



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1477

Sandi Arnold
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Gao Xiaoli Judge Leslie F. Forbang
Case No.:	2024-1886
Date of Decision:	25 October 2024
Date of Publication:	11 November 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: George G. Irving

Counsel for Respondent: Rupa Mitra

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Ms. Sandi Arnold (Ms. Arnold), a staff member with the United Nations Mission in Kosovo (UNMIK) contested the decision of the Administration to impose on her the disciplinary measure of written censure, in accordance with Staff Rule 10.2(a)(i), together with the managerial action of managerial coaching for one year for misconduct (contested decision).
2. By Judgment No. UNDT/2023/124 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Ms. Arnold's application.
3. Ms. Arnold lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. Ms. Arnold joined the Organization in 2009. At the relevant time of events, she was employed as Chief of Mission Support with UNMIK at the D-1 level since February 2017.
6. On 21 October 2019, the Office of Internal Oversight Services (OIOS) received an anonymous report of possible misconduct involving Ms. Arnold. Specifically, it was reported that she "had harassed staff members at UNMIK by making sexually suggestive and inappropriate comments and bullied staff by making them do private errands for her. It was also reported that she had made dishonest travel expense claims".²
7. Between 13 May 2019 and 20 May 2020, OIOS received 15 additional reports of possible misconduct concerning Ms. Arnold.³
8. On 9 January 2020, OIOS was authorized to open an investigation regarding the matters reported against Ms. Arnold.⁴

¹ *Arnold v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/124.

² Investigation Report, paras. 1, 2 and 13.

³ *Ibid.*, para. 14.

⁴ *Ibid.*, para. 17.

9. On 4 September 2020, Ms. Arnold was informed by OIOS of the allegations made against her.⁵

10. OIOS interviewed several witnesses, including Ms. Arnold, on 18 and 22 September 2020, as well as on 8 October 2020. She also subsequently sent a detailed response clarifying her account of the events.⁶

11. In 2019 and 2020, some of the reports were unofficially disclosed to the media and published in articles by Inner City Press.⁷

12. On 21 December 2020, Ms. Arnold requested OIOS by e-mail to take appropriate action regarding the articles published by Inner City Press.⁸

13. On 29 December 2021, OIOS issued its Investigation Report in which it found, *inter alia*, that while Ms. Arnold “categorically denied the allegations, (...) her actions did not support her assertions”. It further held that “[w]hile denying misconduct, on several occasions she conceded material parts of witnesses’ accounts were truthful”. OIOS also observed that “[m]uch of the material provided in her post interview was irrelevant and excessive”.⁹ OIOS concluded that the following facts were established:¹⁰

- (i) In 2017, Ms. Arnold gifted two colleagues ‘sex toys’, which they found inappropriate;
- (ii) Ms. Arnold made inappropriate sexual comments to colleagues in the work environment and socially;
- (iii) Ms. Arnold bullied and harassed colleagues; and
- (iv) One colleague was bullied to the point of considering suicide.

14. OIOS referred the matter to the Office of Human Resources for appropriate action based on the Investigation Report.¹¹

15. On 15 January 2022, Ms. Arnold was placed on administrative leave with full pay (ALWFP) for three months or until the completion of the disciplinary process, whichever was earlier.¹²

⁵ Impugned Judgment, para. 5.

⁶ *Ibid.*, para. 6.

⁷ Articles by Inner City Press.

⁸ E-mail dated 21 December 2020 from Ms. Arnold to the Administration.

⁹ Investigation Report, paras. 291 and 292.

¹⁰ *Ibid.*, para. 3.

¹¹ *Ibid.*, para. 295.

¹² Letter of allegations of misconduct dated 4 April 2022, para. 4.

16. On 4 April 2022, the Assistant Secretary-General for Human Resources (ASG/OHR) informed Ms. Arnold by memorandum that, based on the evidence and findings contained in the Investigation Report, the following allegations of misconduct were formally issued against her:¹³

- a) You gave sex toys to Ms. [L.A.] and Ms. [M.D.L.] contrary to the expectations of a manager in a senior leadership position.
- b) You made inappropriate sexual comments to colleagues in the work environment and at social meetings.
- c) You bullied and shouted at Ms. [A.M.], including:
 - i) In a state of anger, you broke a pen spilling ink and making [her] cry;
 - ii) You made [her] provide breakfast for you.
 - iii) You shook [her] computer in anger.
- d) You bullied and harassed Ms. [L.A.], swearing at her over the printing of a document.
- e) You inappropriately published training results of staff.
- f) You referred to staff using inappropriate nicknames.

17. The ASG/OHR also mentioned that, if established, Ms. Arnold's conduct would constitute a violation of Staff Regulation 1.2(a), (b), (e) and (f), Staff Rule 1.2(f) and paragraphs 16, 17, 22, and 42 of the Standards of Conduct for the International Civil Service (2013), as well as harassment. Ms. Arnold was requested to provide her written comments or explanations on the factual findings, which she did on 18 May 2022.¹⁴

18. On 25 August 2022, Ms. Arnold was informed by letter from the ASG/OHR of the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) that the following allegations raised against her had been established by a preponderance of evidence:¹⁵

Count one: You inappropriately published training results of staff.

Count two: You gifted a sex toy to Ms. [L.A.].

Count three: You bullied and harassed Ms. [L.A.], swearing at her over the printing of a document.

Count four: You referred to staff using inappropriate nicknames.

¹³ *Ibid.*, para. 33.

¹⁴ *Ibid.*, paras. 34-36.

¹⁵ Sanction letter dated 25 August 2022.

19. The ASG/OHR informed Ms. Arnold that it had been concluded that publishing training results of staff did not amount to misconduct. Nevertheless, it was determined that the remainder of her actions were established, and although they did not amount to harassment, they still violated Staff Regulation 1.2(a) and (f) and fell below the standards expected of a senior leader as outlined in paragraphs 16 and 17 of the Standards of Conduct for the International Civil Service (2013). Consequently, these actions constituted misconduct in respect of which the disciplinary measure of written censure, together with the managerial action of managerial coaching for one year, was imposed pursuant to Staff Rule 10.2(a)(i).¹⁶

Procedures before the UNDT

20. On 10 November 2022, Ms. Arnold filed an application with the Dispute Tribunal challenging the contested decision, in which she requested, *inter alia*, anonymity in the publication of any orders or judgments.¹⁷

21. By Order No. 122 (GVA/2023), the UNDT rejected Ms. Arnold's request for anonymity. The UNDT held that while it regretted "the leak of information [to Inner City Press] that [Ms. Arnold] pointed out, it [found] that anonymization [was] not the adequate mechanism to address or to stop it". It further found that, contrary to Ms. Arnold's contentions, the allegations referred to "shortcomings of managerial behaviour [and not] (...) to [her] private life or sexual orientation".¹⁸

Impugned Judgment

22. On 7 November 2023, the Dispute Tribunal issued the impugned Judgment, dismissing Ms. Arnold's application. The UNDT first found that the managerial coaching decision was not part of the dispute, as Ms. Arnold did not formally contest it since it was not a disciplinary measure. Therefore, the UNDT limited its scope of judicial review to the disciplinary measure of written censure.¹⁹

23. Turning to the merits of the case, the UNDT examined the facts supporting each count of misconduct.

¹⁶ *Ibid.*

¹⁷ Impugned Judgment, para. 11.

¹⁸ *Arnold v. Secretary-General of the United Nations*, Order No. 122 (GVA/2023), paras. 13-15.

¹⁹ Impugned Judgment, paras. 27-29.

24. With regard to Count one, the Dispute Tribunal noted “the Administration’s finding that the inappropriate publication of training results of staff by [Ms. Arnold did] not amount to misconduct”. Consequently, the UNDT found it unnecessary to examine whether such fact had been established to the requisite standard of a preponderance of evidence.²⁰

25. Regarding Count two, the UNDT found no merit in Ms. Arnold’s claims that the Administration had omitted that she gifted a sex toy to Ms. L.A. at her request and that it was a private exchange that happened outside of the workplace. On the contrary, referring to the Annex to the sanction letter dated 25 August 2022, the Dispute Tribunal held that the Administration appropriately concluded that the sex toy was given to Ms. L.A. at her request and at her home.²¹ The UNDT also concluded that “it was inappropriate for [Ms. Arnold] to transgress the boundary between the professional and personal life of her subordinate” and that her conduct violated Staff Regulation 1.2(f).²² It also found that her action “solicited or not, could negatively impact the image and interests of the Organization”.²³

26. Concerning Count three, the Dispute Tribunal found that it had been established by a preponderance of evidence that on 5 July 2018, Ms. Arnold bullied Ms. L.A. by swearing at her over the printing of a document. The UNDT found no merit in Ms. Arnold’s assertion that her use of expletives was directed at the copying machine. On the contrary, it concluded that the incident was corroborated by two witnesses, Ms. D.M. and Mr. A.A., who stated that they were offended and humiliated by Ms. Arnold’s conduct.²⁴ Relying on the Investigation Report, the UNDT summarized the incident as follows:²⁵

[O]n 5 July 2018, [Ms. Arnold] requested that a policy document be printed for her in advance of a meeting with the Special Representative for the Secretary-General. [Ms. Arnold] became upset when the document was not printed in its entirety and shouted at Ms. L.A. telling her ‘Will you f[***]ing print the policy itself’. When [Ms. Arnold] was not satisfied with the second printing, she threw it at Ms. L.A. and shouted again. Ms. L.A. told [Ms. Arnold] that there was no need to shout, and that they would print the policy as requested. In response, [Ms. Arnold] repeatedly stated words to the effect of ‘f[**]k you, f[**]k off’ and ‘go f[**]k yourself’.

²⁰ *Ibid.*, para. 34.

²¹ *Ibid.*, paras. 40-41.

²² *Ibid.*, para. 70.

²³ *Ibid.*, para. 72.

²⁴ *Ibid.*, paras. 46 and 65.

²⁵ *Ibid.*, para. 45.

27. Turning to Ms. Arnold’s argument that she apologized for her conduct on the same day, the UNDT observed that an apology does not “invalidate or undo the misconduct”.²⁶ The UNDT concluded that her conduct with regard to Count three violated the minimum level of civility expected in the workplace.²⁷

28. Concerning Count four, the UNDT found that it had been established that Ms. Arnold called her colleagues by nicknames related to their physical characteristics or national origins. Specifically, the UNDT noted that several witnesses reported to the OIOS investigators that Ms. Arnold “used ‘Choo Choo’ for ‘everyone’ and ‘Ju Ju Eyes’ for Ms. L.B. and that [she] gave colleagues nicknames that had national references. For example, she called a colleague from Germany ‘Berlin’, a colleague from Sweden ‘Helsinki’, a colleague from Finland ‘Finland’, another colleague ‘Vushtri’ and Ms. L.A., who is French, ‘Frenchy’”.²⁸

29. The Dispute Tribunal found no merit in Ms. Arnold’s assertion that no one ever expressed concerns about her practice or suggested that it was unwelcome or offensive. The UNDT observed that objections by staff members were not necessary for Ms. Arnold’s actions to constitute misconduct. Indeed, the UNDT highlighted that her practice was inappropriate, particularly in a multicultural workplace environment. Moreover, the UNDT observed that several staff members considered Ms. Arnold’s practice inappropriate.²⁹ The UNDT also rejected Ms. Arnold’s contention that her practice fostered team spirit, finding instead that it created a “significant risk of dividing staff on national origin” and carried “a risk of undermining an inclusive and harmonious working environment”.³⁰

30. Therefore, the UNDT found that the Administration had established the facts underlying the disciplinary measure of written censure to the required standard of a preponderance of evidence.

31. The UNDT held that Ms. Arnold’s actions constituted misconduct. In this regard, the UNDT rejected her contentions that the present case concerned only isolated incidents rather than repeated acts of misconduct.³¹ It also found that Ms. Arnold’s positive performance evaluation did not undermine the Administration’s authority to determine that the established facts amounted to

²⁶ *Ibid.*, paras. 48 and 76.

²⁷ *Ibid.*, para. 75.

²⁸ *Ibid.*, para. 51.

²⁹ *Ibid.*, paras. 52-54 and 79.

³⁰ *Ibid.*, paras. 78 and 80.

³¹ *Ibid.*, para. 64.

misconduct.³² Furthermore, relying on *Hasmik Egian*,³³ the UNDT noted that even if Ms. Arnold's conduct did not amount to harassment, it nevertheless constituted misconduct, a broader concept.³⁴ Therefore, it found that her conduct violated Staff Regulation 1.2(a) and (f) and fell below the standards expected of a senior leader as outlined in paragraphs 16, 17 and 42 of the Standards of Conduct for the International Civil Service (2013).

32. The UNDT held that the disciplinary measure of written censure was proportionate to the nature and gravity of Ms. Arnold's misconduct. It determined that, contrary to Ms. Arnold's argument, the Administration had "no obligation to explain in its decision why it adopt[ed] a disciplinary measure instead of an administrative measure".³⁵ The UNDT also observed that, despite the limited number of cases involving unbecoming behaviour, the Administration had sufficiently considered the past practice of the Organization in matters of comparable misconduct. Additionally, it found that the Administration had appropriately considered both aggravating and mitigating circumstances of the case as well as the nature and gravity of Ms. Arnold's misconduct. Consequently, the Dispute Tribunal determined that the sanction imposed was lawful and within the range of reasonable disciplinary measures, particularly given that it was the most lenient option available.³⁶

33. The Dispute Tribunal concluded that Ms. Arnold's due process rights had been respected during both the investigative and the disciplinary process. In this regard, it noted that Ms. Arnold failed to demonstrate any substantial procedural irregularities that could have negatively impacted the outcome of the investigation or the disciplinary process.

34. Last, the UNDT rejected Ms. Arnold's requests for remedies. It further found that her request for accountability action to investigate and prevent further defamatory information about her was without basis and did not fall within the scope of review of the present case.³⁷

³² *Ibid.*, para. 66.

³³ *Hasmik Egian v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1333, para. 89.

³⁴ Impugned Judgment, para. 67.

³⁵ *Ibid.*, para. 90.

³⁶ *Ibid.*, paras. 92-96.

³⁷ *Ibid.*, paras. 107-108.

Procedure before the Appeals Tribunal

35. On 4 January 2024, Ms. Arnold filed an appeal against the impugned Judgment before the Appeals Tribunal, to which the Secretary-General responded on 7 March 2024.

Submissions**Ms. Arnold's Appeal**

36. Ms. Arnold requests the Appeals Tribunal to grant her appeal and rescind the contested decision.³⁸

37. Ms. Arnold notes that the present case was framed as “unbecoming behaviour”, which, while not amounting to harassment, still constituted misconduct. She argues that the UNDT accepted this determination despite the lack of “any criteria”, highlighting its relativity.

38. Ms. Arnold contends that the UNDT erroneously based its decision on the premise that even private incidents could compromise the image of the Organization, despite the absence of evidence showing such an impact in the present case. Furthermore, relying on *Conteh*,³⁹ Ms. Arnold reiterates that the facts of this case pertain solely to her private life and are irrelevant to the contested decision.

39. Ms. Arnold also reiterates that the present case involves only isolated incidents rather than repeated acts of misconduct and that these incidents were either solicited or reciprocated by the staff members. She restates that the “one incident of using an expletive in the office (which was followed by an apology) cannot reasonably be perceived as grounds for sanctioning misconduct”.

40. Ms. Arnold clarifies that her use of nicknames to refer to staff members occurred in “casual e-mail communications” and was reciprocated by the staff. She questions how the UNDT could have concluded that objections from staff members were not necessary for her practice to constitute misconduct. She further seeks to understand how her conduct could be deemed misconduct if it does not amount to harassment.

41. Concerning the proportionality of the written censure, Ms. Arnold argues that her managerial capacities did not warrant the imposition of a written censure. She asserts that the

³⁸ Appeal form.

³⁹ *Conteh v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/189, para. 40.

UNDT failed to consider the impact of a disciplinary measure on her record and career, despite being the most lenient option available.

42. Ms. Arnold submits that the UNDT erred in law by finding that her acts amounted to misconduct warranting a written censure, particularly in the absence of analysis of similar or prior cases with comparable outcome.

43. Last, Ms. Arnold contends that the UNDT erroneously disregarded “the context in which this case arose and [its] impact”. In particular, she highlights that the UNDT overlooked the leak of information to Inner City Press. Ms. Arnold also argues that the UNDT failed to consider the “deliberate personal campaign including [11] anonymous e-mails sent widely throughout the [United Nations] and subsequently published in the Inner City Press”. She further contends that the disciplinary process was “weaponized”, with the imposition of a censure being the first step in a process to “remove her”.

The Secretary-General’s Answer

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

45. The Secretary-General submits that the UNDT correctly determined that Ms. Arnold’s actions constituted misconduct, even if they did not constitute harassment. The Secretary-General observes that Ms. Arnold’s assertions in this regard “at best, might only imply that the UNDT made errors (...), and the remainder (...) are merely repetitions of (...) arguments already made in her application, and which the UNDT properly addressed in the [impugned] Judgment”. Relying on Appeals Tribunal jurisprudence, the Secretary-General argues that it is not sufficient for Ms. Arnold to merely repeat the arguments submitted before the Dispute Tribunal.⁴⁰ The Secretary-General contends that the appeal should be dismissed on this ground alone.

46. Nevertheless, even if the Appeals Tribunal were to consider Ms. Arnold’s arguments in this regard, the Secretary-General contends that they fail to establish any reversible error in the impugned Judgment. They also ignore the fact that these claims had already been addressed by the UNDT. In particular, the Secretary-General emphasizes that Ms. Arnold’s argument that the Administration’s determination that she had engaged in “unbecoming behaviour” lacked “any

⁴⁰ *Muhsen v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-793, para. 9.

criteria” and yet was accepted by the Dispute Tribunal fails “to even frame this apparent criticism as a claim of error on the part of the UNDT”.

47. The Secretary-General contends that the UNDT correctly found that Ms. Arnold’s actions constituted misconduct, even if there was only a possibility of them causing a negative impact. The Secretary-General further observes that Ms. Arnold’s arguments to the contrary are merely observations rather than claims of any error by the Dispute Tribunal.

48. The Secretary-General argues that the UNDT appropriately considered that a finding of misconduct did not require demonstration of actual harm to the image and interests of the Organization. Indeed, the Secretary-General highlights that the Appeals Tribunal, in *Hasmik Egian*, held that “even if there is only a possibility of creating a hostile work environment, the contested actions may still constitute misconduct”.⁴¹ In any event, the Secretary-General contends that even if there was no requirement to demonstrate a negative impact, the UNDT did find evidence showing that Ms. Arnold’s actions caused harm to the Organization.⁴²

49. In response to Ms. Arnold’s argument that the UNDT erroneously based its decision on facts related to her private life, the Secretary-General points out that her reliance on *Conteh* is identical to that presented in her application before the UNDT and ignores the fact that the UNDT had already distinguished *Conteh* in the impugned Judgment.⁴³

50. The Secretary-General contends that Ms. Arnold’s assertions that the UNDT failed to consider that her actions were either solicited or reciprocated by staff members are again a mere repetition of the ones she made before the UNDT. Furthermore, the Secretary-General argues that these allegations are factually incorrect, as the UNDT considered the fact that Ms. Arnold gave the sex toy to Ms. L.A. at the latter’s request, as well as the fact that “assigning nicknames to colleagues based on their physical characteristics or national origins is inappropriate in a multilateral working environment regardless of whether the addressees *welcome them or not*”.⁴⁴

51. Last, the Secretary-General submits that the UNDT correctly held that the disciplinary measure of written censure imposed on Ms. Arnold was proportionate to the offence. He argues

⁴¹ *Hasmik Egian* Judgment, *op. cit.*, para. 90.

⁴² The Secretary-General refers to paragraphs 52-54 and 65 of the impugned Judgment.

⁴³ *Conteh* Judgment, *op. cit.*

⁴⁴ Impugned Judgment, para. 54 (emphasis added).

that Ms. Arnold's arguments in this regard again merely repeats the ones she made before the UNDT and do not demonstrate that the UNDT's conclusions were erroneous. On the contrary, the Secretary-General asserts that the UNDT correctly considered the mitigating factors and appropriately highlighted that the sanction imposed on Ms. Arnold was the most lenient available. The Secretary-General also notes that the UNDT correctly found that Ms. Arnold's request for accountability action did not fall within its scope of review.

Considerations

52. This Tribunal is competent in terms of Article 2(1) of the Appeals Tribunal Statute to determine an appeal where it is asserted that the UNDT has (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision. For an appeal to be considered by this Tribunal, it must be brought within the ambit of this Article, with the defects in the impugned Judgment identified and the grounds on which it is contended any error of fact or law has been committed which warrants intervention by this Tribunal.⁴⁵

53. The task of the UNDT in a disciplinary matter is to determine whether: i) the facts on which the sanction is based have been established on the evidentiary standard of clear and convincing evidence where termination of service is a possible outcome, or a preponderance of evidence where termination is not a possible outcome; ii) the established facts qualify as misconduct in terms of the applicable legal framework; iii) the sanction is proportionate to the misconduct; and iv) there has been due process or procedural fairness by the original decision-maker.⁴⁶ Since termination was not contemplated in this matter, the facts underlying the misconduct alleged had to be shown to be more likely than not based on the facts and circumstances established, with the established facts shown to constitute misconduct under the Staff Regulations and Rules.

54. We are satisfied that the UNDT committed no error of fact or law in finding that Ms. Arnold had committed "unbecoming behaviour" and that the Administration had appropriately concluded that the sex toy had been given by Ms. Arnold to Ms. L.A. at home at Ms. L.A.'s own request.

⁴⁵ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-744, paras. 36-37.

⁴⁶ *Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-972, para. 69.

Nevertheless, it found that Ms. Arnold's conduct was inappropriate as it transgressed the boundary between the professional and personal life of her subordinate, violated Staff Regulation 1.2(f), and whether solicited or not, had the potential to negatively impact the image and interests of the Organization.

55. Ms. Arnold was required to conduct herself "at all times in a manner befitting [her] status" as an international civil servant and not to "engage in any activity that [was] incompatible with the proper discharge of [her] duties with the United Nations".⁴⁷ Paragraph 16 of the Standards of Conduct for the International Civil Service (2013) provides that "[m]anagers and supervisors are in positions of leadership and it is their responsibility to ensure a harmonious workplace based on mutual respect", in which "[m]anagers are responsible for guiding and motivating their staff and promoting their development". Its paragraph 17 further states that managers and supervisors are considered "role models and they have therefore a special obligation to uphold the highest standards of conduct". In relation to private life and personal conduct, paragraph 42 states that:

... (...) There may be situations (...) in which the behaviour of an international civil servant may reflect on the organization. International civil servants must therefore bear in mind that their conduct and activities outside the workplace, even if unrelated to official duties, can compromise the image and the interests of the organizations. This can also result from the conduct of members of international civil servants' households, and it is the responsibility of international civil servants to make sure that their households are fully aware of this.

56. In her conduct, Ms. Arnold failed to uphold the required standard expected of her role. She was reasonably expected to act as a role model in her position of leadership and as an international civil servant. This required that she refrain from engaging in any activity incompatible with the proper discharge of her duties or that could compromise the image and interests of the Organization. Her conduct in gifting a sex toy to a colleague clearly had the potential to damage the good name, image and interests of the Organization and was not compatible with the proper discharge of her duties. Given her position of leadership, Ms. Arnold should reasonably have recognized this and conducted herself in a manner befitting her status in response to a subordinate asking to be gifted a sex toy, even if this took place in private.

⁴⁷ Staff Regulation 1.2(f).

57. We are also satisfied that the UNDT committed no error of fact or law in finding that Ms. Arnold bullied Ms. L.A. by swearing at her over the printing of a document, as this was corroborated by two witnesses, who stated that they were offended and humiliated by her conduct. Ms. Arnold's conduct in directing expletives at a colleague clearly violated the minimum level of civility expected in the workplace, even if she apologized for it on the same day.

58. Furthermore, the UNDT cannot be faulted for finding that Ms. Arnold's misconducted herself by calling her colleagues by nicknames related to their physical characteristics or national origins. The fact that no colleague expressed concern about the use of such nicknames, or that they were used in "casual e-mail communications" and reciprocated by the staff, did not negate the fact that her actions were patently inappropriate. This is so since all staff members are entitled to be treated with dignity and respect and to work in an environment free from harassment and abuse,⁴⁸ with staff required to exhibit respect for all cultures.⁴⁹ Ms. Arnold's conduct clearly did not accord with the standard of conduct required of her in circumstances in which she ought reasonably to have recognized that it could be perceived to cause offence or humiliation to another person. As a manager, she was responsible for ensuring a "harmonious workplace based on mutual respect"⁵⁰ and for performing her duties in the manner of a role model, with "a special obligation to uphold the highest standards of conduct".⁵¹ She failed to do so.

59. The Administration has broad discretion in disciplinary matters, which will not be lightly interfered with on judicial review.⁵² Under our jurisprudence, the proportionality inquiry of Staff Rule 10.3(b) seeks to ensure that a disciplinary measure is reasonable and not more excessive than necessary to obtain the desired result.⁵³ This requires that legitimate concerns are balanced and relevant facts considered, while also meeting the obligation to treat staff members fairly and rationally.

60. The UNDT did not err in finding that, in relation to Ms. Arnold, this discretion was exercised in a manner that was lawful, rational, and procedurally correct. The disciplinary measure imposed on her was not unlawful, arbitrary, excessive, abusive, discriminatory or

⁴⁸ Article 101(3) of the Charter of the United Nations and Staff Regulation 1.2(a).

⁴⁹ Staff Regulation 1.2(a).

⁵⁰ Paragraph 16 of the Standards of Conduct for the International Civil Service (2013).

⁵¹ Paragraph 17 of the Standards of Conduct for the International Civil Service (2013).

⁵² *Yasin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-915, para. 42.

⁵³ *Timothy Kennedy v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1453, para. 71.

absurd in its severity, but was imposed within accepted limits with due regard to the applicable norms, the purpose of discipline, and its potential to be constructive and corrective, driving personal growth and development in a staff member to ensure that their conduct in the future complies with the accepted norms and standards of the Organization. As this Tribunal made clear in *Hasmik Egian*,⁵⁴ the high standards of conduct for international civil servants laid down by the relevant Staff Regulations and Rules justify that even if there is only a possibility of creating a hostile work environment, the contested actions may still constitute misconduct.

61. In the present case, the facts underlying the disciplinary measure of written censure were proved on a preponderance of evidence and the disciplinary measure imposed was proportionate. In her challenge against the disciplinary measure imposed, Ms. Arnold asserted that regard was not given to its impact on her record and career, nor to the deliberate personal campaign against her. We are of the view that the measure imposed constituted a proportionate response to the misconduct committed. It had regard to her position and the circumstances in which the misconduct occurred, and it was the most lenient option available.

⁵⁴ *Hasmik Egian* Judgment, *op. cit.*

Judgment

62. Ms. Arnold's appeal is dismissed, and Judgment No. UNDT/2023/124 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Gao

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 11th day of November 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar