



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

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Judgment No. 2023-UNAT-1318

**Benedictine Desbois  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Martha Halfeld
Case No.:	2022-1686
Date of Decision:	24 March 2023
Date of Publication:	11 April 2023
Registrar:	Juliet Johnson

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Counsels for Appellant: Julia Kyung Min Lee, OSLA  
Dorota Banaszewska, OSLA

Counsel for Respondent: Angélique Trouche

**JUDGE JOHN RAYMOND MURPHY, PRESIDING.**

1. Ms. Benedictine Desbois, a former staff member with the United Nations Environment Programme (UNEP), contested the decision of the Administration to impose on her the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity, for physical assault (contested decision).
2. By Judgment No. UNDT/2022/014<sup>1</sup> (impugned Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Ms. Desbois' application.
3. Ms. Desbois lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure**

5. At the time of her separation from service, in January 2019, Ms. Desbois was employed as a Programme Management Assistant at the G-6 level in UNEP, in Paris, France. She commenced employment with the Organization in March 2003.
6. It is alleged that on 25 November 2016 at a party held at the UNEP office in Paris, at which alcohol was consumed, Ms. Desbois became involved in a heated conversation with a colleague, M.K., and assaulted her in the presence of two other staff members, S.K. and E.K. M.K. alleged that Ms. Desbois shouted at her, pushed her, and slapped her in the face. The confrontation occurred in the context of an argument about work-related matters concerning a job vacancy.
7. Both M.K. and Ms. Desbois reported the incident. On 26 November 2016, M.K. reported to UNEP management that Ms. Desbois physically assaulted her by hitting her with "four very strong slaps in the presence of other colleagues". On 27 November 2016, Ms. Desbois reported to management that there had been a "violent altercation". She alleged

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<sup>1</sup> *Desbois v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/014.

that M.K. had been “extremely aggressive” and pushed her. She maintained that she “had no choice than to respond to defend” herself.

8. On 28 November 2016, M.K. again reported the incident, this time to the Chief of Project Management and Administration Unit (CPMA) who then obtained written statements from Ms. Desbois, M.K., S.K., E.K. and other persons who had not witnessed the incident but had interacted with the parties after the event.

9. On 7 December 2016, M.K. submitted a memorandum to the Executive Director of UNEP again reporting the alleged assault.

10. On 14 December 2016, UNEP referred the incident to the Office of Internal Oversight Services (OIOS) for investigation. On 16 December 2016, M.K. separately reported the incident to OIOS via its hotline. On 22 December 2016, M.K. met with the Deputy Director of her division and the CPMA and told them that she was stressed and had consulted a doctor, Dr. C., at the United Nations Educational, Scientific and Cultural Organization (UNESCO) who observed that her face was still swollen from the slaps.

11. After conducting an investigation, and interviewing various witnesses, OIOS issued an investigation report on 31 July 2017. It concluded that Ms. Desbois had pushed M.K. and slapped her in the face, at least twice.

12. By memorandum dated 16 October 2017, UNEP referred the matter to the Office of Human Resources Management (OHRM) for appropriate action. By memorandum dated 14 June 2018, Ms. Desbois was requested to respond to the formal allegations of misconduct. After various written exchanges, on 7 January 2019, more than 2 years after the incident, a sanction letter was delivered to Ms. Desbois informing her that it had been established that she had committed misconduct in respect of which the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity was imposed.

### *Impugned Judgment*

13. The UNDT held a hearing in October 2021 during which it heard oral evidence from five witnesses: Ms. Desbois, M.K., E.K., S.K. and the lead OIOS investigator who conducted the investigation.

14. The UNDT carefully reviewed the testimony of the witnesses who testified before it as well as the documentary evidence, particularly the investigation report and the medical records admitted into evidence during the hearing before it, and concluded that the assault had occurred and constituted misconduct.<sup>2</sup>

15. In reaching its decision the UNDT relied principally on the evidence of S.K., who testified that she clearly saw Ms. Desbois slapping M.K.<sup>3</sup> The UNDT accepted this eyewitness testimony as credible and reliable in all material respects. The testimony was corroborated by the documentary evidence, albeit hearsay, of the medical report of Dr. C., which confirmed that M.K.'s right cheek was sensitive to the touch and that she was in a state of stress at the time of the medical examination.<sup>4</sup> The evidence of the assault was further corroborated by E.K. who testified that she had heard a rapid "clapping sound" and, like S.K., confirmed a verbal exchange between Ms. Desbois and M.K. to the effect that M.K. should "wake up" and with M.K. responding to Ms. Desbois that if she assaulted her again, she would kill her.<sup>5</sup>

16. The UNDT rejected as implausible the version of Ms. Desbois that she had not slapped M.K. but had merely placed her hands on M.K.'s cheeks to hold her and calm her down. This, the UNDT considered, was inconsistent with what S.K. saw, what E.K. heard and the contemporaneous medical report of Dr. C.<sup>6</sup> It also constituted a "partial" admission (albeit an attempt at exculpation).<sup>7</sup>

17. After considering mitigating and aggravating factors, the UNDT held that the sanction of separation from service was proportionate. The UNDT was of the view that an assault of a colleague will always be a serious matter, incompatible with the ethos of the Organization and in violation of the standard laid down by Staff Regulation 1.2(f) requiring staff members to "conduct themselves at all times in a manner befitting their status as international civil servants".<sup>8</sup> It accordingly saw no reason or basis to interfere with the contested decision of the Administration, which fell within the reasonable range of sanction options available to it.<sup>9</sup>

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<sup>2</sup> *Ibid.*, paras. 51 and 53.

<sup>3</sup> *Ibid.*, paras. 37 and 45.

<sup>4</sup> *Ibid.*, paras. 32 and 48.

<sup>5</sup> *Ibid.*, paras. 41 and 45-46.

<sup>6</sup> *Ibid.*, paras. 47-48.

<sup>7</sup> *Ibid.*, para. 61.

<sup>8</sup> *Ibid.*, paras. 52-53, 59 and 64.

<sup>9</sup> *Ibid.*, para. 65.

18. The UNDT finally concluded that while there were flaws in the OIOS investigation, in its failure to follow up on various evidentiary questions and disclose certain information, these were later cured in that the proceedings before the UNDT entailed a *de novo* review and consideration of the facts based upon a proper determination of the credibility of the witnesses that testified before it. Thus, it held that there were no substantial procedural irregularities that justified a finding of illegality.<sup>10</sup>

*Procedure before the Appeals Tribunal*

19. Ms. Desbois filed her appeal of the impugned Judgment with the UNAT on 18 April 2022. The Secretary-General filed his answer on 24 June 2022.

**Submissions**

**Ms. Desbois' Appeal**

20. With respect to the impugned Judgment, Ms. Desbois submits that the UNDT erred in fact and law in dismissing her application.

21. Ms. Desbois essentially argues that the UNDT erred in fact by preferring the versions of M.K., S.K. and E.K. which she maintains were tainted by contradictions and inconsistencies. M.K. claimed that Ms. Desbois slapped her initially twice and then twice again when she crossed the room. S.K., in her initial written statement to the OIOS investigators, did not state that she had witnessed the assault but later, in a second statement, clarified that she saw Ms. Desbois slap M.K. across the face three to four times in sequence. Ms. Desbois maintains that the two accounts are different to an extent that raises doubt as to their veracity.

22. Ms. Desbois also points to different accounts of the movements of the witnesses during the alleged assault and whether the assault resulted into M.K. bumping into a television screen which S.K. prevented from falling over. This, she maintains, is inconsistent with the testimony of S.K. who did not confirm that she was in the vicinity of the television screen and said she left the room to seek assistance.

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<sup>10</sup> *Ibid.*, paras. 68-69.

23. Ms. Desbois argues further that M.K.'s exaggeration of the assault, her improbable denial of using vulgar language and her claim that she suffered pain in her knees after the assault (when she perhaps had a previous existing condition for which she took medication) renders her evidence less credible.

24. Ms. Desbois maintains that the UNDT erred in failing to accept her submission that M.K. and S.K. colluded to align their stories, when the evidence suggested that they were in contact during the investigation and probably shared information.

25. Ms. Desbois further submits that the UNDT erred in attaching weight to the medical report of Dr. C. noting that M.K.'s right cheek was sensitive to the touch. This, she maintains, was inconsistent with the observations of two persons, R.D.J. and A.F. (neither of whom were called to testify before the UNDT), to the effect that M.K. was completely normal immediately following the incident.

26. Ms. Desbois submits that the UNDT also erred in finding, in the absence of any aggravating factors, that the sanction was proportionate.

27. Ms. Desbois submits additionally that the UNDT erred in holding that the alleged procedural irregularities of the OIOS investigation did not have a material outcome on the decision that an assault had occurred and that separation from service was the appropriate sanction.

28. Ms. Desbois accordingly requests her appeal to be upheld and for the impugned Judgment to be reversed. Ms. Desbois also requests that the Appeals Tribunal order her reinstatement or, in the alternative, the payment of two-year net base salary as compensation in lieu of reinstatement as well as a compensation for moral damages caused by her separation from service. Finally, she also requests that the UNAT order the Administration that "all adverse materials relating to the disciplinary proceedings" be removed from her personnel file.

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

29. The Secretary-General submits that the Dispute Tribunal did not err in fact or law in dismissing Ms. Desbois' application.

30. The Secretary-General submits that despite purported inconsistencies and the possible exaggeration of its nature and details as alleged by Ms. Desbois, there is clear and convincing evidence that Ms. Desbois slapped M.K. The testimonies of M.K., S.K. and E.K. convincingly confirm that the slapping in fact occurred. This is corroborated further by the medical evidence which Ms. Desbois did not challenge before the UNDT in any meaningful way.

31. The Secretary-General argues that the disciplinary sanction was proportionate and entirely consistent with past practice and the jurisprudence of the UNAT.

32. The Secretary-General maintains that Ms. Desbois' due process rights were not violated and that the failure to disclose some of the records was cured during the trial before the UNDT. Ms. Desbois had a proper opportunity to review the evidence that had not been shared with her during the investigation and, in any event, the assault was established by clear and convincing evidence before the UNDT.

33. The Secretary-General accordingly requests that the appeal be dismissed, and the impugned Judgment be affirmed.

### **Considerations**

34. The primary question for consideration in this appeal is whether the UNDT erred in fact and law in concluding that there was clear and convincing evidence that Ms. Desbois assaulted M.K. by slapping her in the face.

35. As a point of departure, it must be accepted that the UNDT was best placed to assess the credibility of the witnesses who testified before it and the inherent probabilities that the physical assault in fact occurred. It had the opportunity to observe the demeanour of the witnesses and to assess their calibre on the basis of their performance in the witness box.

36. To accept Ms. Desbois' version of events, we would have to conclude that M.K., S.K. and E.K. colluded to perjure themselves for no evident purpose. Likewise, we would have to reject the medical report of Dr. C. as insufficiently reliable.

37. While there are admittedly inconsistencies in some of the statements and the various versions put forward at different stages of the investigation process, these are not of an order that damage the credibility and reliability of the three witnesses in relation to the key factual issue.

S.K.'s testimony that she saw the assault stands firm. There is no evidence that she or E.K., who heard noises consistent with an assault, were motivated by bad faith to falsely incriminate Ms. Desbois or that they would be inclined to do so on account of any prior negative *animus* between them. In so far as there may be different accounts about the nature and extent of the assault and the whereabouts of its occurrence, it must be kept in mind that we have here a shocking event, a rapid assault, and a moving scene. In such circumstances, it is necessary to allow for a measure of subjective experience and evaluation. What remains consistently certain is that three witnesses had knowledge and experience of the assault, which has not been convincingly controverted or shown to be fabricated by ill motive.

38. In addition, there is the medical report of Dr. C. which contains an expert opinion that M.K.'s right cheek was sensitive to the touch, thus confirming an earlier injury. While this evidence is hearsay (on account of its probative value being dependent on a person, Dr. C., who did not testify before the UNDT), Ms. Desbois did not object to its admission. She indeed admitted that she grabbed M.K.'s face, such explanation amounting to an admission of a lesser assault. The implausibility and inherent improbability of that explanation (most probably made conscious of the inculpatory implications of the truth), as the UNDT understood, constitutes an admission against interest of some probative value, which is corroborative of the assault having in fact taken place as alleged.

39. In the premises, the UNDT did not err in concluding that the assault in fact occurred.

40. The Organization imposes a high standard of conduct on staff members. The physical assault of another staff member is a fundamental violation of the ethos of the United Nations, the universal upper guardian of all human rights, including the right to dignity and personal autonomy.<sup>11</sup> It accordingly falls within the managerial prerogative of the Administration to take a strict approach in the interest of ensuring that staff members conduct themselves in a manner befitting their status as international civil servants. Its response to the misconduct here lies within the range of proportionate options. Importantly, Ms. Desbois did not establish a degree of provocation that mitigated her retaliation which was also excessive and beyond the bounds of any permissible defense in the altercation underway. It was thus entirely appropriate for the UNDT to defer to management's exercise of discretion in this instance. It made no error in doing so.

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<sup>11</sup> *Halidou v. Secretary-general of the United Nations*, Judgment No. 2020-UNAT-1070, para. 35.



41. Finally, the UNDT also did not err in holding that procedural shortcomings in the investigation were not of any consequence. The findings of the UNDT that the assault was established in accordance with the clear and convincing evidence standard, and the sanction was proportionate, were based correctly on the evidence adduced before it and not exclusively on the findings of the OIOS. The findings and conclusions of the OIOS report do not amount to a judicial determination in accordance with the clear and convincing evidence standard. By reason of the methodology applied, the findings of an OIOS investigation will normally be to the effect that there are reasonable grounds (probable cause) to believe that misconduct has occurred. The purpose of the UNDT proceedings in disciplinary cases is to decide if those reasonable grounds for believing misconduct has occurred can be sustained as *highly* probable by all the evidence placed before the UNDT, a standard short of the criminal standard of beyond all reasonable doubt (requiring more than mere reasonable grounds or a balance of probabilities). Consequently, procedural irregularities in the OIOS investigation of whether reasonable grounds (probable cause) of misconduct exist will invariably be inconsequential when a judicial determination establishes misconduct as highly probable. As the UNDT correctly held, and it stands to reason, the procedural defects of the preliminary investigation were cured by the thorough judicial trial it conducted. An investigation is one thing, a judicial trial is another. The UNDT accordingly made no error on this score either.

42. In the premises, the appeal must be dismissed.

**Judgment**

43. The appeal is dismissed, and Judgment No. UNDT/2022/014 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of March 2023 in New York, United States.

*(Signed)*

Judge Murphy, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Halfeld

Judgment published and entered in the Register on this 11<sup>th</sup> day of April 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar