval of AA's residence was apparently in accordance with BB's general comments leads the Appeals Tribunal to dismiss Mr. Ramos' grounds of appeal that BB's observations were "in violation of the rules" or that he was biased against Mr. Ramos.

53. On the contrary, in light of the ultimate decision to approve AA's residence, the Appeals Tribunal is convinced about the reasonableness of BB's clarification according to which inspectors followed a practice whereby they could give staff members some time to comply with the policies, before eventually deciding on the recommendation of a residence. It is also important to highlight, as did the UNDT, that BB's position regarding the recommendation of AA's residence eventually prevailed, against Mr. Ramos' disapproval of the apartment.<sup>16</sup>

54. Despite the discussion above regarding the credibility of AA's testimony, which is needed to address the issues raised in Mr. Ramos' appeal, what matters the most in the present case is that the relevant parts of the conversation were held in Spanish and only AA could have understood them since BB does not speak Spanish, a fact known to both Mr. Ramos and AA. To help AA improve her Spanish when Mr. Ramos was performing his official duty was not a reasonable excuse. This appeared in fact to have interfered with Mr. Ramos' work, as there is no complete certainty as to what was said by whom during the inspection. Despite being there to attend the inspection, BB could not follow most of the conversation because of the fact that it was held in Spanish, having to content himself with observing AA's facial expressions, which he later described as having an "uncomfortable" look.

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<sup>16</sup> *Ibid*, para. 23.

55. On another note, there was no error of law in the UNDT Judgment when it found that the sanction letter made no finding regarding AA's Spanish skills, but still did not rescind the decision in question. In light of the jurisprudence cited above according to which sexual harassment can happen regardless of the scale of impact on the victim, the Appeals Tribunal does not find this a relevant omission in the sanction letter. Moreover, considering Mr. Ramos' own admission that AA was fluent in Spanish and was able to lead the conversation in Spanish, the Appeals Tribunal also dismisses Mr. Ramos' claim that AA was not able to understand everything he said to her. In this regard, the fact that AA did not explicitly ask Mr. Ramos to continue in English is not relevant. In reality, she tried to bring the language of the conversation back to English several times, not because she was not able to understand or speak Spanish, but because she wanted BB to understand and follow the conversation, and hopefully be a deterrent to Mr. Ramos' sexual advances.

56. If we were to use Mr. Ramos' line of argument, as Head of the Security Officer Unit, UNDSS, Mr. Ramos should indeed have avoided using a language which was not completely known to AA. By using Spanish, he should obviously have avoided using expressions which could be misinterpreted. In other words, in order to avoid misunderstanding of his intentions, Mr. Ramos should have refrained himself from speaking Spanish during the core part of the inspection, after the initial friendly greeting. In addition, in the case of using Spanish, as he did, he should have avoided ambiguous expressions or vocabulary which could lead to discomfort on the part of the person whose residence was being inspected. Mr. Ramos did not do this, and this is why the investigators and the UNDT had to undertake a long series of interviews and testimonies in order to grasp the whole context of what happened during the inspection in AA's residence on 30 August 2018.

57. Mr. Ramos' account of facts was that they started talking in Spanish after AA had initiated the conversation and said that she regretted not having many opportunities to speak Spanish. He also said that he had used the word "bonita", meaning "nice" for the fact that AA had expressed herself in Spanish. But this version of events was only raised before the UNDT, and not before the investigators, to whom Mr. Ramos said that he was referring to the "house" as "bonita".<sup>17</sup> Furthermore, while Mr. Ramos denied having used the word "bonita", the gender ("bonito" or "bonita") changes according to his different versions of when he used it, namely, outside or inside

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<sup>17</sup> *Ibid.*, para. 43.

the apartment. The Appeals Tribunal hence concludes that the UNDT did not err in its assessment on this matter.<sup>18</sup>

58. In light of the above, the Appeals Tribunal is not persuaded that AA fabricated the incident in revenge for Mr. Ramos' refusal to approve her apartment, as Mr. Ramos alleges. His reasoning is, moreover, not consistent with AA's social media messages with CC only a few hours after the inspection, in which she confided to her friend what had happened in her apartment. Nor is Mr. Ramos' line of reasoning consistent with what AA told BB immediately after the inspection, when she asked him to stay in order to share with him her confusion and anguish about Mr. Ramos' utterances during the inspection. More convincing was AA's detailed and consistent account of events, corroborated by the testimonies of BB, CC and DD.

59. According to AA's testimony before the UNDT, she tried to be polite throughout the inspection, also because she saw Mr. Ramos as a senior influential official with connections. Although she was not sure about Mr. Ramos' intent at the beginning of the conversation, his comments during the inspection created an intimidating work environment. At first, Mr. Ramos created confusion in AA's mind about his intentions, when he commented that she was "bonita" after her answer that she had no dependents and his observation that she was "solita, solita" (alone, alone). Then, already in the flat, during the conversation about cooking, Mr. Ramos admitted that he would win a cooking competition against AA's boyfriend and proposed to cook for AA, even though conceding that this subject could have caused some sensitivity and discomfort in AA.<sup>19</sup> Mr. Ramos' claim that there was no connection between cooking and sex, apart from being naïve, does not take into account the fact that sexual harassment often comes within the context of a conversation. In this regard, AA said that she had brought to light the information about having a boyfriend who used to cook for her in an attempt to set a limit for Mr. Ramos, who then said that he was "joking while working", making her think that he would cease his sexual innuendos. However, when the inspection came to the bedroom, AA was certain that Mr. Ramos had overstepped the boundaries of what was considered to be an appropriate behaviour.

60. Regarding Mr. Ramos' conduct in the bedroom, his own statement to the OIOS reveals that after having seen underwear in plain sight in a untidy bedroom, he exclaimed in Spanish, "Oh, this is where the action takes place!", before clarifying that "action" referred to "sex with

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<sup>18</sup> *Ibid*, para. 46.

<sup>19</sup> *Ibid.*, para. 50.

her boyfriend”. However, in the hearing before the UNDT, he stated that his expression at that time was, “This is where the fire takes place!”, referring to the flammability of the clothing, etc. In light of this change of accounts and the totality of the evidence, including the place where his conversation took place (in the bedroom) and the language only known to AA but not to BB, the Appeals Tribunal finds that, regardless of the expression used (“fire starting” or “action taking place”), Mr. Ramos was inappropriately referring to AA having sex on her bed. Mr. Ramos’ assertion in his appeal that he was “understandably nervous” and that he “was trying to tell the investigators what they wanted to know” is a mere attempt to reargue his case with no substantive grounds. AA also said that, at this point, she started responding only in English in an attempt to bring the conversation back to the inspection and away from any sexual inuendo.

61. While still in the bedroom Mr. Ramos asked in Spanish what AA would do when the fire started. Clarifying her testimony during the UNDT oral hearing, AA said that she responded in English about a real fire, even though she interpreted the word fire as having a sexual undertone, because she was trying to redirect the conversation to a line of reasoning, by saying that if there was a fire, she would go to the bathroom, use the water to extinguish it or, if the water was not sufficient she would exit using the emergency exit, or in a worst-case scenario, the balcony.<sup>20</sup> Up to this point, BB could only understand a few utterances which were spoken in English. Among these, there was one which at the time of the events BB recalled Mr. Ramos telling him that AA did not understand what kind of fire he was talking about, and that he was not talking about a fire that an AC extinguisher could cool down (in English). Given the fact that BB could not have followed the thread of the previous conversation in Spanish, it is not surprising that he could well have supposed that Mr. Ramos was indeed referring to a kind of real fire which an AC extinguisher would not be enough to extinguish, because the fire would be beyond the effectiveness of an ordinary AC extinguisher.

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<sup>20</sup> According to BB’s testimony during the UNDT hearing, “I’ll try to jump through the window or run out to the stairs if there is a fire.” was AA’s answer in English to Mr. Ramos’ question in Spanish of what she would do in case of fire.

62. Furthermore, there was still the comment, in Spanish, that the bed was “small, but it would do”, referring to the small twin bed being suitable for them together. BB testified about AA telling him this just after the inspection, when she asked BB to stay longer, despite the fact that Mr. Ramos had told him to leave twice, as they were about to finish the inspection.<sup>21</sup>

63. The reality is that the constant change of language between Spanish and English had the consequence of excluding BB from the conversation.<sup>22</sup> Mr. Ramos raises again the issue of BB not having interfered during the inspection. However, BB’s testimony during the UNDT hearing explained that he had not intervened because there was no physical violence and that he only became aware of the content of the conversation in Spanish after having stayed at the end of the inspection at AA’s request and listened to her version of the events in English. Although not having intervened during the inspection and despite having been dismissed by Mr. Ramos, BB stayed at AA’s request at the end of the inspection and believed what she had told him. Only then could he understand why AA had such an uncomfortable expression on her face while talking to Mr. Ramos in Spanish during the inspection. BB also said that AA’s account of facts was consistent with her facial expressions during the inspection, as she looked worried, frightened, and upset, with perspiration on her face.

64. By the same token, Mr. Ramos takes issue with AA’s background of previous sexual abuse, which could have influenced her emotions being heightened or her interpretation at the time of the events. While this could be partly true, this does not render Mr. Ramos’ behaviour more appropriate in the premises. As discussed, sexual harassment can occur regardless of the scale of the impact on the possible victim. On another note, any previous negative experience on AA’s part might have contributed to help her to keep the conversation within professional limits and to report the abuse she had encountered.

65. Any other “contradiction” brought by the appeal, particularly with regard the exact dates or sequences of events, is inconsequential to the outcome of the case, especially in light of the time elapsed since the relevant facts.

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<sup>21</sup> Mr. Ramos told BB “We’re almost done here, you can leave”, while AA signaled to BB not to leave.

<sup>22</sup> BB, who was observing, testified that he did not know if the intention of Mr. Ramos in Spanish was to keep him from understanding the conversation.

66. There is one aspect of the appeal which merits appreciation which did not merely repeat previous arguments already presented and rejected at the first instance level. Mr. Ramos takes issue with the fact that the UNDT used the adjective “credible”, arguing that this indicates that the UNDT applied a lower standard of review when dealing with disciplinary measures, which require that the fact be established by clear and convincing evidence. Mr. Ramos was specifically referring to AA’s physical appearance, the connection between cooking and sex, the alleged comments in the bedroom and at the end of the inspection.

67. The standard of review in disciplinary matters is settled in the Appeals Tribunal’s unambiguous jurisprudence, according to which a judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilised 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”.<sup>23</sup>

68. Specifically with regard to the standard of evidence when dealing with cases involving *sexual harassment*, the Appeals Tribunal has already held that the credibility of the witnesses is of fundamental value.<sup>24</sup> Moreover, it was undoubtedly enough for the Secretary-General to discharge his burden of proof by providing “the various evidentiary statements relay[ing] the version of the complainant with a conspicuous consistency that added to their credibility.”<sup>25</sup> By contrast, the statement of Mr. Ramos revealed that he was vague, elusive and contradictory in his account. Added to that, it is objectively unlikely that the various witnesses against Mr. Ramos would have colluded or conspired with the complainant to falsely incriminate Mr. Ramos, and they had no reason to do this.

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<sup>23</sup> *Abdulhamid Al Fararjeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1136, para. 11.

<sup>24</sup> *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-819, para. 31; See also *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, para. 56.

<sup>25</sup> *Mbaigolmem, op cit.* Judgment, para. 31.



69. In the present case, the UNDT Judgment used the word “credible” when it referred to the following facts: i) Mr. Ramos told AA in her bedroom that her bed was small but that it would do, by this implying that, even though he is a man of a large build, the bed was of an adequate size for them to have sex; ii) Mr. Ramos told BB that the fire to which he referred was not the type that an AC extinguisher could cool down; iii) after the inspection, Mr. Ramos not only insisted on giving to AA his phone number, but also asked her when he could cook for her, and questioned her about whether she was permitted to have friends and about her boyfriend not leaving her even if she were unfaithful to him, which AA understood as “whether her boyfriend would leave her if she cheated”;<sup>26</sup> and iv) after the inspection, AA asked BB not to leave because she needed to speak with him. After Mr. Ramos had left, AA discussed Mr. Ramos’ conduct with BB, in particular his mentioning of her making fire, the comments about her boyfriend and the fact that he could cook for her, while BB noted that AA looked frightened.

70. The facts cited in i) and ii) above were evidenced before the UNDT only by AA’s statements and therefore not corroborated by other witnesses, while those in iii) and iv) were corroborated both by the OIOS interview statements and BB’s testimony before the UNDT.<sup>27</sup> While it is true that the UNDT used the adjective “credible” to describe these facts, it is also true that the UNDT interpreted them together with the entirety of the evidence on the record, including the consistency of all the other witnesses’ statements, in contrast with Mr. Ramos’ contradictory statements to the UNDT and OIOS, as well as the general sexual undertone of some of Mr. Ramos’ other comments.

71. As noted above in this Judgment, in order for conduct to constitute sexual harassment, apart from an “unwelcome sexual advance”, it is required that the behaviour in question “might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, [...] or creates an intimidating, hostile or offensive work environment” and that “[w]hile typically involving a pattern of behaviour, it can take the form of a single incident”. Accordingly, the Appeals Tribunal is satisfied that there is clear and convincing evidence that the Mr. Ramos’ conduct as established did constitute sexual harassment.

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<sup>26</sup> Impugned Judgment, para. 69(b).

<sup>27</sup> *Ibid.*, para 61 and 70.

72. In summation, the UNDT was in a position to assess the candour and demeanour of the witnesses, the contradictions in Mr. Ramos' oral evidence, the consistency of each witness statement when compared to other witnesses testifying in relation to the same incident, and the integrity of the witnesses' recall of the events. The UNDT had a proper opportunity to make an analysis and evaluation of the probability or improbability of the different versions on each of the disputed issues and, because its conclusion is reasonable, the Appeals Tribunal will not interfere with its findings.

73. In light of the above, the Appeals Tribunal agrees with the UNDT that Mr. Ramos' submissions regarding the facts had not been established and that the facts set out in the sanction letter were substantiated to the relevant standard of evidence. The UNDT did not err when it found that Mr. Ramos' comments and proposals could reasonably be categorised as a pattern of behaviour having caused offence and humiliation, and created an intimidating, hostile or offensive work environment, as defined by Section 1(1.3) of ST/SGB/2008/5.<sup>28</sup>

74. Mr. Ramos lastly claims that the UNDT erred when it found that the sanction imposed was proportionate to the offence, particularly because he should not be adversely affected for exercising his fundamental right to defend himself and appeal the allegations. While this broad statement is generally applicable to criminal cases, to the extent of the present case, it must be interpreted together with the duty to cooperate with the administrative investigation pursuant to Staff Rule 1.2(c), and the principle of good faith. In its Judgment, the UNDT, having had the advantage of assessing the demeanour of witnesses while they were giving evidence and their credibility and persuasiveness, pointed to some inconsistencies in Mr. Ramos' account of events, with which the Appeals Tribunal has no reason to disagree. This, coupled with the other circumstances of the case, *particularly the fact that Mr. Ramos abused his authority while performing his duties in a protective capacity*, leads to the conclusion that the sanction was indeed proportionate to the offence. In particular, the following jurisprudence applies:<sup>29</sup>

... Sexual harassment is a scourge in the workplace which undermines the morale and well-being of staff members subjected to it. As such, it impacts negatively upon the efficiency of the Organization and impedes its capacity to ensure a safe, healthy and productive work environment. The Organization is entitled and obliged to pursue a severe approach to sexual harassment. The message therefore needs to be sent out

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<sup>28</sup> Impugned Judgment, para. 78.

<sup>29</sup> *Mbaigolmem, op cit.* Judgment, para. 33; and *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-089, para. 27.

clearly that staff members who sexually harass their colleagues should expect to lose their employment. The sanction imposed by the Administration in this case was accordingly proportionate.

... Under the circumstances we agree with the UNDT that the conduct was established and that it was serious. Though perhaps the Secretary-General, in his discretion, could have come to a different conclusion, we cannot say that the sanction of summary dismissal was unfair or disproportionate to the seriousness of the offences. The UNDT refused to substitute its judgment in this case, and this Tribunal must be deferential not only to the Secretary-General, but also to that Tribunal, which is charged with finding facts.

75. In light of the above, the Appeals Tribunal finds no merit in any of the grounds of Mr. Ramos' substantive appeal or in his claims for compensation and finds no fault in the UNDT Judgment. Consequently, the appeal is dismissed in its entirety.

**Judgment**

76. Mr. Ramos' appeal is dismissed and Judgment No. UNDT/2021/082 is affirmed.

Original and Authoritative Version: English

Decision dated this 1<sup>st</sup> day of July 2022 in New York, United States.

*(Signed)*

Judge Halfeld, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Raikos

Judgment published and entered into the Registry on this 12<sup>th</sup> day of August 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar