



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

Judgment No. 2023-UNAT-1340

**Mubashara Iram
(Appellant/Respondent)**

v.

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

JUDGMENT

Before: Judge Sabine Knierim, Presiding
Judge John Raymond Murphy
Judge Gao Xiaoli

Case Nos.: 2022-1704 & 2022-1705

Date of Decision: 24 March 2023

Date of Publication: 8 May 2023

Registrar: Juliet Johnson

Counsel for Ms. Iram: Raja Muhammad Farooq

Counsel for Secretary-General: Patricia C. Aragonés

JUDGE SABINE KNIERIM, PRESIDING.

1. Mubashara Iram, a former staff member, contested the decision to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity (contested Decision).
2. By Judgment No. UNDT/2022/039¹ (impugned Judgment), the United Nations Dispute Tribunal (UNDT) replaced the contested disciplinary measure by that of demotion of one step in grade with deferment, for three years, of eligibility for consideration for promotion.
3. Ms. Iram and the Secretary-General each lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses Ms. Iram's appeal, grants the Secretary-General's appeal and modifies the impugned Judgment.

Facts and Procedure²

5. Ms. Iram held the position of Water, Sanitation and Hygiene (WASH) Officer at the Sindh Field Office (SFO) in Karachi, Pakistan, United Nations Children's Fund (UNICEF).³ As of September 2018, she had served with UNICEF for more than seven years.⁴
6. On 11 September 2018, the Office of Internal Audit and Investigation (OIAI), UNICEF, received three complaints of possible misconduct from the Pakistan Country Office (PCO) against Ms. Iram.⁵ The complainants, a WASH Officer (Vo1), a WASH Specialist (Vo2), and a WASH Officer (Vo3), reported that she had engaged in workplace harassment by using offensive language, engaging in bullying, intimidation and humiliation. On 12 February 2019, she was notified by OIAI about said complaints.

¹ *Iram v. Secretary-General of the United Nations*, Judgment dated 26 April 2022.

² Summarized from the impugned Judgment as relevant to the appeals.

³ Impugned Judgment, para. 1.

⁴ Contested Decision, para. 41.

⁵ Impugned Judgment, para. 2.

7. On 7 November 2019, Ms. Iram was interviewed by OIAI.⁶ On 20 November 2019, she submitted an official statement to the investigation with supporting documents. On 26 December 2019, OIAI issued its investigation report concluding that she had failed to observe the standards of conduct and referred the matter to the Division of Human Resources (DHR) for appropriate action.

8. On 23 January 2020, the Director, DHR, issued a charge letter against Ms. Iram for misconduct on account of seven allegations: (a) bullying VO1, (b) making abusive comments towards VO1's child, (c) repeatedly and unwelcomingly calling and messaging VO1 and VO2 after work-hours, (d) insulting VO2 in the presence of other WASH personnel during a team meeting, (e) bullying VO3, (f) shouting at VO3 in the presence of VO1, and (g) repeatedly and unwelcomingly touching and hugging VO3 after he had told her that it made him feel uncomfortable.⁷ On 24 February 2020, she responded to the charge letter.

9. By the 11 May 2020 letter from the Deputy Executive Director (DED), Management, UNICEF, Ms. Iram was informed of the contested Decision.⁸ DED dropped the charges for one incident under charge (a) and three incidents under charge (e)⁹ but concluded that the remaining allegations against her were established by clear and convincing evidence and that her actions amounted to serious misconduct¹⁰. DED decided to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii).

10. On 8 August 2020, Ms. Iram filed an application before the UNDT, seeking to be reinstated into service and having all the allegations dropped, awarded compensation, and having the parties held accountable for initiating the case.¹¹

⁶ *Ibid.*, para. 4.

⁷ *Ibid.*, para. 7.

⁸ *Ibid.*, para. 9.

⁹ Letter of 11 May 2020 (Annex 4 to the Secretary-General's appeal).

¹⁰ The contested Decision referred to the violation of paragraph 21 of the Standards of Conduct for International Civil Service, Staff Regulations 1.2(b) and (f), paragraphs 6.1, 6.3 and 6.15 of POLICY/DHR/2019/001 (UNICEF Policy on the Disciplinary Process and Measures), and paragraph 1.1(b) of Executive Directive CF/EXD/2012-007 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority).

¹¹ Ms. Iram application before the UNDT (Annex 2 to her appeal).

11. On 18 October 2020, she filed a rejoinder.¹² On 9 March 2022, she indicated a desire for an oral hearing. By Order No. 38 (GVA/2022) of 15 March 2022, the UNDT informed the parties that the case would be determined on the papers. On 17 March 2022, she filed a motion requesting leave to submit additional comments and supporting documents. By Order No. 40 (GVA/2022) of 21 March 2022, her motion was denied.

The Impugned Judgment

12. On 26 April 2022, the UNDT rendered the impugned Judgment granting the application in part, rescinding the contested disciplinary measure and replacing it by that of demotion of one step in grade with deferment, for three years, of eligibility for consideration for promotion, and ordering the Secretary-General to reinstate Ms. Iram and effect any back payments accordingly.

13. In addition, the UNDT decided that, should the Secretary-General elect to pay compensation in lieu of reinstatement, she shall be paid, as an alternative, a sum equivalent to 12 months of her net-base salary at the rate that she would have been paid had she been demoted at the time of her separation, minus the termination indemnity that she received upon her separation. The UNDT ordered that payment of that amount was due within 60 days of the date on which the Judgment becomes executable.

14. The UNDT found that, given the timeline of the reported incidents, the contemporaneous evidence on record, and the fact that the complainants had been separately reporting said incidents to Senior Management, SFO, for a while before the official complaint, Ms. Iram's claim that they were conspiring against her to fabricate or overstate the incidents relating to the alleged workplace harassment was neither credible nor supported by any evidence.¹³ The allegations are established by clear and convincing evidence.

15. The UNDT held that her conduct towards her colleagues VO1, VO2, and VO3, which included using demeaning, abusive and offensive language, and intimidatory actions, was improper and unwelcome and could reasonably be perceived as causing offence or humiliation, constituted serious misconduct in violation of paragraph 21 of the Standards of Conduct for

¹² Impugned Judgment, para. 12.

¹³ *Ibid.*, para. 34.

International Civil Service, Staff Regulations 1.2(b) and 1.2(f), paragraphs 6.1, 6.3, and 6.15 of POLICY/DHR/2019/001, and paragraph 1.1(b) of CF/EXD/2012-007.¹⁴

16. The UNDT noted that in determining the appropriate sanction it considered the nature of Ms. Iram's actions, the practice of the Organization in matters of comparable misconduct, as well as whether any aggravating or mitigating factors applied to her case.¹⁵ The sanction of separation from service with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii), is too harsh a penalty to pay in line with the past practice of the Secretary-General in matters of comparable misconduct.¹⁶

17. The UNDT also found that it weighed against the Secretary-General the fact that Ms. Iram's supervisors never addressed any of the workplace issues in her performance evaluation, that they did not take formal action over the staff's complaints, that the only attempt at mediation was an informal meeting conducted by one of her supervisors at the time, who himself had previously complained about her, and that the concerned staff were never given proper assistance until they threatened to resign.¹⁷

18. In addition, the UNDT was of the view that the difficult and stressful nature of the functions required of her, her performance record, and, especially, the lack of support and corrective action by UNICEF Senior Management, should have been taken into account as mitigating factors.¹⁸ The disciplinary measure was disproportionate.

19. The UNDT maintained that Ms. Iram's due process rights had been respected during the investigation and disciplinary processes.¹⁹ She was interviewed, given the opportunity to provide comments and countervailing evidence in response to the draft investigation report, as well as the charge letter. Her comments were given proper consideration by the investigators.

¹⁴ *Ibid.*, paras. 50 and 54–55.

¹⁵ *Ibid.*, para. 56.

¹⁶ The UNDT refers to a Compendium of disciplinary measures, Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2020; cases Nos. 98, 136, 137, 159, 169, 458, and 517.

¹⁷ Impugned Judgment, para. 66. According to VO2's 28 August 2018 e-mail, VO1 and VO3 had been "reporting these issues to the previous [Chief of Field Office Ms. N.K.] (...) at various intervals"; "[h]owever, the situation" had not improved and "these issues" had been "going on since the last 3-5 years". In paragraph 65 of its Judgment, the UNDT noted that "despite multiple complaints made to supervisors since at least 2015, UNICEF Management and Human Resources never formally acted upon those complaints".

¹⁸ *Ibid.*, para. 68.

¹⁹ *Ibid.*, para. 72.

Procedure before the Appeals Tribunal

20. On 25 June 2022, Ms. Iram filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 30 August 2022. On 27 June 2022, the Secretary-General filed an appeal of the impugned Judgment, to which she responded on 28 August 2022.

21. On 26 October 2022, the Appeals Tribunal consolidated the appeals.

Submissions

Ms. Iram's Appeal

22. Ms. Iram requests the Appeals Tribunal to modify the impugned Judgment, reversing the parts which impose deferment, for three years, of her eligibility for consideration for promotion and award to the Secretary-General the discretion to pay compensation in lieu of reinstatement. She seeks reinstatement with all the respective benefits. Furthermore, she seeks that the Appeals Tribunal hold the parties accountable for initiating the case and rendering the contested Decision.

23. She submits that the UNDT has erred on a question of fact, resulting in a manifestly unreasonable decision. There is no clear and convincing evidence of the allegations against her.

24. Ms. Iram alleges that the UNDT failed to diligently consider that 31 of 38 allegations made by VO1, VO2 and VO3 were dropped. The UNDT failed to establish that the contested Decision reflected incorrectly the chronology of events in respect of VO1's complaint made on 15 November 2016 and informal mediation held on 23 August 2016. As to the 20 April 2017 complaint, the UNDT failed to appreciate that all the allegations made in that complaint were dropped.

25. Ms. Iram argues that the UNDT should have considered that a 16 August 2017 e-mail by VO3, referring to "tension", lacks specificity and her name. The UNDT failed to reflect on the fact that on 25 August 2017, she was delegated the function of Officer-In-Charge. A 27 November 2017 e-mail which she received as an exhibit with the investigation report on 23 January 2020, had not been shared or discussed with her until that time. The UNDT failed to

note that a performance evaluation report, covering the relevant period in 2017, assessed her favourably.

26. She submits that it is implausible that the discontentment, if genuine, could have remained silent for three years. The UNDT ignored that the mode and manner of the complaints underwent substantial improvement over time. The UNDT failed to adjudge the credibility of witnesses. Given that 31 of 38 allegations were dropped, and the principle of *falsus in uno, falsus in omnibus*²⁰, the UNDT should have dismissed the remaining allegations as unsubstantiated.

27. Ms. Iram maintains that the narrative by her former supervisor Mr. Al., a witness in support of VO1's complaints, was incorrect and he did not act neutrally or transparently in respect of her. The testimony of Mr. N., a WASH Specialist, another witness, included statements about Mr. Al.'s character but were ignored by the UNDT. The UNDT should also have considered that Mr. Gr., former Chief of WASH,²¹ had never observed any behaviour of hers, as outlined by Mr. Al.

28. She contends that the UNDT failed to consider that²², when Wi-Fi signals are not strong enough, it is not visible whether the WhatsApp call was connecting. VO1 never expressed to her that her calls were unwelcomed. The call records are not credible. In addition, VO2 contacted her outside working hours on 3 February 2018 via e-mail and on 16 October 2018 via a phone message, for example, which was typical for UNICEF.

29. Ms. Iram argues that the allegation of bullying VO1 about an illicit relationship is without credible evidence and was developed by Mr. Al. in an arbitrary and concealed manner in consultation with VO1 in 2016 for the purpose of advancing their personal agenda.

²⁰ Ms. Iram refers to the legal principle (meaning "false in one thing, false in everything") that a witness who testifies (willfully) falsely about one matter is not credible on any matter.

²¹ According to the investigation report, Mr. Gr. was Chief of WASH, PCO, until June 2016 and thereafter the position was held by Mr. Go. until December 2018 (paragraph 13 of the investigation report).

²² With reference to allegation (c), see *supra*.

30. She alleges that the incident which purportedly included insulting VO2 in the presence of other WASH personnel during a team meeting²³, was framed. VO1 and VO3 have an interest in the outcome of the case. No independent witnesses have testified to this allegation.

31. Ms. Iram submits that the allegations of bullying VO3²⁴ and shouting at VO3 in the presence of VO1²⁵ are not supported by any credible evidence. VO1 is partial. Maintaining the allegation of bullying VO3 is inconsistent with dropping other similar charges. It is not credible that she would have conducted herself in an unpleasant manner with anyone, as she was applying for another post at that time.

32. She maintains that the UNDT erred in concluding that she touched and hugged VO3 in the presence of the former Chief, WASH, PCO. The investigation report stated that Mr. Go. could not recall any such incident. No other person besides VO3 reported such incidents. The allegation lacks concrete evidence with specific details as to the date and place of any such incident.

33. Ms. Iram contends that the facts do not qualify as misconduct. Misconduct must have a motive and be willful. This is not the case. The UNDT failed to consider the issue of the expiry of VO1's contract. No administrative measure (e.g., reprimand) or managerial action had been applied to her alleged conduct (e.g., caution, warning, advisory communication, training, coaching, referral).

34. Ms. Iram argues that VO1 fabricated the narrative of having suffered detrimental effects to VO1's pregnancy due to the stress induced by her misconduct. Also, VO2's malice is exemplified by an untruthful allegation by VO2 that, on one occasion, she did not consult with the team about a document before sending it to the PCO. In addition, contrary to what VO3 alleged about discord in the process of revisiting some work-related proposals, VO3 had, on 7 September 2017, written appreciatively of her commitment to the results.

35. Ms. Iram asserts that her due process rights were not respected. Her submissions were essentially not heard. The UNDT should have considered her performance record. The UNDT should not have ignored that one of the witnesses was a former complainant and subsequently

²³ Allegation (d), see *supra*.

²⁴ Allegation (e), see *supra*.

²⁵ Allegation (f), see *supra*.

carried out fact-finding.²⁶ Furthermore, VO2's conflict of interest was not considered. Her supervisors abused their authority. The UNDT failed to consider the witnesses identified by her and provide reasoned responses to her arguments.

The Secretary-General's Answer

36. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Iram's appeal.

37. The Secretary-General argues that the UNDT correctly concluded that the facts upon which the disciplinary measure was based, had been established by the Administration by clear and convincing evidence. The UNDT correctly found that the established conduct constituted misconduct and that Ms. Iram's due process rights had been respected.

The Secretary-General's Appeal

38. The Secretary-General requests that the Appeals Tribunal uphold the contested Decision.

39. The Secretary-General argues that the UNDT erred in law and exceeded its jurisdiction by substituting its views in place of the lawful exercise of discretion in the imposition of the disciplinary measure. The UNDT did not make any finding that the imposed disciplinary measure was blatantly illegal, arbitrary, beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. Rather, the UNDT was simply "not convinced" of its appropriateness.

40. The Secretary-General submits that the relevance of past practice is necessarily subordinate to the specific facts of each case. The legal standard of reversing a disciplinary measure requires more than showing a comparison with other cases. The UNDT also exceeded its jurisdiction by engaging in conjectures when improperly considering "the context" and the speculative ulterior motives in choosing the disciplinary measure. The UNDT's conclusion is impossible to reconcile with its finding that the organizational unit had struggled to deal with behavioural issues for years.

²⁶ Ms. Iram's refers to a violation of the principle *nemo iudex in sua causa* which, as appears to be her view, concerns Mr. Al.

41. The Secretary-General contends that the UNDT erred in law and in fact in concluding that separation from service was not proportionate to the established misconduct. Contrary to the UNDT's conclusion, the imposed disciplinary measure was supported by past practice.²⁷ The UNDT failed to consider the totality of the established facts, the jurisprudence showing past practice, and the aggravating factors considered by the Administration.

42. The Secretary-General argues that the UNDT erred in law and in fact in finding that the Administration had failed to consider three additional mitigating factors. Nothing supports the finding that Ms. Iram's functions were very difficult and stressful. A positive performance record²⁸ and the alleged lack of support and corrective measures²⁹ were not mitigating factors. The UNDT failed to consider the aggravating factors considered by the Administration: having a managerial or senior position or a position of trust and/or the repetitive nature of the misconduct.³⁰

Ms. Iram's Answer

43. Ms. Iram requests that the Appeals Tribunal dismiss the Secretary-General's appeal.

44. She submits that the appeal should be dismissed as time-barred.

45. Ms. Iram argues that if there had been any genuine concerns, they should have been taken up formally with her. The principle of presumption of innocence was not observed. The facts of the case were not established due to the lack of credible evidence and they do not amount to misconduct.

²⁷ The Secretary-General refers to the Compendium, cases Nos. 317, 326, 446, 456 and 518.

²⁸ The Secretary-General refers to *Jaffa v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-545, para. 18.

²⁹ The Secretary-General refers to *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, para. 24.

³⁰ The Secretary-General refers to *Kenneth Conteh v. Secretary-General of the United Nations*, Judgment No 2021-UNAT-1171, paras. 3, 19–20, 46, and 50–51, among others, and the Compendium, cases Nos. 235, 256, 412 and 516; 70, 325 and 406.

Considerations

Ms. Iram's request for an oral hearing

46. Ms. Iram requests an oral hearing, stating: “The substantial set of documents were submitted and it seems that some important points cannot be comprehended just based on the documented records. It is therefore crucial and important to conduct an oral hearing.” Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). Under Article 18(1) of the Rules, a request for an oral hearing may be granted if it would “assist in the expeditious and fair disposal of the case”. In the present case, the Appeals Tribunal does not find that an oral hearing would assist it in resolving the issues on appeal. As a result, the request for an oral hearing is denied.

Judicial review in disciplinary cases

47. In disciplinary cases under Article 2(1)(b) of the Appeals Tribunal Statute, the UNDT will examine the following: (i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); (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.³¹

Merits of Ms. Iram's appeal

Clear and convincing evidence for misconduct

48. Ms. Iram claims that the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision because, contrary to the impugned Judgment, there is no clear and convincing evidence of the allegations against her. We do not agree.

49. The UNDT did not err in holding that there was clear and convincing evidence that Ms. Iram harassed other staff members over a substantial period of time, and that this behaviour constitutes serious misconduct.

³¹ *Maqay Bamba v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1259, para. 37.

50. Paragraph 21 of the Standards of Conduct for the International Civil Service specifies as follows:

Harassment in any shape or form is an affront to human dignity and international civil servants must not engage in any form of harassment. International civil servants have the right to a workplace environment free of harassment or abuse. All organizations must prohibit any kind of harassment. Organizations have a duty to establish rules and provide guidance on what constitutes harassment and abuse of authority and how unacceptable behaviour will be addressed.

51. Staff Regulation 1.2 (Basic rights and obligations of staff), in relevant parts, provide:

Core values

...

(b) 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; General rights and obligations

...

(f) While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. They 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. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status;

...

52. Finally, Section 1 (Definitions) of CF/EXD/2012-007 reads as follows:

1.1 For the purpose of this directive, the following definitions apply:

(b) Harassment is any improper and unwelcome conduct that has or might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to abuse, demean, intimidate, belittle, humiliate or embarrass another person or which create an intimidating, hostile or offensive work environment. It includes harassment based on any grounds, such as race, religion, color, creed, ethnic origin, physical attributes, gender or sexual orientation. Harassment normally involves a series of incidents.

...

53. Ms. Iram contends that the complainants and other witnesses are not credible as they colluded against her. She submits that it is implausible that the discontentment, if genuine, could have remained silent for three years. She argues that the UNDT ignored that the mode and manner of the complaints underwent substantial improvement over time.

54. We agree with the UNDT that the complainants and other witnesses delivered a credible account of Ms. Iram's behaviour at the workplace. Ms. Iram did not present and we cannot detect any plausible reason why the three complainants and other witnesses should all have colluded against her and given false testimony about her actions. This applies in particular to those witnesses who had already left the WASH Section in Karachi, such as her former supervisor Mr. Al. and former Programme Associate Mr. Ar. There are no substantial inconsistencies between the statements (see below). All the complainants and other witnesses declared that they would give truthful testimony. It is highly unlikely that United Nations staff members who, as complainants or witnesses, testify under oath during an investigation process, would deliver an untruthful statement, as this would be regarded as serious misconduct and could possibly lead to disciplinary investigations and severe sanctions against them.

55. Contrary to Ms. Iram's allegations, the three complainants did not stay silent before filing their formal complaints in August 2018. The record shows that, for a couple of years already, there had been complaints and discussions about her behaviour. Several meetings had been held in order to find a solution, but to no avail. It is apparent from the case file that Ms. Iram was on a stretch assignment in Kabul starting from 18 May 2018 but visited the office several times during her rest and recuperation cycle in the beginning of July 2018. We can understand that Ms. Iram's colleagues, after having experienced a peaceful work atmosphere from mid-May until the beginning of July 2018, decided to launch formal complaints before Ms. Iram's stretch assignment ended (on 30 September 2018) and she would return to the WASH Section in Karachi. It is also understandable that the formal complaints filed at the end of August 2018 are more detailed than previous complaints. For these reasons, the UNDT did not err in accepting the complainants' and other witnesses' statements during the investigation procedure as clear and convincing evidence for Ms. Iram's misconduct.

56. Ms. Iram further alleges that the UNDT failed to diligently consider that 31 of 38 allegations made by VO1, VO2 and VO3 were dropped. Mr. Iram submits that, given that 31 of 38 allegations were dropped and the principle of *falsus in uno, falsus in omnibus*, the UNDT should have dismissed the remaining allegations as unsubstantiated.

57. This argument is without merit. In disciplinary matters, the tribunals will only review whether there is sufficient evidence for the allegations as asserted in the disciplinary decision. In the present case, the 11 May 2020 decision which imposed on Ms. Iram the disciplinary measure of separation from service with compensation of lieu of notice and with termination indemnity, was based on the (seven) incidents reviewed by the UNDT. It is of no legal relevance that other allegations were dropped before or during the disciplinary proceedings. Contrary to Ms. Iram's allegations, the principle of *falsus in uno, falsus in omnibus* does not apply.³²

58. As for the seven allegations against Ms. Iram, we agree with the UNDT that they are established by clear and convincing evidence.

Allegation (a)

59. The UNDT correctly held that there is clear and convincing evidence that Ms. Iram bullied VO1 by calling her names like "garbage" and "asshole". According to VO1's 28 November 2018 statement, Ms. Iram repeatedly used abusive language towards her calling her "garbage" and "asshole". VO2 and VO3 also testified that Ms. Iram used insulting and verbally abusive language towards them and other staff members. In addition, other witnesses Mr. Al., Mr. Ar. and Mr. K. stated that Ms. Iram used abusive language. Mr. Ar. specified, in his 30 September 2019 interview, that Ms. Iram would say "bitch", "fuck your sister" and "fuck off" to him and other staff members. On appeal, Ms. Iram did not present any reason why Mr. Al. (her former supervisor who had already left the WASH Section in Karachi in July 2017), Mr. Ar. and Mr. K. should have colluded with VO1 and given false testimony.

60. Further, we can find no error in the UNDT's conclusion that there is clear and convincing evidence that Ms. Iram bullied VO1 by accusing her of having an illicit relationship with their supervisor Mr. Al. In her interview, VO1 stated that, after her return from maternity leave in

³² See *Ganbold v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-976, paras. 31 and 35; *Abu Ghali v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-366, paras. 35–36 and 39.

June 2016, Ms. Iram accused her of having an illicit relationship with Mr. Al., and that he would give her favors. This narrative is supported by the statement of Mr. Ar. who testified that VO1 was harassed by Ms. Iram who created a scenario that there was some personal connection between VO1 and Mr. Al. Asked how he knows these details, Mr. Ar. answered that the issue was discussed at a meeting on 19 May 2017. Mr. Al., in his 24 September 2019 interview, stated that in 2016, he was asked by former Chief of Field Office (CFO) Ms. N.K. to mediate between VO1 and Ms. Iram. When Mr. Al. became aware of the complaints, he was surprised because some of them pertained to him. Specifically, Ms. Iram claimed that he was having an illicit relationship with VO1. Although he told the former CFO that he did not want to mediate because of his involvement in the matter, Ms. N.K. requested him to do so. In an 8 May 2017 e-mail to Ms. N.K., Mr. Al. wrote: “I also distanced myself from Iram because of the allegations she surfaced on me regarding my illicit relationship with [VO1], which was totally uncalled for.”

61. Ms. Iram’s allegation in paragraph 9 of her appeal, that the narrative by her former supervisor Mr. Al., a witness in support of VO1’s complaints, was incorrect and he did not act neutrally or transparently in respect of her, as is apparent from the testimony of Mr. N., a WASH Specialist, whose statements about Mr. Al.’s character were ignored by the UNDT, is without merit. While Mr. N., in his 27 November 2019 e-mail to OIAI, stated that he felt Mr. Al. clearly provoked Ms. Iram, he confirmed that Mr. Al.’s account of the situation was correct and Ms. Iram’s behaviour was unacceptable.

Allegation (b)

62. The UNDT correctly held that there was clear and convincing evidence that Ms. Iram, on 23 August 2016 and subsequent occasions, made abusive statements about VO1’s child. In her interview, VO1 stated that Ms. Iram was very aggressive during the 23 August 2016 meeting, shouting and verbally abusing her in front of their supervisor Mr. Al. She then started verbally abusing VO1’s child who was born with a neurological problem and had undergone several surgeries. VO1 specified that Ms. Iram said the following: “God had punished you by giving you a sick child. I prayed to God that you lose your child, that you can feel the pain I am going through, because I am an orphan.” This statement is corroborated by Mr. Al.’s 24 September 2019 statement whereby he testified that, to the best of his recollection, Ms. Iram told VO1: “you do not deserve this child and this child needs to die as soon as possible.”

Allegation (c)

63. The UNDT correctly held that there is clear and convincing evidence that Ms. Iram repeatedly called and texted both VO1 and VO2 after working hours when she knew or reasonably should have known that her contacts were not welcome. VO2 stated during his interview that “Ms. Iram had a habit to mainly talk in the office during work-hours and then she would start working after work-hours and while doing so, she would also be calling her colleagues, including myself, but unfortunately, not only on work related matters”. In his 28 August 2018 complaint to CFO Ms. C.B., he specified: “She talks all day in the office and doesn’t let anyone work (unfortunately we all sit in the same room) and then starts working from home after office hours and calling people repeatedly till late night which affects private family time. Even if I tell her that I am busy and we will talk in the morning, she insists and keep talking for hours.” VO1 provided records which demonstrate that Ms. Iram called or texted her multiple times in late evenings and, when she was not responsive, Ms. Iram would text her to ask why she was not taking her calls or texts and/or whether she had blocked her. The UNDT appropriately had regard to this fact.³³

64. Ms. Iram’s allegations on appeal (that the call records are not credible, that VO1 never expressed to her that her calls were unwelcome and that VO2 contacted her outside working hours on 3 February 2018 via e-mail and on 16 October 2018 via a phone message, which was typical for UNICEF) do not put the impugned Judgment into doubt. While an occasional call or text to discuss work-related matters after working hours might not be unusual for UNICEF, VO1 and VO2 stated that Ms. Iram repeatedly called or texted them after working hours, and not only to discuss work-related but also private matters. The records provided by VO1 sufficiently demonstrate that she tried to avoid Ms. Iram’s attempts to contact her.

Allegation (d)

65. The UNDT correctly held that there is clear and convincing evidence that Ms. Iram made insulting remarks to VO2 in the presence of other WASH personnel during a WASH team meeting on 6 July 2018. VO2 described the incident in his 28 August 2018 complaint to CFO Ms. C.B. to which he referred in his witness statement. VO1 confirmed that towards the end of the team meeting, Ms. Iram walked into the office and started shouting at VO2. VO3 recalled that

³³ Impugned Judgment, para. 40.

towards the end of the team meeting, Ms. Iram walked into the room and started shouting at VO2, saying: “What are you people doing, what are you hiding from me?”

66. Ms. Iram’s allegations on appeal (that the incident was framed, VO1 and VO3 have an interest in the outcome of the case and no independent witnesses have testified to this allegation) is without merit. As outlined above, VO1 and VO3 are credible witnesses, and Ms. Iram’s habit of verbally abusing her colleagues has also been demonstrated by other (“independent”) witnesses.

Allegation (e)

67. The UNDT correctly found that there is clear and convincing evidence that Ms. Iram bullied VO3 by showing him sanitary pads, discussing her menstruation (“period”) in front of him, and accusing him of being gender insensitive. VO3 stated during his 30 November/ 1 December 2018 interview that Ms. Iram, a few days before her stretch assignment, showed her menstrual pads to him and called him gender sensitive when she realized that he felt ashamed about the situation; Ms. Iram’s behaviour made him feel uncomfortable. VO1, in her 28 November 2018 statement, testified that Ms. Iram showed menstrual pads to VO3 at the office, asking him whether he knew what that was. Ms. Iram also told VO3 that she was having her period and that she was going to use the pads.

Allegation (f)

68. There is also clear and convincing evidence that Ms. Iram shouted at VO3 on 24 November 2017. VO3, in his 30 November/1 December 2018 witness statement, stated that on 24 November 2017, Ms. Iram yelled at him in front of other colleagues and told him that he had no moral character. This is confirmed by the 28 November 2018 witness statement of VO1 who stated that at the end of 2017, Ms. Iram shouted at VO3 and said he had no guts to support the team. There is also a 27 November 2017 e-mail of VO3 to Mr. Go. where VO3 stated: “Last week, I was on official travel from Sukkur to Hyderabad and then onwards from Hyderabad to Karachi along with Iram and [T.]. As soon as we reached back office, she yelled at me and said that I did not support her in her conversation with [T.]. (...) In front of the other colleagues, she informed me that I have no moral character to speak out in front of the foreigners and I am afraid of them. (...) As soon as I replied, she shouted at me to keep quiet.”

Allegation (g)

69. Finally, there is clear and convincing evidence that Ms. Iram repeatedly touched and/or hugged VO3 after he had expressly told her that such contact made him feel uncomfortable. In his 30 November/1 December 2018 interview, VO3 stated that Ms. Iram had touched and hugged him in front of other colleagues even though he had told her on several occasions that he did not like her doing that. She would not listen to him but tell him that he was her brother and therefore, she could touch him. VO1 confirmed in her 9 December 2018 witness statement that Ms. Iram used to hug VO3 and that he stopped her many times saying that he was uncomfortable and did not like that. However, Ms. Iram did not stop but used to say that he was like her brother. Both witnesses are credible. Their statements are not only corroborated by the statement of another witness, Mr. K., but also by Ms. Iram's own statements during the investigation process. Mr. K., in his 24 September 2019 interview, said that Ms. Iram would hug him many times and ask: "How are you my brother?", and she would also be hugging many other male colleagues and would always loudly say: "How are you my brother?" With regard to Mr. K., Ms. Iram stated in her 7 November 2019 interview: "I used to go in his room. So, like in a local way of giving respect, he used to put his hand on his chest. So, I just used to pat on his shoulder the way elder sister does with the younger brother. This is what, yes, I used to do it like so many times. But he never, never said anything. Like he does not like this or something like that." It becomes clear from this statement that Ms. Iram touched Mr. K. although he, by putting his hand on his chest when she entered his room, had clearly indicated that he did not wish any physical contact with her.

70. Ms. Iram's allegations on appeal (that the investigation report stated that Mr. Go. could not recall any such incident and no other person besides VO3 reported such incidents, the allegation lacks concrete evidence with specific details as to the date and place of any such incident) is without merit. As explained above, the allegation is corroborated by Ms. Iram's own witness statement and the account of Mr. K. VO3 had specified during his interview that the hugging incident in front of Mr. Go. took place in the office a few days before Ms. Iram's stretch assignment. While it is true that Mr. Go. could not remember the incident, he did not deny it, either.

Misconduct

71. Ms. Iram contends that the facts do not qualify as misconduct and that misconduct must have a motive and be willful which is not the case here. She argues that the UNDT failed to consider the issue of the expiry of VO1's contract. She submits that no administrative measure (e.g. reprimand) or managerial action had been applied to her alleged conduct (e.g., caution, warning, advisory communication, training, coaching, referral).

72. We do not agree. The abusive language and actions by Ms. Iram towards her colleagues clearly qualify as harassment which constitutes serious misconduct.

Due process

73. Ms. Iram asserts that her due process rights were not respected and her submissions were essentially not heard. She argues that the UNDT should have considered her performance track record and not have ignored that one of the witnesses was a former complainant and subsequently carried out fact-finding. Furthermore, Ms. Iram submits that VO2's conflict of interest was not considered. She claims that her supervisors abused their authority. She further contends that the UNDT failed to consider the witnesses identified by her and provide reasoned responses to her arguments. Ms. Iram states that a 27 November 2017 e-mail which she received as an exhibit with the investigation report on 23 January 2020, had not been shared or discussed with her until that time.

74. These arguments are without substance and do not put the impugned Judgment into doubt. We recall that under Article 2(1)(d) of the Appeals Tribunal Statute, an appellant has the onus to assert that the Dispute Tribunal has committed an error of procedure, such as to affect the outcome of the case. Like the UNDT, we find that Ms. Iram's due process rights were respected during the investigation process as she was interviewed and had the opportunity to respond to the allegations. She does not specify on appeal which witnesses identified by her should have been considered by the UNDT and how this could have affected the outcome of the case. The 27 November 2017 e-mail was provided to her on 23 January 2020, and she had sufficient time to comment on it before the disciplinary sanction was issued. No former complainant acted as investigator or "fact-finder" during the investigation proceedings. Whether her performance record had to be considered is an issue for proportionality (see below), but not of due process. VO2's alleged conflict of interest is not further explained.

75. Finally, in the present case, due process did not require the UNDT to hold an oral hearing and give Ms. Iram an opportunity to confront and cross-exam the witnesses. In an early full-bench decision (*Applicant*³⁴), the Appeals Tribunal held:

As a general principle, the importance of confrontation, and cross-examination, of witnesses is well-established. That said, “[d]isciplinary cases are not criminal. Liberty is not at stake.” Thus, due process does not always require that a staff member defending a disciplinary action for summary dismissal has the rights to confront and cross-examine his accusers.

76. Based on this jurisprudence, the Appeals Tribunal has clarified several times that clear and convincing evidence can be established without an oral hearing in certain circumstances and this is in the discretion of the Dispute Tribunal (*Nadasan*³⁵; *Abu Osba*³⁶). In the present case, Ms. Iram did not show why her due process rights should have required the UNDT to hold an oral hearing. A large number of witnesses testified during the investigation proceedings that she had harassed her colleagues for several years. As stated earlier, Ms. Iram has not given a persuasive reason why those witnesses, some of whom had already left UNICEF, should have colluded against her and given false testimony. Under these circumstances, we find that the impugned Judgment did not violate Ms. Iram’s due process rights.

The Secretary-General’s appeal

Receivability of the Secretary-General’s appeal

77. Article 7(1) of the Appeals Tribunal Statute provides that

[a]n appeal shall be receivable if:

...

(c) The appeal is filed within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or within 30 calendar days of the receipt of the interlocutory order of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that

³⁴ *Applicant v. Secretary-General of the United Nations*, 2013-UNAT-302, para. 33 (footnote omitted).

³⁵ *Nadasan v. Secretary-General of the United Nations*, 2019-UNAT-918, paras. 39–40.

³⁶ *Mohammed Yousef abd el-Qader Abu Osba v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 2020-UNAT-1061, paras. 41 ff.

deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal.

78. Article 7 (Time limits for filing appeals) of the Rules sets out the time limit for submitting the appeal as follows:

1. Appeals instituting proceedings shall be submitted to the Appeals Tribunal through the Registrar within:

(a) 60 calendar days of the receipt by a party appealing a judgement of the Dispute Tribunal;

...

79. Under Article 29 (Calculation of time limits) of the Rules,

[t]he time limits prescribed in the rules of procedure:

...

(b) Shall include the next working day of the Registry when the last day of the period is not a working day;

...

80. In *Rehman*³⁷, we held:

(...) The 60-day time limit started to run when the parties received the UNDT Judgment on 14 March 2018. The last day of the 60-day period was 13 May 2018 which was a Sunday and thus not a working day which is why the time limit included the next working day pursuant to Article 29(b) of the Appeals Tribunal [Rules of Procedure]. The filing of the appeal on Monday, 14 May 2018, was therefore timely.

81. Likewise, in *Sirhan*³⁸, we found:

(...) Article 29(b) of the Rules provides that the time period shall include the next working day of the Registry when the last day of the period is not a working day. Sunday is not a working day for the Appeals Tribunal. Accordingly, the parties had until the close of business on 19 February 2018 to file their appeals. (...)

³⁷ *Rehman v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-886, para. 20.

³⁸ *Sirhan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-860, para. 15.

82. In the present case, the impugned Judgment was issued to the Secretary-General on 26 April 2022 and the last day of the 60-day time limit fell on Saturday, 25 June 2022. Saturday is not a working day for the Appeals Tribunal which is why the time limit included the next working day pursuant to Article 29(b) of the Rules. The filing of the appeal on Monday, 27 June 2022, was therefore timely. Accordingly, contrary to Ms. Iram's argument, the Secretary-General's appeal is receivable *ratione temporis*.

Merits of the Secretary-General's appeal

83. We find that the UNDT erred in law and exceeded its jurisdiction when it concluded that the disciplinary sanction of separation from service with compensation in lieu of notice and with termination indemnity was not proportionate to the misconduct, rescinded it and replaced it by a more lenient measure.

84. According to Staff Rule 10.2 (Disciplinary measures),

(a) Disciplinary measures may take one or more of the following forms only:

(i) Written censure;

(ii) Loss of one or more steps in grade;

(iii) Deferment, for a specified period, of eligibility for salary increment;

(iv) Suspension without pay for a specified period;

(v) Fine;

(vi) Deferment, for a specified period, of eligibility for consideration for promotion;

(vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;

(viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;

(ix) Dismissal.

...

85. Staff Rule 10.3 (Due process in the disciplinary process) provides that

...

(b) [a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.

...

86. Under the consistent jurisprudence of the Appeals Tribunal, the Administration has a broad discretion when it comes to the choice of a disciplinary sanction. As we held in *Appellant*³⁹:

(...) The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures; to wit: a sanction within the limits stated by the respective norms, which is sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. This rationale is followed without any change in the jurisprudence of this Tribunal. The Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

87. Furthermore, in *Kenneth Conteh*⁴⁰ and *Ali Halidou*⁴¹, we found:

(...) the Administration has a broad discretion in determining the disciplinary measure imposed on staff members as a consequence of wrongdoing. It is best suited to select an adequate sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. Thus, in determining the proportionality of a sanction, the UNDT should observe a measure of deference, but more importantly, it must not be swayed by irrelevant factors or ignore relevant considerations.

88. The misconduct shown by Ms. Iram was of a very serious nature. As established by the Administration and also found by the UNDT, there is clear and convincing evidence that Ms. Iram, for several years, had harassed her colleagues. The consequences to her workplace,

³⁹ *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1216, para. 45 (footnotes omitted).

⁴⁰ *Kenneth Conteh v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1171, para. 50.

⁴¹ *Ali Halidou v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1070, para. 34.

UNICEF, SFO, WASH Section in Karachi, were grave: both her supervisors, WASH Specialist Mr. Al. (from March 2015 until July 2017) and WASH specialist VO2 (from January until October 2018), testified that they quit their job because of Ms. Iram's behaviour. In his 24 September 2019 interview, Mr. Al. testified that the two years working with Ms. Iram were very tough and stressful for him and he did not want to remember those days. WASH Specialist VO2, on 27 November 2018, testified that when he joined UNICEF, he was looking for career progress. However, continuous stress and problems with Ms. Iram affected him so much that he decided to leave UNICEF. He specified: "I was unable to work under those conditions and I did not see any solutions. I was getting overstressed." VO1 and VO3 both testified that their health was substantially affected by Ms. Iram's behaviour.

89. Under these circumstances, the disciplinary sanction cannot be regarded as disproportionate but was necessary to protect the efficiency of the workplace and the health of other staff members. Otherwise Ms. Iram would have been able to continue working for UNICEF, and there was a risk that her behaviour would not substantially change. It was thus reasonable for the Administration to separate Ms. Iram from service.

90. We note that separation from service with compensation in lieu of notice and with termination indemnity was not the harshest possible disciplinary sanction.

91. Contrary to the UNDT's findings, insufficient and inadequate actions by the management or Ms. Iram's positive performance evaluations cannot be regarded as a mitigating factor which would render the disciplinary sanction unproportionate. While it is possible, as the UNDT assumes, that Ms. Iram's behavior would have improved had she been charged with a (more lenient) disciplinary sanction earlier or other formal managerial action had been taken, this is by no means certain. The case record shows that, for several years, Ms. Iram's behavior was a concern at UNICEF and a number of informal discussions and mediations were undertaken to achieve an improvement, but without success. Given the nature and gravity of Ms. Iram's misconduct over a substantial length of time, the impact on the other staff members and the consequences to the efficiency of the Organization, we find that it is within the Administration's broad discretion to decide that it was necessary to separate her from service. A more lenient sanction which would have allowed Ms. Iram to continue working, included the risk that other staff members' health would further be harmed, that they would leave UNICEF to avoid harassment, and that there would be an impact on the efficiency of the Organization.

Referral for accountability

92. However, we agree with the UNDT that, by not taking formal action against Ms. Iram sooner, the Administration probably failed in its obligation to protect its employees. Therefore, we exercise our discretion under Article 9(5) the Appeals Tribunal Statute and refer this case to the Secretary-General for possible action to enforce accountability. Particular attention should be paid to the (in)actions of former CFO Ms. N.K.

Judgment

93. Ms. Iram's appeal is dismissed and the Secretary-General's appeal is granted. Judgment No. UNDT/2022/039 is hereby modified as follows:
94. Ms. Iram's application is dismissed in its entirety.
95. The case is referred to the Secretary-General for possible action to enforce accountability.

Original and Authoritative Version: English

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

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Gao

Judgment published and entered in the Register on this 8th day of May 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar