



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

Judgment No. 2024-UNAT-1449

**Michael David Antoine
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case No.:	2023-1844
Date of Decision:	28 June 2024
Date of Publication:	23 July 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Sètonджи Roland Adjovi & Anthony Kreil Wilson
Counsel for Respondent:	Angélique Trouche

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Michael David Antoine was a former Administrative Officer (FS-6) in the Office of the Deputy Chief Mission Support, United Nations Truce Supervision Organization (UNTSO), based in Jerusalem. He contested the disciplinary decision to dismiss him for misconduct on two counts: count one was publicly engaging in sexually suggestive behaviour in a United Nations vehicle with an unauthorized individual (FO1) and count two was failing to cooperate with the investigation (contested decision).¹
2. By Judgment No. UNDT/2023/059, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed the application on the merits (impugned Judgment).² The Dispute Tribunal upheld the first count of misconduct but found that the facts in count two did not amount to misconduct.
3. Mr. Antoine appeals in respect of count one. Neither party appeals the UNDT's decision on count two. Therefore, the only issue in this appeal concerns the UNDT's decision on count one concerning the conduct in the United Nations vehicle.
4. Mr. Antoine admits that there was an unauthorized individual in the vehicle with him but disputes that they were engaging in "sexually suggestive behaviour". He also argues that his due process rights were violated in the investigation and disciplinary, and the UNDT process.
5. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment. Our decision is issued contemporaneously with our Judgment in *Millan* as some of the same arguments and submissions were considered on similar facts.³

¹ The stated misconduct consisting of failing to cooperate with the investigation is not before us on appeal but we include the related facts in our summary as relevant to the sanction imposed.

² *Antoine v. Secretary-General of the United Nations*, Judgment dated 21 June 2023.

³ *Ray Steven Millan v. Secretary-General of the United Nations (Millan II)*, Judgment No. 2024-UNAT-1448.

Facts and Procedure⁴

6. Mr. Antoine joined the United Nations in 1999.⁵ From 2001 to February 2024 and again from October 2014, he served at UNTSO.⁶ At the time of the events in question, he held the position of Administrative Officer, at the FS-6 level, on a continuous appointment at UNTSO in Jerusalem.⁷

7. On 21 May 2020, the following events took place in Tel Aviv, Israel.⁸ The vehicle, being a typical white United Nations vehicle with identifiable letters “UN” inscribed on the right front door, hood and bonnet, travelled in slow-moving traffic in HaYarkon Street, a busy and well-illuminated street in Tel Aviv. On board the vehicle were four individuals: a male staff member was the driver in the driver’s seat (SD), Mr. Millan, another male staff member, a Security Officer in the Office of the Deputy Chief Mission Support, to whose care the vehicle had been entrusted to, was in the front passenger seat, and Mr. Antoine and a female individual (FO1) were in the rear seat. FO1 was not a member of United Nations personnel and was an unauthorized passenger in the vehicle. A liability waiver had not been signed on her behalf. The vehicle stopped at traffic lights in HaYarkon Street. Mr. Antoine held FO1 on his lap. FO1 straddled and gyrated on him, while she faced towards him and while he held her with his hands on her buttocks and pulled her genital area close to his crotch.

8. By chance, the vehicle and its occupants were being video recorded by a member of the public or other unknown individual.⁹ A 18-second video clip (the video clip), showing the United Nations markings on the vehicle and the activity of Mr. Antoine and FO1 in the rear of the vehicle, was widely disseminated on social media and media outlets and “brought negative publicity to the Organization”.

9. On 24 June 2020, the Office of Internal Oversight Services (OIOS) received a report, containing the video clip, of possible misconduct, implicating staff members at UNTSO in

⁴ Summarized from the impugned Judgment as relevant to the appeal.

⁵ *Michael David Antoine v. Secretary-General of the United Nations (Antoine I)*, Judgment No. 2023-UNAT-1328, para. 3.

⁶ Application before the UNDT, Section VII, para. 1 (Annex 2 to the appeal); Investigation Report, para. 7.

⁷ *Ibid.*; *Antoine I* Judgment, *op. cit.*, para. 3.

⁸ Impugned Judgment, paras. 2, 35, 42-44 and 57.

⁹ *Ibid.*, paras. 42-43, 47, 54, 56 and 57.

Jerusalem.¹⁰ Upon receipt of the information, OIOS conducted formal investigations and identified the staff members in the vehicle. Mr. Antoine was interviewed on 30 June 2020.

10. On 1 July 2020, Mr. Antoine was placed on Administrative Leave Without Pay (ALWOP), which was subsequently changed to Administrative Leave with Pay (ALWP) effective 9 September 2020.¹¹

11. On 19 May 2021, OIOS transmitted its Investigation Report to the Office of Human Resources (OHR) for appropriate action.¹² By a letter dated 12 August 2021, the Assistant Secretary-General, OHR, DMSPC, (ASG/OHR/DMSPC) charged Mr. Antoine with misconduct. He was granted a period of one month to provide comments to the charges.

12. By the Sanction Letter dated 11 April 2022, Mr. Antoine was informed of the contested decision.¹³ The ASG/OHR/DMSPC informed him that it was established by clear and convincing evidence that:¹⁴

- a. On 21 May 2020, while in a UN vehicle clearly visible from a public street in Tel Aviv, Israel, you held a female individual closely to your body while she was seated on your lap facing you and gyrating in a sexually suggestive manner. These events were captured in an 18-second video-clip, which was widely disseminated, bringing the Organization into disrepute; and
- b. Between June 2020 and March 2021, you failed to cooperate with the OIOS investigation into your conduct, by:
 - i. refusing to provide OIOS with the contact details of a material witness; and
 - ii. deleting data from a mobile phone which you had submitted to the investigators or submitting to OIOS a different mobile phone from that used on 21 May 2020 and/or deleting data from a UN-issued SIM card, which you had submitted to the investigators.

13. The Sanction Letter stated that Mr. Antoine had violated Staff Rules and Regulations as follows:¹⁵

¹⁰ *Ibid.*, paras. 2-3.

¹¹ *Ibid.*, para. 3.

¹² *Ibid.*, paras. 5-6.

¹³ *Ibid.*, para. 7.

¹⁴ Annex to the Sanction Letter, para. 20.

¹⁵ *Ibid.*, para. 34. Secretary-General's Bulletin ST/SGB/2018/1 (Staff Regulations and Rules), applicable in 2020, and ST/SGB/2018/1/Rev.1 (Staff Regulations and Rules), applicable in 2021.

a. Staff Regulation 1.2(b): by holding a female individual closely to his body while she was seated on his lap facing him and gyrating in a sexually suggestive manner in a UN vehicle and by failing to cooperate with a duly authorized OIOS investigation, Mr. Antoine failed, by each act and together, to uphold the highest standards of efficiency, competence and integrity.

b. Staff Regulation 1.2(f): by holding a female individual closely to his body while she was seated on his lap facing him and gyrating in a sexually suggestive manner in a UN vehicle, and by failing to cooperate with a duly authorized OIOS investigation, Mr. Antoine failed, by each act and together, to conduct himself at all times in a manner befitting his status as an international civil servant.

c. Staff Regulation 1.2(q): by holding a female individual closely to his body while she was seated on his lap facing him and gyrating in a sexually suggestive manner in a UN vehicle, Mr. Antoine failed to use the property of the Organization – i.e., the UN vehicle – only for official purposes and failed to exercise reasonable care when utilizing that property, in violation of Staff Regulation 1.2(q).

d. Staff Regulation 1.2(r): by failing to cooperate with the OIOS investigation, in particular his refusal to identify FO1, Mr. Antoine failed to respond fully to requests for information from officials authorized to investigate the possible misuse of funds, waste or abuse – in the instant case, the UN vehicle featured in the clip – Mr. Antoine acted in violation of Staff Regulation 1.2(r).

e. Staff Rule 1.2(c): by failing to cooperate with the OIOS investigation, as stated (...) above, Mr. Antoine violated Staff Rule 1.2(c).

f. Staff Rule 1.2(g): by failing to cooperate with the OIOS investigation, as stated (...) above, Mr. Antoine disrupted or otherwise interfered with an official activity of the Organization, including the Organization's official activity in connection with the administration of justice system, in violation of Staff Rule 1.2(g).

14. The Sanction Letter informed him that in determining the appropriate sanction, the USG/DMSPC had considered the past practice of the Organization in matters of comparable misconduct.¹⁶ The USG/DMSPC considered that the reputational harm to the Organization resulting from Mr. Antoine's conduct and the fact that, in light of his comments which attempted to downplay his behavior as "quite minor" and blame the Organization for exaggerating, had shown no remorse and had accepted no responsibility for his acts constituted aggravating factors. The USG/DMSPC considered Mr. Antoine's long period of service with the Organization as a mitigating factor. The USG/DMSPC maintained, however, that his acts of misconduct were of such a serious nature that this factor could not alter the sanction. The USG/DMSPC found, moreover, that a lack

¹⁶ Annex to the Sanction Letter, paras. 45-49.

of prior misconduct by Mr. Antoine was not in and of itself a mitigating factor, as not being the subject of a disciplinary process is the minimum expectation set out by the Staff Regulations and Rules.

15. Lastly, it was noted in the Sanction Letter that the disciplinary measure of dismissal was effective upon its receipt by Mr. Antoine.¹⁷

The UNDT Proceedings

16. On 11 July 2022, Mr. Antoine filed an application with the UNDT.¹⁸ He also requested that the UNDT conduct an oral hearing with certain witnesses.

17. In Order No. 041 (NBI/2023), the UNDT denied the request. The UNDT was of the view that it was not useful to call for testimonies of people not directly informed on the material facts at stake, including staff members and other persons listed in the application. The UNDT further noted that it had already held that the relevant facts were clear and there was no need to conduct a hearing as the matter could be determined based on the record, and thus directed the parties to submit closing submissions on or before 31 March 2023.

The impugned Judgment

18. In the impugned Judgment, the UNDT dismissed the application.

19. The UNDT found that, with regard to count one, the facts were clearly demonstrated by the 18-second video clip of Mr. Antoine's behaviour, which clip spoke for itself.¹⁹ The UNDT found that the acts depicted had a clear sexual connotation and could not be compared with "Caribbean dances", as argued by Mr. Antoine.²⁰ It was not a dance which happened but an activity of sexual nature, although not a sexual act itself. The acts were indeed perceived as sexual by people who saw the video on the web and commented on it. Finally, the sexual nature of the activity is also confirmed by this Tribunal's findings in *Antoine I*.²¹

20. The UNDT noted that two e-mails of 23 and 24 June 2020 which referred to OIOS identifying information about the persons on board, including defining FO1 as a local prostitute,

¹⁷ Sanction Letter, p. 3.

¹⁸ Impugned Judgment, para. 10.

¹⁹ *Ibid.*, para. 42.

²⁰ *Ibid.*, paras. 46-47.

²¹ *Antoine I* Judgment, *op. cit.*

also expressed disagreement with the behaviour in public space.²² Not brought into question by either of the parties, the UNDT held that these e-mails were reliable in full. The said facts corroborate the assessment of the nature of the activity depicted in the video as sexual.²³

21. Referring to several new articles, the UNDT observed that the video clip spread on the web, attracting many negative comments and prolonged attention from the public.²⁴ It caused tremendous damage to the image of the Organization. In particular, the United Nations logo on the vehicle created a connection between the Organization and activity with sexual connotations performed inside. It undermined the reputation, credibility and integrity of the Organization in a difficult conflict-affected area of the world. If not for his misconduct, the harm to the Organization would not have occurred, and therefore he remains responsible for it.²⁵

22. The UNDT held that Mr. Antoine failed to exercise reasonable care when utilizing the property and the assets of the Organization, in violation of Staff Regulation 1.2(q), and behaved in a manner that put the Organization into disrepute, caused a tremendous damage to its image and was contrary to the standard of integrity required of an international official, in violation of Staff Regulation 1.2(b), and that this amounted to serious misconduct not befitting an international civil servant.²⁶

23. The UNDT highlighted that misconduct had occurred in relation to the events of 21 May 2020 only.²⁷ As to count two, i.e. failing to cooperate with the OIOS investigation, a disciplinary sanction for non-cooperation has to be excluded with reference to the staff member who committed misconduct sanctioned in the same proceedings. Accordingly, the accusations under count two fall.

24. Referring to Mr. Antoine's lapse of integrity and competence being in stark contrast with the conduct befitting an international civil servant and the core values of the Organization, damage to the reputation of the Organization and the deliberate nature of his conduct, the UNDT found

²² Impugned Judgment, paras. 49-52.

²³ In passing, the UNDT also referred to other details that, in its view, suggested that the scope of the activities of a sexual nature by the group of male staff members on that day plausibly had been more extensive than what was stated in the contested decision.

²⁴ Impugned Judgment, paras. 53-59.

²⁵ The UNDT further noted that the reputational damage to the Organization was an objective consequence of Mr. Antoine's behavior, which, given the circumstances, he could have foreseen and avoided (impugned Judgment, para. 85).

²⁶ Impugned Judgment, paras. 81-83.

²⁷ *Ibid.*, paras. 85-92.

that the sanction had been fully justified and proportionate, considering only count one.²⁸ Continuation of his employment relationship with the Organization could not be tolerated, since that required mutual trust and confidence. Considering the dissemination of the video clip and damage to the Organization's reputation, the case is unprecedented.²⁹ SD's conduct and role in the events was fundamentally different: SD tried to stop the event as inappropriate, whereas Mr. Antoine was the main actor in the affair.

25. The UNDT was of the view that Mr. Antoine's procedural fairness rights had been respected throughout the investigation and the disciplinary process.³⁰

26. Last, the UNDT held that Mr. Antoine's claim for compensation for moral damage related to the publication of information, was inadmissible because he had not directly challenged in these proceedings any act of the spokesperson for the Secretary-General.³¹

Submissions

Mr. Antoine's Appeal

27. Mr. Antoine requests the Appeals Tribunal to remand the case for additional findings of fact or, in the alternative, rescind the contested decision and order reappointment to a suitable position commensurate with his skill set, compensation in lieu of rescission in the amount of three years of salary and pension payments and compensation for harm for the damage to his career and self-respect. In the alternative, he requests the Appeals Tribunal to reduce the sanction or, if the Appeals Tribunal considers that the misconduct still warranted termination, to replace the sanction with separation with termination indemnity.

28. Mr. Antoine argues that the UNDT failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure, such as to affect the decision of the case, and erred on a question of fact, resulting in a manifestly unreasonable decision.

29. He submits that he was expecting to have a trial. In his application requesting an oral hearing, he requested a hearing to call witnesses and himself to give oral testimony. He provided

²⁸ *Ibid.*, paras. 121-131. As confirmation, the UNDT referred to *Antoine I Judgment (op. cit.)*, para. 35.

²⁹ The UNDT noted that the present case was different from disciplinary case No. 345 in the Compendium of Disciplinary Measures, "Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2021" for the scandal in the public opinion.

³⁰ Impugned Judgment, paras. 110-114.

³¹ *Ibid.*, para. 135.

a detailed justification for his request on 28 February 2023, including the relevance of hearing the testimony of the Director of the Investigation Division, OIOS, (D/ID/OIOS) on the validity of the Investigation Report.³²

30. Mr. Antoine further maintains that he, Mr. Millan and SD, at minimum, were “informed of the material acts at stake” as they had been in the vehicle during the incident. In addition, the actions of both investigators, IO1³³ (calling as witness requested at paragraph 33(d) of the application) and the Chief Investigator (CI), OIOS, United Nations Office in Vienna, (at paragraph 33(b) of the application), should have been challengeable under oath, as well as the role of the D/ID/OIOS (at paragraph 33(b) of the application). The subsequent analysis by the USG/DMSPC (paragraph 33(c) of the application) as the decision-maker was also of key importance. By refusing to hold an oral hearing and hear those witnesses, the UNDT committed a serious error in procedure.

31. Mr. Antoine contends that the UNDT erred when it disapproved of the purpose of the trip to Tel Aviv, characterized FO1 as a prostitute, and found that he had not questioned the veracity of the allegation about FO1’s occupation made in the e-mails of 23 and 24 June 2020.³⁴ He had no opportunity to cross-examine the author of the e-mails. The allegations should have been ruled inadmissible as hearsay. Moreover, the UNDT erred by relying on *Antoine I*, which had established the facts merely by a preponderance of the evidence.³⁵ The UNDT also erred when it held him responsible for the reputational damage to the Organization.

32. Lastly, Mr. Antoine submits that the UNDT did not address and ignored the bias of Judge S. and the Administration against him and Mr. Millan in favouring SD by a lesser sanction because SD was not represented by his and Mr. Millan’s legal counsel and did not have to submit an application challenging placement on ALWOP, responding to which, according to the Secretary-General in other cases concerning administrative leave, were “consuming considerable human resources”.

³² Mr. Antoine refers to Annex 4 to the appeal, paras. 8-29.

³³ Identified by the UNDT as Chief, Special Investigations Unit, UNTSO (impugned Judgment, para. 53).

³⁴ Mr. Antoine refers to the statement of a Field Security Assistant, UNTSO, in an interview of 10 July 2020, at 26:23.

³⁵ *Antoine I* Judgment, *op. cit.*

The Secretary-General's Answer

33. The Secretary-General requests the Appeals Tribunal to uphold the impugned Judgment and dismiss the appeal.

34. The Secretary-General argues that the UNDT correctly concluded that the contested decision was lawful. Mr. Antoine has failed to establish any error by the UNDT, warranting a reversal of the impugned Judgment. The Appeals Tribunal has upheld disciplinary decisions without a hearing at the UNDT level.³⁶ He has failed to explain how holding a hearing and calling the witnesses he had listed would have made a difference to the outcome of the case. The UNDT established the facts on the basis of his admissions and the video clip which, as rightly found, “speaks for itself”.

35. The Secretary-General submits that Mr. Antoine has misrepresented the impugned Judgment. The UNDT made no finding that FO1 had been a prostitute. It was not relevant. The argument that the UNDT erred in referring to a preponderance of the evidence is misleading. The UNDT was clear that it applied the standard of clear and convincing evidence.

36. The Secretary-General contends that Mr. Antoine’s argument relying on the sanction imposed on SD fails. The sanction of written censure, with loss of two steps and deferment for two years of eligibility for salary increment, imposed on SD is irrelevant to the present case.

37. The Secretary-General observes that the argument of bias of Judge S. and the Administration against Mr. Antoine is new and, as such, not receivable. Regardless, he has not substantiated any bias against him. The impugned Judgment was not rendered by that UNDT Judge. His argument has no merit.

Considerations

38. Mr. Antoine says that the Dispute Tribunal erred in fact or in law in the impugned Judgment as well as committed an error of procedure when it denied him an oral hearing. He further says that the Dispute Tribunal erred in its findings on the merits of the case.

³⁶ The Secretary-General cites *AAC v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1370; *Oswaldo Di Mario v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1331; and *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-819, para. 28.

Denial of an oral hearing by the UNDT

39. During the UNDT prehearing process, Mr. Antoine formally requested a hearing to call the other male passengers of the United Nations vehicle during the conduct in question as witnesses, as well as FO1's lawyer, the individuals from OIOS related to the investigation, the USG/DMSPC, the ASG/OHR/DMSPC, D/OHR/DMSPC, Io1, an expert witness regarding data storage on phones, and himself.

40. In Order No. 041 (NBI/2023), the Dispute Tribunal denied the request for an oral hearing on the basis that Mr. Antoine "did not specify the reasons for hearing the witnesses" and that the hearing "cannot be a way to allow fishing expeditions on purported due process violations or unspecified facts". In addition, the Dispute Tribunal considered that the D/ID/OIOS had already testified regarding the investigation and disciplinary process in its earlier case regarding Mr. Antoine's dispute of the decision to place him on ALWOP³⁷ and the D/ID/OIOS's evidence was already on the record as Annex 7 to the Secretary-General's the reply. As for FO1's lawyer, the Dispute Tribunal held it was not proper to hear from a lawyer to testify on behalf of an unidentified person.

41. Relying on *Mbaigolmem*,³⁸ Mr. Antoine requested the Dispute Tribunal to reconsider the Order, arguing that he had not yet had an opportunity to challenge the OIOS investigation, present expert evidence regarding storage of data on phones, and consider the credibility of SD.

42. In Order No. 058 (NBI/2023), the Dispute Tribunal rejected Mr. Antoine's motion to reconsider its decision on the oral hearing.

43. Article 16(2) of the UNDT Rules of Procedure provides that a hearing shall *normally* be held following an appeal against an administrative decision imposing a disciplinary measure.³⁹

44. The Appeals Tribunal in *Mbaigolmem* previously held that as cases of alleged misconduct typically require determination of disputed factual issues, this is best done in "an oral hearing involving an adversarial fact-finding process which tests the credibility, reliability

³⁷ *Antoine v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/151 (Earlier UNDT *Antoine* Judgment), affirmed in the *Antoine I* Judgment (*op. cit.*).

³⁸ *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-819.

³⁹ Emphasis added.

and probabilities of the relevant testimony”.⁴⁰ Further, as a factual finding of misconduct is of serious import, the determination of misconduct should preferably be done in an oral hearing.⁴¹

45. However, we have also held that “an oral hearing and cross-examination will not be required in all disciplinary cases”.⁴² Further in *Shumba*, the Appeals Tribunal held that whether an oral hearing will be required “will depend on the circumstances of the case before the UNDT. For example, there may be documentary, audio or video evidence or circumstances surrounding the parties or witnesses that may support the decision not to hold an oral hearing.”⁴³

46. Finally, the Appeals Tribunal has consistently held that the UNDT, as a first instance tribunal, is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and to provide justice for both parties and therefore enjoys a wide margin of discretion in all matters relating to case management.⁴⁴

47. The present case is not one where the issues require the Dispute Tribunal’s determination of the credibility of contradicting testimonies of parties or witnesses. In declining the request for an oral hearing in case management, the Dispute Tribunal appropriately considered the undisputed facts, Mr. Antoine’s admissions, and evidence that independently corroborated the facts in dispute such as the video clip depicting the events in question, the investigation record, copies of e-mails, and other evidence.

48. For example, Mr. Antoine does not dispute that he was in the rear seat of the United Nations vehicle with an unauthorized female passenger who was straddled on his lap facing him. What he disputes is that the female passenger was “gyrating in a sexually suggestive manner”.

49. As for the whether the unauthorized passenger on Mr. Antoine’s lap was “dancing” (as alleged by Mr. Antoine) or “gyrating in a sexually suggestive manner” (as alleged by the Administration), the Dispute Tribunal did not err in finding that this factual determination did

⁴⁰ *Mbaigolmem* Judgment, *op. cit.*, para. 26.

⁴¹ *Ibid.*

⁴² *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022 UNAT 1187, para. 58.

⁴³ *Humphreys Timothy Shumba v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1384, para. 74 (internal citation omitted).

⁴⁴ *Samer Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1195, para. 55.

not require an oral hearing. The Dispute Tribunal had before it the video clip depicting the actions in question. The unauthorized passenger could not be called as a witness as her identity was unknown even though she had a lawyer. The Dispute Tribunal was correct in finding that it was not appropriate to call her lawyer to testify. The lawyer did not witness the events in question. Any testimony would be hearsay from their client and likely subject to attorney-client privilege.

50. The best evidence in the matter is the video clip that showed the conduct in question. The video clip is clear and has not been impugned. There is no dispute that it accurately depicts the conduct. There is no dispute that Mr. Antoine is the person in the rear seat of the vehicle. The only question is the characterization of the actions of Mr. Antoine and the unauthorized person, which can be determined by viewing the video clip. Testimony from witnesses and an assessment of their credibility is not required for this determination.

51. As for the lawfulness of the investigation, this was considered by the Dispute Tribunal in the Earlier *Antoine* Judgment where the UNDT had held a hearing on Mr. Antoine's application contesting the decision to place him on ALWOP during the disciplinary process.⁴⁵ In that application, the Dispute Tribunal considered the exact same arguments made by Mr. Antoine regarding the alleged due process violations in the investigation and disciplinary process, namely the alleged conflict of interest of IO1 and the lack of presumption of innocence by the investigators. It heard testimony from the D/ID/OIOS on these submissions and ultimately held these arguments were not substantiated. Therefore, these arguments have already been judicially considered and determined.

52. Further, in the present application the Dispute Tribunal had before it existing evidence and findings from the Earlier *Antoine* Judgment on this issue.

53. Article 2 of the UNAT Statute provides that the Appeals Tribunal can review the Dispute Tribunal's judgment concerning an error in procedure "such as to affect the decision of the case".

54. We find that, although the Dispute Tribunal would "normally" hold a hearing in a disciplinary matter, the Dispute Tribunal exercised its discretion judiciously in not holding a hearing in the circumstances of this case and that the lack of a hearing did not affect the decision of the case.

⁴⁵ Earlier UNDT *Antoine* Judgment, *op. cit.*

Merits of the appeal

55. As stated above, Mr. Antoine does not dispute that he was in the rear seat of the marked United Nations vehicle where an unauthorized female passenger was on his lap facing him. He argues that these established facts alone and an allegedly flawed investigation cannot support his dismissal.

Standard of review in disciplinary cases

56. In disciplinary cases such as this one, it is well-established that the Dispute Tribunal must consider (a) whether the facts on which the sanction is based have been established by the Secretary-General by clear and convincing evidence when termination is a possible outcome, (b) whether the established facts qualify as misconduct under the Staff Regulations and Rules, (c) whether the sanction is proportionate to the offence and the circumstances, and (d) whether the staff member's due process rights were observed in the investigation and disciplinary process.⁴⁶ Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; it means that the truth of the facts asserted is highly probable.⁴⁷

57. Mr. Antoine argues that the Dispute Tribunal erred in applying the wrong standard of proof when it stated that "there was (...) a preponderance of evidence that the Applicant had committed serious misconduct".⁴⁸ However, it is clear that, in that paragraph of the impugned Judgment, the Dispute Tribunal was citing the Appeals Tribunal's findings in *Antoine I*.⁴⁹ This statement alone is not an indication that the Tribunal applied the incorrect standard of proof required to establish the facts in this case. This is borne out by the factual findings made by the Dispute Tribunal in other parts of the impugned Judgment. For example, the Dispute Tribunal held that the facts as to the first count were "clearly demonstrated" by the video clip.⁵⁰

58. For the following reasons, we find that the Dispute Tribunal did not err.

⁴⁶ *Maguy Bamba v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1259, para. 37 (internal citation omitted).

⁴⁷ *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 30.

⁴⁸ Impugned Judgment, para. 83.

⁴⁹ *Antoine I* Judgment, *op. cit.*

⁵⁰ Impugned Judgment, para. 42.

Clear and convincing evidence of misconduct

59. Both the Dispute Tribunal and the Appeals Tribunal reviewed the conduct in question in the contest of the Administration's decision to place Mr. Antoine on ALWOP and the decision to extend his placement on ALWP.⁵¹ Both the Dispute Tribunal and the Appeals Tribunal held in those prior decisions that there was undoubtedly a preponderance of evidence that Mr. Antoine had engaged in serious acts of misconduct warranting separation or dismissal.⁵²

60. The issue in the present case is whether the facts have been established by the higher, clear and convincing standard.

61. In the impugned Judgment, the Dispute Tribunal held that the facts are "clearly demonstrated by the 18-second video[]clip of the Applicant's behaviour" which "speaks for itself".⁵³

62. In the video clip, Mr. Antoine was filmed in a clearly marked United Nations vehicle, stopped in traffic, in the rear seat holding a female individual on his lap who was facing or straddling him and moving her hips while Mr. Antoine was holding her with his hands on her buttocks pulling her genital area closer to his crotch area. The actions depicted on the clip have a clear sexual connotation as determined by the Dispute Tribunal. The unauthorized female passenger is clearly seen "gyrating in a sexually suggestive manner" as described in the Sanction Letter. Whether the action is labelled a "dance" or whether the female is a prostitute as suggested is immaterial. In the Earlier UNDT *Antoine* Judgment and in *Antoine I*, both the Dispute Tribunal and Appeals Tribunal have determined that the actions were of a "sexual" nature".⁵⁴

63. As outlined in the impugned Judgment, the video clip was widely disseminated in social media and regular media. Although Mr. Antoine did not disseminate the clip, his actions in a public place were contrary to the standard of integrity required of an international official. It brought disrepute to the Organization and difficulties with the host country, undermining the goals of the Organization. Further, Mr. Antoine showed a disregard for the reputation of the Organization and risked the events in question being recorded, which could and was widely

⁵¹ Earlier UNDT *Antoine* Judgment, *op. cit.*; *Antoine I* Judgment, *op. cit.*

⁵² *Antoine I* Judgment, *op. cit.*, paras. 34-35.

⁵³ Impugned Judgment, para. 42.

⁵⁴ Earlier UNDT *Antoine* Judgment, *op. cit.*; *Antoine I* Judgment, *op. cit.*

disseminated causing further reputational harm for the Organization. Mr. Antoine's acts of serious misconduct were clearly not befitting an international civil servant and were grave enough for the Administration to contemplate separation or dismissal, as it was irremediably damaging the trust relationship between the staff member and the Organization.

64. As such, the Dispute Tribunal did not err in its finding that the facts were established clearly and convincingly and that they constituted misconduct pursuant to Staff Regulation 1.2(b) and 1.2(q).

Due process of the investigation and the disciplinary process

65. Mr. Antoine raises allegations to support his submission that his due process rights were violated during the investigation and disciplinary process, particularly the participation of IO1 as an investigator and a violation of the presumption of innocence by OIOS.

66. As stated above, these allegations have already been decided in the Earlier UNDT *Antoine* Judgment in the context of the Organization's decision to place him on ALWOP.⁵⁵ Although the administrative decision in question here is the Administration's finding of misconduct and the disciplinary measure, Mr. Antoine's due process allegations and arguments are the same and have already been adjudicated.

67. The Appeals Tribunal has previously held that only substantial procedural irregularities in the disciplinary investigation will render a disciplinary measure unlawful.⁵⁶

68. We find that the Dispute Tribunal did not err in finding that Mr. Antoine's procedural fairness rights were respected during the investigation and disciplinary process.

Proportionality of the sanction

69. Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of the staff member's misconduct.⁵⁷

⁵⁵ *Ibid.*

⁵⁶ *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889, para. 33 (internal citations omitted).

⁵⁷ Staff Rule 10.3(b).

70. As correctly noted by the Dispute Tribunal, the Secretary-General has broad discretion in determining the appropriate disciplinary measure for the established misconduct and the Tribunal will only overturn a measure if it finds that it is excessive or unreasonable.⁵⁸

71. Mr. Antoine says the Dispute Tribunal erred when it found that the imposition of the disciplinary measure of dismissal was lawful and proportionate sanction. He says the Dispute Tribunal erred in ignoring the bias against him by Judge S. and the lesser sanction received by SD.

72. On 14 July 2020, Mr. Antoine had applied to the Dispute Tribunal for suspension of action of the decision to place him on ALWOP.⁵⁹ On 20 July 2020, Judge S. of the Dispute Tribunal issued unpublished Order No. 137 (NBI/2020), denying Mr. Antoine's motion to file a response to the Secretary-General's reply.⁶⁰ On the same day, Counsel for Mr. Antoine requested Judge S.'s recusal in that case.⁶¹ Mr. Antoine contended that the Judge, and the UNDT proceedings themselves, was biased.⁶² He says this matter is unaddressed in the impugned Judgment.

73. The Dispute Tribunal might not have addressed these submissions in the impugned Judgment because they are irrelevant to this matter. Order No. 137 (NBI/2020) was issued in respect of another application before the UNDT, regarding the suspension of the decision to place Mr. Antoine on ALWOP. Judge S. was not involved in the UNDT proceedings regarding the application contesting the disciplinary decision on appeal in the present case.

74. Mr. Antoine argues that he received "biased" treatment in both the UNDT proceedings and in the proportionality of the sanction when compared to SD. SD received a written censure with loss of two steps and deferment of eligibility for salary increment for a period of two years pursuant to Staff Rule 10.2(a)(i) and (iii).⁶³

75. The Dispute Tribunal dealt with this in the impugned Judgment and held that the less severe sanction was justified by the fact that SD's role in the events was fundamentally different: the vehicle was not assigned to SD who was driving and SD attempted to stop the events while Mr. Antoine was the "main actor in the affair". As the "main actor" in the events in question,

⁵⁸ *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, paras. 19-21 (internal citations omitted).

⁵⁹ Impugned Judgment, para. 9(b).

⁶⁰ *Antoine v. Secretary-General of the United Nations*, Order No. 137 (NBI/2020), para. 1.

⁶¹ Impugned Judgment, para. 9(c).

⁶² *Ibid.*

⁶³ *Ibid.*, para. 130.

Mr. Antoine should have received a more onerous sanction compared to SD and Mr. Millan, which he did.

76. The Secretary-General has broad discretion in determining the disciplinary measure and there is a reasonable range of sanctions open to the Secretary-General. In this case, the Secretary-General considered all the relevant factors (aggravating and mitigating), and we find that the disciplinary measure imposed was consistent with prior precedent and proportionate to the offence, i.e. neither excessive and unreasonable.

77. We agree with the Dispute Tribunal that Mr. Antoine displayed such a deliberate lapse of integrity and competence that the continuation of his employment relationship with the Organization could not be tolerated and the damage to the Organization's reputation was "unprecedented". The only appropriate sanction is therefore dismissal.

78. As the administrative decision in question is lawful, there is no basis for Mr. Antoine's claim for compensation for harm.

79. Therefore, the appeal fails on all grounds.

Judgment

80. Mr. Antoine' appeal is dismissed, and Judgment No. UNDT/2023/059 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Gao

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 23rd day of July 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar