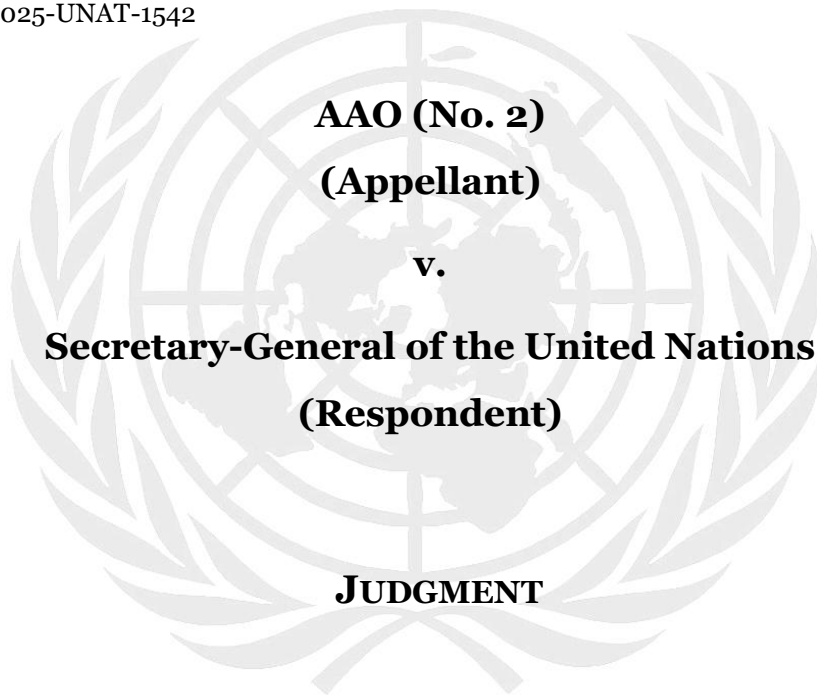




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1542



AAO (No. 2)

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Kanwaldeep Sandhu
Case No.:	2024-1927
Date of Decision:	21 March 2025
Date of Publication:	20 May 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant: Jeffery C. Dahl

Counsel for Respondent: Noam Wiener & Amanda Stoltz

JUDGE GRAEME COLGAN, PRESIDING.

1. AAO, a former staff member of the United Nations Office on Drugs and Crime (UNODC), appeals Judgment No. UNDT/2024/016 (impugned Judgment).¹ The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed his application contesting his separation from service with compensation in lieu of notice and with 25 per cent of termination indemnity (contested decision).

2. In the impugned Judgment, the UNDT found that the contested decision was lawful; that the Administration had demonstrated by clear and convincing evidence that AAO had engaged in sexual harassment and workplace harassment; and that the disciplinary measure of separation from service was a proportionate response to the established misconduct.

3. For the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. Prior to his separation, AAO held a fixed-term appointment and worked as a Social Affairs Officer, Grade P-3, in a Data Development and Dissemination Unit (DDDU) of UNODC. A young woman (Vo1) was hired as an intern between July and December 2015 at DDDU. Mr. E.B., the Chief/DDDU/UNODC, was Vo1's direct reporting officer; however, AAO managed the projects in which she was engaged.²

5. From July to October 2017, Vo1 was working at another UNODC regional office. In November 2017 she returned to work as a consultant to DDDU in the same city where AAO was located. While she was in her previous location, AAO contacted her via WhatsApp and invited her to participate with him in a regional training course in South Korea on 5-7 December 2017.³ Vo1 had never participated in such a training and felt honoured to be included.

6. The preparations for the training in South Korea were underway before Vo1 returned to their common DDDU office. There was an extra night planned in South Korea following the training. In discussions about this extra night, on 8 November 2017, AAO and Vo1 had the

¹ *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/016 (28 March 2024).

² *Ibid.*, para. 8.

³ *Ibid.*, paras. 102-103.

following e-mail exchange about accommodation on the last day after the training and before their departure from Seoul:⁴

9:19 am [AAO] to Vo1: [...], Does not sound bad, what do you think? I've done some researches, Daejeon is not that exciting, but the high-speed train to Seoul takes 50 min. So, you could go back and forth in one day (Friday for example). Let me know, [...].

10:23 am Vo1 to [AAO]: That's true. But we fly from Seoul the next day, right? Then we have to drive twice ... Would it not be more practical to stay in Seoul and from there go to the airport? [...]

11:31 am [AAO] to Vo1: Yes, I see that too ... I thought the airport is in the middle between Seoul and Daejeon, but that's not so and it's over 2 hours from Daejeon to the airport ... We could check the prices for the accommodation in Seoul and or - Ask KOSTAT if they would provide us with the airport shuttle on Saturday the latter possibility would be almost risky ... Can you look for accommodation /prices. [...]

12:33 am Vo1 to [AAO]: [...] I have already looked. Basically, there are all sorts of accommodations between 50 – 500 euros! At booking.com there are always good deals – **if you give me a price range I can reserve 2 rooms**. This is very fast. Also, for the airport shuttle, either the shuttle will drive us to Seoul on Friday to the new accommodation (instead to the airport), or on Saturday from the Seoul accommodation to the airport. [...]

13:08 [AAO] to Vo1: [...] OK, price range of 50-100 should be ok, but I'm more in line with your budget. **Maybe you'll find something on Airbnb where you have 2 rooms or separate beds or something like that**. I can ask if we can take the shuttle on Friday to Seoul. I really do not want to ask for Saturday.

7. On 21 November 2017, Vo1 told AAO: "I am still sorting out accommodation for the last night in Seoul. **I have made a reservation**, but I am still waiting for a better offer! I will keep you updated." To which, AAO replied: "**What about Airbnb?**"⁵

8. Towards the end of November, Vo1 booked two separate rooms in a hotel for them in Seoul.

9. On 3 December 2017, on the flight to South Korea, AAO and Vo1 sat next to each other. Vo1 claimed that AAO shared intense personal matters with her, including his childhood, recent divorce, and a romantic relationship that he had with a young woman of about Vo1's age while he was on sabbatical. Vo1 stated that he told her, in their common first language German, that he

⁴ *Ibid.*, para. 205 (emphases in original).

⁵ *Ibid.*, para. 206 (emphases in original).

“felt differently about [her] since the summer”. She also alleged that AAO said he did not agree with the United Nations rules against romantic relationships between supervisors and supervisees. She also said that he told her: “I hope you know what is expected of you on this trip”.⁶ Vo1 felt trapped by this conversation as she would be on the mission alone with AAO.

10. On the return flight on 9 December 2017, Vo1 asked AAO whether he had invited her on the trip for personal or professional reasons. She said that AAO stated that it was for both, and Vo1 said she told him that nothing would ever happen between them.⁷ Upon arrival in their common city, Vo1 called her best friend, Ms. A.S., to confide in her about what happened with AAO.

11. Following the trip to South Korea, Vo1 alleged that AAO created a hostile work environment for her by monitoring her movements closely. Two colleagues, Mr. A.K. and Ms. S.K., confirmed her account.⁸

12. Vo1 said that on 28 April 2018 AAO was “rude” to her at a team meeting, causing her distress and she confided in another colleague, Mr. U.R., about what happened on the trip to South Korea.⁹

13. AAO admitted that he made comments about Vo1’s age (25 years old) in front of colleagues and counterparts at the beginning of a mission to Peru in June 2018. Vo1 believed that his comments were mocking and intended to offend her.¹⁰

14. On 5 July 2018, AAO and Vo1 had a work-related disagreement about a project. AAO admits he reacted harshly but contends that he was justified because Vo1 had gone “behind his back”. Mr. E.B. confirmed that he could hear AAO shouting at Vo1 from several offices away.¹¹ Ms. S.K. observed Vo1 crying later in the day due to this disagreement.

15. On 20 July 2018, the Investigations Division of the Office of Internal Oversight Services (OIOS) received a report by Vo1 of sexual harassment, harassment, and abuse of authority towards her by AAO.

⁶ *Ibid.*, para. 214.

⁷ *Ibid.*, para. 215.

⁸ *Ibid.*, paras. 225-227.

⁹ *Ibid.*, paras. 229-230.

¹⁰ *Ibid.*, paras. 233-234.

¹¹ *Ibid.*, paras. 236-239.

16. On 28 June 2019, OIOS finished its investigation concluding that AAO had sexually harassed and abused his authority over VO1 by suggesting that they share a room on the trip to South Korea, and that he had harassed her and abused his authority in six different instances. Not all of these were the subject of conclusions against AAO for which he was sanctioned, and we omit those that were not:¹²

- a. Controlling her movements and creating a hostile work environment after she refused his advances and reproached him for his conduct towards her;
- b. ...
- c. Humiliating VO1 and being rude to her in the presence of other colleagues during team meetings.
- d. ...
- e. Speaking to VO1 using a loud tone, especially when she had done something wrong; and
- f. Raising his voice towards VO1 during a discussion on 5 July 2018, and by being harsh and unfriendly with her during a subsequent meeting.

17. On 24 September 2019, the Director of the Administrative Law Division, Office of Human Resources issued a memorandum entitled “allegations of misconduct”. AAO was requested to provide any comments on the allegations.

18. On 19 May 2020, the Assistant Secretary-General for Human Resources (ASG/HR) conveyed the decision of the Under-Secretary General for Management Strategy, Policy and Compliance (USG/DMSPC) that it had been established by clear and convincing evidence that AAO:¹³

- a. In November to December 2017, in connection with and during travels for a mission to South Korea, made unwelcome advances of a sexual nature towards VO1; and
- b. Between January and July 2018, created an intimidating and hostile work environment for VO1 by closely and excessively monitoring her work and movements in the office, treating her rudely in team meetings, making demeaning remarks to or about her in work contexts, and raising [his] voice in public settings in the workplace.

¹² *Ibid.*, para. 11.

¹³ 19 May 2020 letter from ASG/HR to AAO (Sanction Letter), p. 2.

19. The USG/DMSPC concluded that AAO's actions constituted serious misconduct in violation of Staff Regulation 1.2(a), Staff Rule 1.2(f)¹⁴ and Sections 2.1 and 3.2 of Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

20. The USG/DMSPC considered that AAO's supervisory role over VO1 served as an aggravating factor, whereas the Covid-19 pandemic was a mitigating factor.¹⁵

21. The USG/DMSPC decided to impose on AAO the disciplinary measure of separation from service, with compensation in lieu of notice and with 25 per cent of his termination indemnity.¹⁶

Initial UNDT and UNAT proceedings

22. On 3 August 2020, AAO filed an application challenging the contested decision before the UNDT.

23. The UNDT held a hearing limited in scope to evidence about AAO's prior conduct with other individuals. AAO and four witnesses testified. This evidence went to AAO's propensity, or its absence, for the sorts of conduct with which he was charged.

24. The UNDT dismissed AAO's application in Judgment No. UNDT/2022/071 (First UNDT Judgment).¹⁷

25. AAO appealed to the UNAT. The UNAT reversed the First UNDT Judgment, finding that the "methodological flaws" in the Judgment "render[ed] it unsustainable in fundamental respects".¹⁸ The UNAT found that there was an overreliance on hearsay evidence and on the OIOS investigative report. Because of the legal and procedural flaws, the UNAT concluded that there "ha[d] not been a proper trial of the issues". The UNAT remanded the case to the UNDT for a fresh trial.¹⁹

¹⁴ ST/SGB/2018/1/Rev.2 (Staff Regulations and Rules of the United Nations).

¹⁵ Sanction Letter, p. 2.

¹⁶ *Ibid.*

¹⁷ *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/071 (28 July 2022).

¹⁸ *AAO v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1361, para. 72.

¹⁹ *Ibid.*, para. 73.

Remand and impugned Judgment

26. On remand, a different UNDT Judge held a merits hearing on 13, 23 and 25 October 2023 on the grounds for AAO's separation from service. VO1 and six other witnesses testified. The six witnesses were: Mr. E.B., Chief/DDDU, Ms. M.T., a consultant who worked with both AAO and VO1 at UNODC, Ms. A.S., the best friend of VO1, Ms. S.K., a UNODC staff member who worked with both AAO and VO1, Mr. A.K. who worked as a consultant at DDDU and worked with both AAO and VO1, and Mr. U.R., who worked in the research and analysis branch of UNODC and shared an office with VO1 for approximately one year. AAO and the four witnesses who testified in the first hearing were not called to do so again. AAO's earlier-given evidence was taken into account at this second UNDT hearing, as was the propensity evidence of his previous four witnesses.

27. The following is a summary of the pertinent evidence given before the UNDT Judge in the case now on appeal.

28. AAO testified that his supervisory role over VO1 was limited to specific outputs and tasks, and it was Mr. E.B. who made decisions about VO1's contract, although he (AAO) might have been consulted about the contract.²⁰ AAO accepted that he might have some influence on VO1 due to his ability to help her with her career.²¹ AAO admitted with respect to the workplace disagreement on 5 July 2018 that he raised his voice at VO1, but denied that he had shouted at her.²² AAO denied insisting on sharing an Airbnb accommodation and stated that his suggestion was to save VO1 money.²³ AAO's position was that VO1 misinterpreted their interactions because she told him on the flight to Seoul that she had faced a serious instance of sexual harassment by someone else not long before.²⁴

29. Mr. E.B. testified that AAO and VO1 worked together almost on a daily basis. He stated that sometimes he supervised VO1, sometimes AAO supervised her.²⁵ Mr. E.B. recalled that on 5 July 2018 AAO had a bad reaction about being asked to provide some inputs on a project and treated VO1 badly. He testified that when AAO did not show up at a meeting to discuss this project, and VO1 went to get him, Mr. E.B. could hear AAO talking loudly to VO1 from four or five office

²⁰ Impugned Judgment, paras. 54-55.

²¹ *Ibid.*, para. 56.

²² *Ibid.*, para. 58.

²³ *Ibid.*, para. 60.

²⁴ *Ibid.*, para. 62.

²⁵ *Ibid.*, para. 93.

doors away.²⁶ He said that he had never witnessed a similar reaction to a work disagreement as the one AAO had on that day.²⁷ Mr. E.B. had never observed any behavior by AAO towards Vo1 that could be regarded as sexual harassment.²⁸

30. Vo1 testified that she worked closely with AAO and Mr. E.B. as a team during her consultancy contracts. AAO first started communicating with her outside of work by friendly WhatsApp messages when she was on a contract break in another city. This is when he asked her about going to South Korea.²⁹ With regard to the accommodation in Seoul, Vo1 testified that they had multiple conversations about this, not just the e-mail exchanges. As to AAO's suggestions of an Airbnb, Vo1 testified that she never indicated that she needed to save money on this booking.³⁰ She also testified that she never claimed that AAO said he would pay for the room.³¹ What he said was that sharing a room would reduce costs.³²

31. Vo1 testified that, on the flight to Seoul, AAO told her many intimate things about his childhood, his divorce, and a relationship with a young woman. He later became drunk and told her that he had started messaging her over WhatsApp when she was temporarily absent from their common location because he had "been starting to have feelings for [her]", that he didn't care about the United Nations training on sexual harassment and that he "hoped [she] kn[e]w what was expected of her on this trip". Vo1 said she went to the aircraft's lavatory and stayed there for a long time.³³

32. Vo1 testified on the return trip, AAO tried to get a flight attendant to seat them together, and she begged the same attendant not to move them. She said that at the end of the trip, she asked AAO whether he had invited her to come on the trip for personal or professional reasons, and he said both. She told him that "this will never happen between us".³⁴

33. Vo1 testified that after their return to the office, she had lunch with AAO and told him that his behavior had been inappropriate. After this, AAO was "awful" to her. He was monitoring her

²⁶ *Ibid.*, paras. 84-85.

²⁷ *Ibid.*, para. 94.

²⁸ *Ibid.*, para. 96.

²⁹ *Ibid.*, paras. 102-103.

³⁰ *Ibid.*, paras. 105-106.

³¹ *Ibid.*, para. 141.

³² *Ibid.*, para. 142.

³³ *Ibid.*, paras. 113-114.

³⁴ *Ibid.*, paras. 115-116.

excessively, placing extra pressure on her, and was rude in team meetings. She testified that he had not treated her like this in the past.³⁵

34. Vo1 testified that on 5 July 2018 AAO shouted at her and was “extremely aggravated” regarding some inputs to a project that Mr. E.B. had asked her to solicit from AAO. After this incident, Mr. E.B. asked her what was going on between them, and Vo1 told him about events related to the mission to South Korea. Mr. E.B. encouraged her to report this to the Head of Branch, and in a meeting between Mr. E.B. and the Head of Branch, they encouraged her to file a complaint with OIOS.³⁶

35. Vo1 testified that AAO never explicitly asked her to have sex with him or made any sexual advance when they were in South Korea. She also testified that another case of sexual harassment of her by someone else had left her feeling “extremely anxious and paranoid” during this period.³⁷

36. Ms. M.T. testified that Vo1 sought her out for advice in November 2017 because she said she felt that AAO was pressuring her to share a room with him in Seoul. Ms. M.T. also testified that Vo1 told her about AAO’s inappropriate behaviour on the flight to Seoul. Ms. M.T. noticed that after this Vo1 was very uncomfortable at work.³⁸

37. Ms. A.S. testified that Vo1 called her after her return following the South Korea trip. Vo1 told her that AAO drank too much alcohol on the flight to Seoul and shared very personal and inappropriate details about past relationships, confessed romantic feelings for her, and told her that “you know what is expected of you on this trip” and that he did not care about the “sexual harassment conference”. Vo1 also told her that AAO wanted to share a room to save money.³⁹

38. Ms. S.K. testified to witnessing an example of AAO monitoring Vo1’s movements and thought he might be over-controlling her. Ms. S.K. testified that she found Vo1 in the cafeteria crying after the 5 July 2018 incident. Ms. S.K. testified that AAO invaded other people’s space without realizing it and often entered colleagues’ offices spontaneously.⁴⁰

³⁵ *Ibid.*, paras. 120-121, 123, and 127.

³⁶ *Ibid.*, paras 128-130.

³⁷ *Ibid.*, paras. 136-138.

³⁸ *Ibid.*, paras. 148-150.

³⁹ *Ibid.*, paras. 153-154.

⁴⁰ *Ibid.*, paras. 159, 160, 163, 165.

39. Mr. A.K. testified that AAO was “toxic”, that he observed tensions between AAO and Vo1, and that she appeared to be “suffering”. Mr. A.K. testified that AAO was usually very negative and critical of Vo1 in team meetings; and that he was more disrespectful and controlling with her than with others.⁴¹ Mr. A.K. also testified that AAO seemed to be frequently interested in Vo1’s whereabouts and he thought AAO’s “extra focus” on Vo1 was strange.⁴²

40. Mr. U.R. testified that AAO was rude and aggressive to Vo1 in team meetings, and that it seemed unusual.⁴³ He testified that Vo1 confided many months after the South Korea trip about AAO’s suggestion to share an accommodation, and how she felt pressured to be nice and respectful towards AAO due to her status and career hopes in the Organization. Mr. U.R. testified that in practice Vo1 was reporting directly to AAO on all projects.⁴⁴

41. Following the hearing and closing submissions, the UNDT delivered the impugned Judgment.

42. The UNDT rejected AAO’s argument that Vo1 had “embellished” her account or that it contained inconsistencies. The UNDT found that the alleged inconsistencies were irrelevant or that AAO’s claims were a distortion of the testimony given.⁴⁵

43. Turning to whether the alleged misconduct – workplace harassment and sexual harassment – were established to the clear and convincing evidence standard, the UNDT first addressed AAO’s suggestion to share accommodation while on the trip to South Korea. The e-mails demonstrated that AAO suggested on two occasions (8 and 21 November 2017)⁴⁶ that they might share an Airbnb together.

44. The UNDT found that the testimony of Ms. M.T. corroborated Vo1’s allegation that Vo1 was troubled and felt pressured by AAO’s suggestion. Vo1 sought the guidance of Ms. M.T. at the time. It was not credible that Vo1 fabricated being in distress about this suggestion to Ms. M.T. in a preparatory move to filing a complaint against him eight months later.⁴⁷

⁴¹ *Ibid.*, paras. 167-170.

⁴² *Ibid.*, para. 172.

⁴³ *Ibid.*, para. 179 and 186.

⁴⁴ *Ibid.*, paras. 179-183.

⁴⁵ *Ibid.*, para. 196.

⁴⁶ *Ibid.*, paras. 211-212

⁴⁷ *Ibid.*, para. 209.

45. The UNDT was convinced that VO1 felt insecure and pressured by AAO. The UNDT noted that VO1 ignored AAO's suggestion of booking an Airbnb and booked two hotel rooms instead, and AAO's response was to again ask her about an Airbnb. The UNDT found VO1 to have been credible that being asked multiple times by a *de facto* supervisor, AAO, to share accommodation during a mission in a foreign country would make her feel uncomfortable.⁴⁸

46. The UNDT concluded that the sexual harassment allegation with respect to these accommodation booking incidents was established to the clear and convincing evidence standard.⁴⁹

47. Turning to the personal conversations that AAO had with VO1 on the flights to and from South Korea, including AAO saying that he had romantic feelings towards her and had personal as well as professional reasons for bringing her on the trip, the UNDT found VO1's recollections more credible than AAO's flat denial. The UNDT noted that Ms. A.S. testified before the Tribunal that VO1 called her immediately after the flight back from South Korea, very distraught about what happened with AAO on the mission. The UNDT considered it unlikely and unreasonable that VO1 would have contemporaneously fabricated a distressing account to her best friend, long before ever formally reporting AAO's conduct to the Organization.⁵⁰ The UNDT concluded that the totality of the evidence met the clear and convincing evidence standard with respect to this sexual harassment allegation.⁵¹

48. Regarding the hostile work environment or workplace harassment allegations, the UNDT identified four subsidiary allegations: (i) monitoring her work and movements in the office, (ii) rude behavior in team meetings, (iii) comments regarding her age, and (iv) his alleged shouting on 5 July 2018.

49. The UNDT found that Mr. A.K. and Ms. S.K. both confirmed that AAO engaged in excess monitoring of VO1 and testified that VO1 seemed scared of AAO and that he was often rude to her.⁵²

50. The UNDT found that Mr. U.R. testified that AAO was unprofessional towards VO1 and that VO1 broke down in their shared office after one particular team meeting in which AAO cut her

⁴⁸ *Ibid.*, paras. 211-212.

⁴⁹ *Ibid.*, para. 213.

⁵⁰ *Ibid.*, paras. 220-222.

⁵¹ *Ibid.*, para. 223.

⁵² *Ibid.*, paras. 225-227.

off. Mr. A.K. also observed the team meetings and stated that AAO was more negative, disrespectful and controlling towards Vo1.⁵³

51. The UNDT observed that AAO admitted that he made a comment about Vo1's age on mission to another country in front of other colleagues, but he said it was complimentary, whereas Vo1 perceived it as mocking. There were no direct or indirect witnesses to this incident.⁵⁴

52. Vo1 alleged that due to a work-related disagreement over a project, AAO reacted aggressively towards her by shouting and accusing her of overstepping his authority. Mr. E.B. confirmed the veracity of Vo1's recollection, stating that he could hear AAO shouting at Vo1 from several offices away. AAO admitted to acting harshly but argued this was justified.⁵⁵

53. The UNDT was convinced that there was a causal link between the events in South Korea and how AAO treated Vo1 in the workplace after the trip. That is, after his advances had been rebuffed, he treated her badly in retribution for his earlier rejection by her. The UNDT found that most of her account was corroborated by direct or circumstantial evidence, including independent witnesses who spoke with her at the relevant time, or witnesses who noticed AAO's harsh behavior towards her that was noticeably worse than his treatment of other colleagues.⁵⁶

54. The UNDT found that even though there were opposing views about Vo1 and AAO's conversations on the flights to and from South Korea, the totality of the evidence gave Vo1's account more credibility than AAO's. The UNDT considered it was unreasonable to conclude that Vo1 "fabricated an elaborate story of workplace harassment with multiple witnesses and incidents over a period of almost seven months just to corroborate another equally and previously fabricated story of sexual harassment".⁵⁷

55. The UNDT rejected AAO's argument that Vo1 was misinterpreting his behavior based on a prior incident of sexual harassment that she experienced. Nothing on the record suggested that her account about AAO was tainted by past experiences.⁵⁸

⁵³ *Ibid.*, paras. 229-231.

⁵⁴ *Ibid.*, paras. 233-235.

⁵⁵ *Ibid.*, paras. 236-239.

⁵⁶ *Ibid.*, para. 240.

⁵⁷ *Ibid.*, para. 243.

⁵⁸ *Ibid.*, para. 244.

56. The UNDT concluded that:⁵⁹

Undeniably, there is clear and convincing evidence in support of Vo1's allegations that [AAO] sexually harassed her in connection with and during a mission to South Korea and proceeded to harass her between January and July 2018 by creating a hostile work environment.

57. Turning to whether the established facts constituted misconduct, the UNDT found that AAO's "suggestion to share a room with Vo1 during a private deviation of a professional work trip was completely inappropriate and reprimandable".⁶⁰ Although as an isolated incident this might or might not reach the threshold of sexual harassment, the Dispute Tribunal held that AAO's conduct could not be assessed in isolation.

58. The UNDT considered as an aggravating factor that AAO oversaw most of Vo1's daily work, giving him input into her performance evaluations and contract renewals.

59. Different witnesses testified to the hostile work environment AAO created for Vo1 after the South Korea trip. The UNDT found it was important to note that this workplace harassment only occurred after Vo1 had allegedly turned down AAO's advances. The UNDT stated that this change in AAO's behavior "left no doubt about the nature of [AAO's] intentions and support[ed] [Vo1's] allegations with respect to what happened in South Korea". That is, the subsequent workplace harassment was consistent with Vo1's allegations that she suffered from sexual harassment by AAO.⁶¹

60. The UNDT thus concluded that AAO's actions constituted sexual harassment and harassment within the meaning of Sections 1.2 and 1.3 of ST/SGB/2008/5, and that he violated Staff Regulation 1.2(a), Staff Rule 1.2(f), and Sections 2.1 and 3.2 of ST/SGB/2008/5.⁶²

61. Regarding the sanction of separation from service, the UNDT did not consider AAO's long service or unblemished disciplinary record to be a mitigating factor in a case of sexual harassment and workplace harassment. The evidence of AAO's character witnesses who testified at the first hearing had no probative value about AAO's behavior towards Vo1, because these witnesses only testified to how AAO treated them. The UNDT further found that the Secretary-General was

⁵⁹ *Ibid.*, para. 245.

⁶⁰ *Ibid.*, para. 250.

⁶¹ *Ibid.*, paras. 257-258.

⁶² *Ibid.*, para. 259.

entitled to consider as an aggravating factor that AAO was Vo1's *de facto* supervisor, even if he was not her FRO.⁶³

62. The UNDT concluded that, given the gravity of the misconduct, AAO remaining in service would have been irreconcilable with the core values of the United Nations.⁶⁴ Thus, the UNDT held that the sanction was adequate and proportionate to the offence.⁶⁵

63. Finally, the UNDT was satisfied that AAO's due process rights were respected in both the investigation phase and the disciplinary phase. The UNDT rejected as meritless AAO's complaints that the OIOS investigators asked leading questions.⁶⁶ The UNDT was also not persuaded that AAO was denied due process because OIOS did not interview 11 individuals that AAO said would testify that he was "not prone to sexual advances".⁶⁷ The UNDT pointed out that OIOS is at liberty to decide who to interview, and that in any event, these 11 individuals could not have shed light on the allegations in this case.⁶⁸ The UNDT also stated that it had not considered alleged prior conduct of AAO as part of its judicial review of the present case with Vo1.⁶⁹

64. The UNDT rejected AAO's application in its entirety.

65. AAO filed an appeal of the impugned Judgment on 27 May 2024, to which the Secretary-General responded with his answer on 29 July 2024.

Submissions

AAO's Appeal

66. AAO submits that the e-mail exchange about accommodations in Seoul are not clear and convincing evidence of sexual harassment. AAO notes that even the UNDT admitted that standing alone the e-mails may not be enough evidence. AAO argues that the UNDT was wrong to rely on Vo1's testimony that there were other oral conversations about the accommodations. AAO states that the e-mail text does not reflect that they had any such conversations.

⁶³ *Ibid.*, paras. 264 and 266.

⁶⁴ *Ibid.*, para. 267.

⁶⁵ *Ibid.*, para. 269.

⁶⁶ *Ibid.*, para. 272.

⁶⁷ *Ibid.*, para. 276.

⁶⁸ *Ibid.*, para. 278.

⁶⁹ *Ibid.*, para. 280.

67. AAO submits that he did not even want to stay in Seoul, and he was only suggesting the Airbnb option to save Vo1 money. AAO argues that this important point has been ignored by the UNDT and the Respondent.

68. AAO points out that there is no overt sexual statement or even sexual innuendo in the e-mail exchange.

69. AAO submits that the UNDT erred in its assessment of Vo1's credibility. AAO refers to Vo1's "self-impeachment" regarding her claims that AAO offered to pay for the extra night in Seoul. The allegation that AAO offered to pay for this night was mentioned at least nine times in the Sanction Letter, yet Vo1 testified at trial that AAO never offered to pay for the extra night.

70. AAO submits that the UNDT erred in "rehabilitating" Vo1's testimony by speculating that she may have interpreted AAO's suggestion to save costs as an implied offer to cover the costs.

71. AAO contends that the UNDT erred by relying on Mr. U.R.'s testimony when Mr. U.R., like the other witnesses, is merely regurgitating what Vo1 told him. The only knowledge that Mr. U.R. had about whether AAO offered to pay for the room came from Vo1.

72. AAO argues that every single piece of evidence that the UNDT used to support the impugned Judgment, other than the e-mails, came from Vo1, either directly or indirectly through what she told others. It is her word against AAO's.

73. AAO contends that an example of Vo1's embellishment is that she told her best friend, Ms. A.S., that AAO had "absolute power over her, in terms of her job and salary". This is a significant overstatement of AAO's actual authority.

74. AAO points out another embellishment from Vo1, namely that Ms. A.S. testified that Vo1 told her that she had been in a hospital in spring of 2018, but Vo1 denied this on cross-examination. Vo1 stated she may have seen a psychiatrist at the time. AAO says this is a "smaller embellishment" but all of the embellishments add up.

75. AAO notes that Mr. A.K testified that Vo1 told him that AAO "wanted to have sexual intercourse with her". However, Vo1 testified that AAO never made such a statement. AAO says that this shows that Vo1 embellished her story to Mr. A.K. The UNDT erred in speculating that it was Mr. A.K. who was providing his own interpretation.

76. AAO argues that the UNDT erred in relying on Mr. A.K.'s testimony that AAO was excessively monitoring Vo1's work, when it was clear that Mr. A.K. did not like AAO.

77. AAO submits that the UNDT erred in concluding that AAO shouted at Vo1 on 5 July 2018. Vo1 testified that Mr. U.R. was present, but Mr. U.R. testified that he did not remember any shouting. This is a significant inconsistency from an eyewitness and the UNDT ignored it.

78. AAO points out that Vo1 embellished her account to OIOS with a host of other allegations, such as AAO hindering her professional prospects by preventing her from going on two missions, and there was no evidence to support this.

79. AAO submits that the totality of the evidence does not support the findings of misconduct to a clear and convincing evidence standard.

80. AAO argues that the UNDT erred in relying on how AAO's behavior changed after they returned from South Korea. AAO states that each of the witnesses who testified to AAO's behaviour towards Vo1 were "primed" by her to see AAO in a negative light. Even if AAO's behaviour did change, there could be many reasons for that, not just that Vo1 rejected his advances.

81. AAO submits that he had admitted to being a demanding colleague and sometimes short in his communications, but this is not necessarily misconduct and would not, standing alone, support a sanction of termination.

82. AAO submits that the UNDT erred in relying on emotional accounts when there was insufficient objective evidence.

83. AAO contends that the UNDT erred in dismissing the effect on Vo1 of a prior harassment incident by another individual. Vo1 shared a timeline with OIOS, and that timeline stated that the stalking and harassing behavior of this other individual was "harrowing" and "psychologically terrifying". She felt that she was not being supported in this earlier situation because it involved a senior male and she was a junior female consultant. It was wrong of the UNDT to brush aside serious concerns about Vo1's emotional and mental health due to this experience.

84. AAO avers that the UNDT erred in failing to appreciate that if Vo1 believed she was being sexually harassed by AAO, it does not make sense that she shared, on the flight to South Korea, this experience of another staff member sexually harassing her.

85. AAO submits that the UNDT erred in ignoring the critical threshold issue of whether AAO was her supervisor or her co-worker. AAO is not a manager or a supervisor under Section 3.2 of ST/SGB/2008/5. AAO cannot have violated this provision when he was not her supervisor; Mr. E.B. was her supervisor.

86. AAO complains that the UNDT erred by creating a fiction of a “*de facto* supervisor”, this is not supported by clear and convincing evidence.

87. AAO submits that the UNDT conflates the clear and convincing evidence standard with the preponderance of the evidence standard. For example, the UNDT accepts Vo1’s emotional distress and subjective experiences as sufficient proof of harassment without clear and convincing corroborative evidence from other sources or witnesses.

88. AAO submits that the UNDT accepted Vo1’s account of other conversations and interactions with AAO when there were no witnesses. This is not clear and convincing without contemporaneous documentation or direct witness observations.

89. AAO contends that the UNDT erred in giving insufficient weight to the testimony of Mr. G.N. and Ms. F.U. who testified to AAO’s professional behavior and normal supervisory practices.

90. AAO avers that the UNDT erred in relying on evidence from only Mr. E.B. and Vo1 regarding the harshness of AAO’s treatment of Vo1 on 5 July 2018. AAO argues that the clear and convincing evidence standard requires more.

91. AAO contends that the UNDT erred in dismissing AAO’s explanations for his supervisory practices and the high-pressure work environment, which could account for Vo1’s perception of being monitored.

92. AAO submits that the impugned Judgment reveals a conflation of legal standards, and the severity of the sanction of separation from service necessitates a higher and more rigorously applied standard of proof.

93. AAO argues that the Respondent used prior conduct evidence in reaching the disciplinary sanction, and thus it was error for OIOS not to interview an additional 11 witnesses who would

have testified that he is not a threatening colleague and is not prone to making sexual advances in the workplace.

94. AAO contends that the Respondent should be sanctioned and held accountable for referring to prior conduct evidence in the Sanction Letter and then stating it was not relevant.

95. AAO submits that based on the UNAT Judgment in *Szvetko*,⁷⁰ a zero-tolerance policy for sexual harassment does not mean that the Respondent must always apply the most drastic measure. There can be impositions of other penalties for lesser infringements. AAO requests that if the UNAT does not rescind the contested decision, that the UNAT apply a more proportional sanction.

96. AAO requests the UNAT to reverse the impugned Judgment, rescind the termination decision, and reinstate him with back pay and necessary adjustment in benefits.

97. AAO requests that if the UNAT were to set compensation in lieu, that he be awarded 50 percent of his expected income from the date of separation until the date of his normal retirement at age 62, or in other words, six times his annual earnings.

98. AAO further requests that the United Nations pay 50 percent of the Organization's pension contribution into the UNJSPF until normal retirement at age 62, and that current pension entitlements are inflation adjusted until the start of the regular pension payments.

99. AAO requests that his name be removed from the United Nations Clear Check database. His inclusion in this database has prevented him from gaining employment with other United Nations entities.

100. Finally, AAO requests moral damages for the due process violations that he has suffered.

The Secretary-General's Answer

101. The Secretary-General submits that AAO fails to demonstrate any error in the UNDT's assessment of VO1's credibility.

102. The Secretary-General points out that AAO ignores UNAT jurisprudence that, especially in cases of sexual harassment where there are no other witnesses besides the victim and the

⁷⁰ *Balint Szvetko v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1311, para. 48.

perpetrator, the credibility of the complainant as a witness is improved when their testimony can be further corroborated through indirect evidence from other witnesses.⁷¹

103. The Secretary-General submits that contrary to AAO's assertions, the UNDT weighed and considered the supposed inconsistency in Vo1's statements about whether AAO offered to pay for the accommodations in Seoul.⁷² The UNDT found that certain inconsistencies were reasonable, given the five-year lapse of time, and because the testimony of Mr. U.R. corroborated Vo1's account, the inconsistency was immaterial to the key facts underlying the contested decision.

104. The Secretary-General contends that the UNDT correctly found that AAO mischaracterized Vo1's statements when AAO says she said he had "absolute power" over her.⁷³

105. The Secretary-General avers that the UNDT properly examined the alleged inconsistency in Vo1's statements about whether she went to a hospital or saw a psychiatrist and found that she consulted a psychiatrist at a hospital.⁷⁴ The UNDT found that how Vo1 characterized the medical treatment she sought was not relevant to the material issues.

106. The Secretary-General submits that the UNDT was correct to conclude that Vo1 reasonably inferred from AAO's suggestion of sharing a room and his expressing attraction to her, that he wanted to engage in sexual relations with her. This is what she told Mr. A.K., as Mr. A.K. testified. The fact that Vo1 testified that AAO never explicitly asked her to have sex with him does not undermine her credibility.

107. The Secretary-General argues that AAO's claims that he treated Vo1 the same as everybody else was belied by the testimony of two witnesses, Mr. A.K. and Ms. S.K. The UNDT made no error in finding that there was evidence in support that AAO was excessively monitoring Vo1's movements.

108. The Secretary-General submits that contrary to AAO's assertions, the UNDT examined the fact that Mr. U.R. testified that he did not remember any shouting on 8 July 2018. Mr. U.R. was not in the office that day, and the fact that Vo1 recalled him being there when she testified five years

⁷¹ Respondent refers to *Aquel v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-040, para. 19.

⁷² Respondent refers to paragraphs 106, 141, 142, and 194 of the impugned Judgment.

⁷³ Respondent refers to paragraph 198 of the impugned Judgment.

⁷⁴ Respondent refers to paragraphs 144, 194 and 199 of the impugned Judgment.

later, was not fatal to her account. The material facts of this incident are not disputed, AAO admitted that he raised his voice on this occasion.

109. The Secretary-General submits that the UNDT properly assessed the alleged inconsistencies or embellishments and determined that they were not relevant to the disputed facts, and that Vo1 was credible. Considering the deference to be provided to the UNDT in making credibility assessments, AAO's claim that the UNDT erred in its assessment of Vo1 should be dismissed.

110. The Secretary-General contends that AAO's claim that the UNDT applied the wrong standard of proof is without merit. The UNDT explicitly applied the clear and convincing evidence standard in a manner consistent with UNAT jurisprudence.

111. The Secretary-General submits that AAO's claim that the UNDT was overly reliant on the "emotional testimony" of Vo1 is a continuation of AAO's attempt to demean and belittle Vo1 by treating her account of his conduct as emotional rather than factual.

112. The Secretary-General submits that many of AAO's minor complaints about how the UNDT assessed pieces of evidence are merely disagreements and do not establish any reversal error by the UNDT.

113. The Secretary-General points out that the UNDT did consider the testimonies of Mr. G.N. and Ms. F.U., who provided information on the impact of the contested decision on AAO. The UNDT explicitly noted that Mr. G.N. had no first-hand knowledge of the workplace interactions between AAO and Vo1, and Ms. F.U.'s knowledge was limited to some Teams' interactions. AAO failed to demonstrate any error by the UNDT in discounting these testimonies.

114. The Secretary-General contends that AAO is in error when he states that the UNDT considered the November 2017 e-mails to be the only evidence of sexual harassment. The UNDT also credited Vo1's testimony that AAO was pressuring her to share accommodations with him, and the e-mails were corroboration.

115. The Secretary-General submits that there was no error by the UNDT in its assessment of the 5 July 2018 incident. The established facts relied upon by the Administration was that AAO became aggressive and raised his voice at Vo1 in a work disagreement, that he refused to attend a

work meeting with Mr. E.B., Chief/DDDU about this matter, and behaved in a harsh manner towards Vo1. These material facts are not in dispute, even by AAO.

116. The Secretary-General rejects AAO's contention that the corroborating witnesses' testimony was "primed" by Vo1. The witnesses testified to independently noticing a change in AAO's attitude towards her.

117. The Secretary-General submits that the UNDT correctly determined that AAO's conduct amounted to harassment as a legal matter pursuant to Section 1.2 of ST/SGB/2008/5. Vo1 clearly considered that AAO's behaviour annoyed, alarmed, demeaned, intimidated, belittled, humiliated, and embarrassed her in the workplace. AAO's conduct, viewed objectively, was reasonably perceived to cause offence or humiliation to Vo1.

118. The Secretary-General contends that AAO's claim that he was demanding and rude to all his colleagues was contrary to the evidence, as other witnesses testified that his behaviour towards Vo1 was worse. In any event, even if it was the same, it does not mean that such behaviour could not constitute misconduct.

119. The Secretary-General submits that the UNDT's factual findings are supported from the testimony of 12 individuals who testified over six days, and their evidence taken together, clearly and convincingly established that AAO inappropriately sought to engage with Vo1 in a sexual relationship and after she turned him down, he treated her in a hostile and demeaning manner. The UNDT was correct to find the facts underlying the contested decision established by clear and convincing evidence.

120. The Secretary-General submits that the UNDT correctly found that AAO's conduct breached Section 3.2 of ST/SGB/2008/5. Section 3 explicitly refers to both managers and supervisors, i.e., to individuals who are formally designated as reporting officers and individuals who regularly supervise their more junior colleagues. The UNDT's finding that AAO was Vo1's supervisor was supported by ample evidence, including AAO's own testimony and statements to OIOS, the testimony of Vo1's first reporting officer (Mr. E.B.), and Vo1's office mate (Mr. U.R.).

121. The Secretary-General submits that AAO's claim that the UNDT brushed aside his complaints that the Respondent was relying on his prior conduct is without basis.

122. The Secretary-General notes that the UNDT explicitly stated that the alleged prior conduct was not considered as evidence before the Tribunal.⁷⁵ There was thus no due process violation.

123. The Secretary-General contends that the UNDT correctly determined that the imposed disciplinary measure was proportionate to the misconduct.

124. The Secretary-General argues that AAO's reliance on the UNAT Judgment in *Szvetko* is inapposite. While the UNAT opined about the possibility of progressive discipline, in that case the UNAT nonetheless upheld the disciplinary measure of separation from service for sexual harassment. The UNAT also affirmed the Administration's "margin of appreciation to flexibly impose different sanctions provided they fall within a reasonable range of proportionate options".⁷⁶

125. The Secretary-General submits that the UNDT correctly declined to interfere with the Secretary-General's discretion in applying disciplinary measures for misconduct. Separation from service with compensation in lieu of notice and with 25 per cent termination indemnity was an appropriate and proportionate sanction in view of the nature and gravity of AAO's misconduct, the aggravating and mitigating factors, and the past practice of the Organization in cases of comparable misconduct.

126. The Secretary-General requests that the UNAT dismiss the appeal in its entirety.

Considerations

127. The following are our reasons for refusing AAO's request for an oral hearing of his appeal. The grounds advanced by him are very short and simple but are so general as to be unpersuasive. He asserts that an oral hearing "will facilitate adjudication of this case". This does not meet even the most minimal expectations of the statutory requirement under Article 8(3) of the Appeals Tribunal Statute (Statute) and we were far from persuaded that any grounds exist for an oral hearing. We decline his application for an oral hearing accordingly.

128. We note that the UNDT addressed the vexed question whether a statutory amendment (implementing a new Article 9(4) of the Dispute Tribunal Statute (UNDT Statute)) which took

⁷⁵ Impugned Judgment, para. 35.

⁷⁶ *Szvetko* Judgment, *op. cit.*, para. 57.

effect during the time when the proceeding was before the Tribunals, was applicable to the decision of the case. The UNDT, for reasons set out in the impugned Judgment, held it was applicable.

129. While we should not necessarily be taken to agree with this, we consider there are several reasons why we should not determine that question of law on this appeal. First, it has not been pleaded by the Appellant or therefore argued by the Secretary-General. Second, whichever of the statutory tests was applicable, the outcome is effectively the same in this case. Third, such a significant point and one for which there is debatable UNAT authority should be considered by the UNAT Judges after comprehensive argument. Finally, because it concerns a transitional legislative provision and there may or may not be further cases which raise it, there may be future statutory amendments which are not expressly retroactive and in which the issue may arise in another context.

130. We begin our substantive considerations by stating some relevant general principles about evidence that the UNDT is entitled to consider in determining what happened and the burden or standard of proof of such evidence. In addition to *viva voce* evidence given previously and relevant and admissible documents produced to the Dispute Tribunal, the accounts of witnesses interviewed by OIOS as part of the investigation into allegations of misconduct were also available to the UNDT. Where the UNDT was satisfied of the authenticity of the OIOS's record, the witness accounts in the investigation were available to cross-check accounts given by witnesses before the Tribunal, or to provide additional evidence where none has been adduced in person. In this case, what AAO told OIOS investigators is relevant where there are challenges to AAO's veracity or other contradictions to his *viva voce* evidence before the Tribunal. Regarding the Complainant (Vo1)'s account of events which she gave to the Tribunal, what she told OIOS investigators and is recorded in their report, may also have been relevant and important evidence to be considered by the Dispute Tribunal. For these purposes, we have considered both the transcript of the evidence of AAO and Vo1 before the UNDT and the transcripts of their interviews with OIOS.

131. In addition to her evidence taken before the UNDT, Vo1 also provided a comprehensive account of those events to the OIOS investigation. The record of these accounts was likewise before the UNDT and available to be taken into account by it and by us on this appeal to determine her consistency and credibility, and whether established conduct by AAO amounted to sexual and/or workplace harassment of Vo1.

132. Having undertaken that exercise, we confirm that Vo1's account of relevant events was consistent and measured. Initially, she did not consider the friendly WhatsApp messages from AAO to be of concern, but with the benefit of reflection and in the context of increasingly worrisome incidents, she came to the realisation that AAO's cumulative conduct was sexual harassment. This is not an unusual situation in such cases. When all the evidence is considered, it is reasonable to infer that AAO's conduct towards her was carried out with the intention of persuading her to engage in a sexual relationship with AAO, which was also contrary to the Organization's prohibitions.

133. AAO argues that he was categorised as a manager or supervisor of Vo1 rather than simply as a co-worker and that the finding of harassment and the sanctions imposed were unwarranted. He says that Section 3.2 of ST/SGB/2008/5 (the Bulletin) requires a managerial or supervisory relationship to be established before the Bulletin's requirements of the establishment and preservation of a harmonious working environment can be invoked and misconduct by breach of this requirement can be established and sanctioned. The words "manager" and "supervisor" are not defined in the Bulletin.

134. The Bulletin also imposes duties and attributes rights to staff members irrespective of a managerial or supervisory relationship between them. It sets standards for relations between staff members of equal standing or irrespective of hierarchical relationships.

135. Vo1 clearly regarded their relationship as one of supervisor/supervisee. She was a contractor engaged less securely than most staff members and who was significantly less experienced in the workplace culture of the entity in which they both worked. Vo1 was deferential towards AAO, only later coming to the realisation that her treatment by AAO in relation to the South Korea mission was not appropriate. There was, in short, an imbalance of power in his favour in the working relationship between Vo1 and AAO which was reflected also in their personal interactions.

136. As regards sexual harassment, the Bulletin defines this materially as:⁷⁷

... any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, ... or creates an

⁷⁷ ST/SGB/2008/5, Section 1.3.

intimidating, hostile or offensive work environment. While typically involving a pattern of behaviour, it can take the form of a single incident. ...

137. What was AAO's behaviour towards VO1 which the Secretary-General categorised as the prohibited behaviour of sexual harassment which was the basis of the sanction imposed against him and the justification for which the UNDT had to determine to the standard of clear and convincing evidence? The Administration's assessment of that conduct was contained in the Sanction Letter formally setting out the Secretary-General's conclusions and the sanctions for the misconduct found to have occurred. In the Letter, it was determined that AAO had made "unwelcome advances of a sexual nature towards VO1". The UNDT's task was to determine whether there was clear and convincing evidence to establish the facts underlying the alleged misconduct as sexual harassment as defined in the Bulletin.

138. In connection with a search for one night's accommodation at the conclusion of the training program that they were conducting, AAO suggested by e-mail to VO1 (who was arranging that accommodation at their own cost) that they could take an Airbnb with two rooms "or separate beds". In a subsequent e-mail following VO1's advice that she had tentatively booked separate hotel rooms for them pending receipt of a better-priced proposal, AAO inquired again about the possibility of an Airbnb.⁷⁸ She then confirmed that separate hotel rooms were subsequently booked by her.

139. On the international flight to South Korea, AAO is said to have discussed at length with VO1 "very personal matters" including his parents' relationship, his own recent divorce and a romantic relationship he had had recently with a young woman. He was also alleged to have said to VO1 words to the effect that he had felt differently about her when he had communicated with her via WhatsApp when VO1 was working at another duty station. This impresses us as being key evidence of AAO's intention. If VO1 was credible in her testimony about this and in the context of the other matters (the Airbnb references for example), it is reasonable to infer that this conversation was evidence of AAO's intent to enter into a non-professional and romantic relationship with her which amounted to a sexual advance.

140. AAO is also said to have discussed with VO1 the United Nations' sexual harassment training but stated that he did not care about the prohibition of romantic relationships between supervisors and supervisees. Finally, on their return flight from South Korea, AAO is said to have

⁷⁸ These e-mails are set out at paragraphs 6-7 of this Judgment.

told VO1 that he had invited her to deliver the training program with him for both professional and personal reasons.

141. Those behaviours summarised above could only have constituted sexual harassment as defined if they fell within the definitions of that conduct being an “unwelcome sexual advance”, a “request for sexual favour”, or “verbal ... conduct or gesture of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interfere[d] with work, ... or create[d] an intimidating, hostile or offensive work environment”.⁷⁹ While AAO’s utterances during the discussions on the flights could not, individually and considered in isolation, have amounted to sexual harassment, contextually they strengthened a conclusion that AAO’s comments during the accommodation exchanges were of a sexual nature.

142. Was the Secretary-General’s conclusion that these events together constituted sexual harassment of VO1 a correct categorisation in law of those events which had been established to the clear and convincing evidential standard? The Sanction Letter setting out the Secretary-General’s conclusions is the starting point for this legal analysis. In this, the accounts of VO1 of incidents were preferred to those of AAO where these accounts conflicted, and her evidence was accepted to the clear and convincing standard. We conclude that the UNDT did not err in its conclusion that the established facts constituted the prohibited conduct of sexual harassment.

143. As to the allegation about accommodation sharing, the conclusion was that there was clear and convincing evidence that AAO had: “in face to face conversations..., suggested that [he] share accommodation with [VO1] on the night of 8th December 2017..., raised Airbnb as an option and offered to pay for such accommodation”, and that AAO “suggested on two occasions via email that [he] share Airbnb accommodation with VO1, including accommodation that had two rooms or two separate beds”.⁸⁰

144. As to the flights to and from South Korea, the Secretary-General concluded that AAO had invited VO1 to accompany him on the training mission. During the flight to Seoul, AAO was found to have told VO1 that he had “romantic feelings for her”; that she may have noticed that he had written to her on WhatsApp while she was working elsewhere; that he told her that he had “felt differently towards [her] since the summer” (some months before the flight); and that despite

⁷⁹ ST/SGB/2008/5, Section 1.3.

⁸⁰ Sanction Letter, annex, para. 48.

recent sexual harassment training he did not care about United Nations rules concerning relationships between supervisors and supervisees. During the return flight from South Korea, AAO was found to have told Vo1 that he had invited her to assist in the training program for both professional reasons and because of his personal feelings towards her.

145. After addressing two allegations of prior and unconnected misconduct made against AAO in respect of other female staff members, the Secretary-General concluded in the Sanction Letter:⁸¹

These cases demonstrate a pattern of conduct of you making unprompted sexual advances and inappropriate gestures towards female colleagues. Both colleagues thought your conduct was inappropriate. The evidence is consistent with and supports Vo1's account that you made inappropriate sexual advances towards her.

146. We note that despite the Secretary-General having improperly taken prior events unrelated to Vo1 into account, the UNDT declined to do so. The UNDT's approach to this issue was correct. There was sufficient clear and convincing evidence that established the facts underlying the misconduct against Vo1 without requiring recourse to prior and unrelated allegations. After setting out the relevant rules and recording that the Secretary-General enjoys a wide discretion in determining what constitutes misconduct and serious misconduct, the UNDT linked the proven facts to the standards of misconduct.

147. The UNDT found that AAO's suggestion to share a room with Vo1 to be "completely inappropriate and reprimandable" which standing alone might not constitute sexual harassment but concluded that AAO's behaviour could not be assessed in isolation. The UNDT held that "the established facts and circumstances surrounding [AAO's] conduct cannot be left out of the examination".⁸² Considering the totality of the facts attributed to AAO, the UNDT found that his conduct amounted to sexual harassment under ST/SGB/2008/5.⁸³

148. We address the arguments separately as between the conclusions of sexual harassment (the events leading to, and immediately after the South Korean mission) and of other harassment and abuse of authority (the events in their common city in the months following the mission).

149. First, were AAO's relevant interactions with Vo1 sexual harassment? While no single interchange between AAO and Vo1 or event involving them could itself have reasonably amounted

⁸¹ *Ibid.*, para. 59(d).

⁸² Impugned Judgment, para. 250.

⁸³ *Ibid.*, para. 259.

to sexual harassment as defined, considered together they establish a subtle, deliberate and intentional pattern of conduct. What may have appeared initially (including to VO1) to be innocuous was in effect preparatory to a possible sexual encounter. Such activity was particularly significant and egregious when there was an imbalance of power (including workplace power) between the participants.

150. AAO suggested repeatedly that they arrange shared accommodation in Seoul even after VO1 had indicated her disagreement with this; he intimated that he had what might neutrally be called “romantic” feelings for her; he shared with VO1 details of his recent casual but intimate relationship with another woman of similar age to VO1; he confirmed that he had taken her on the mission to South Korea for personal as well as professional reasons; he expressed to her his disagreement with the United Nations principles against sexual or romantic liaisons between supervisors and supervisees; and he told VO1 that he hoped that she knew what “was expected of [her] on the mission”. Together with these behaviours having been displayed by AAO in a supervisory relationship with VO1, and with VO1’s responses to them, his conduct constituted sexual harassment as this is defined and prohibited by the United Nations.

151. Second, we consider the conclusions of non-sexual harassment, although as will be seen, there are two significant connections between the two categories of harassment. These behaviours included the unprecedented (in the sense of not having occurred before the South Korea trip) harsh and unwarranted treatment by AAO of VO1 both one-to-one and in meetings observed by others as is detailed earlier in this Judgment.

152. Those two significant connections between the sexual harassment and the non-sexual harassment of VO1 just referred to, are as follows. First, AAO’s objectionable workplace behaviour towards VO1 only began after the South Korea mission during which the sexual harassment occurred. The UNDT was entitled to draw the inference that AAO, rebuffed in his sexual advances to VO1, retaliated subsequently against her in their workplace relationship. Had the sexual harassment not occurred, or had AAO succeeded in his sexual advances, it is highly probable that he would have had no cause to change his previous workplace behaviour towards her. Second, the sequencing of behaviours by AAO towards VO1 allowed the UNDT to also draw a proper inference that they were related. The evidence indicated that prior to preparations for the South Korea mission, AAO’s workplace behaviour towards VO1 as a colleague and in a supervisory relationship, was unexceptional. After the South Korea mission this changed for the worse and significantly, yet there was no explanation that might have negated the inference of their cause and effect.

153. These two circumstances tended to corroborate inferentially VO1's account of events where they conflicted with AAO's account. They confirm that the UNDT was entitled to prefer VO1's accounts of events where they conflicted with AAO's.

154. In summary, we conclude that the allegations of workplace harassment and mistreatment by AAO of VO1 after their return to the office from the South Korea mission were well established by the evidence before the UNDT.

155. As to the allegations of sexual harassment and misconduct by AAO towards VO1 in the period leading up to and during the South Korea mission, we can discern no error of law or fact by the UNDT which had the advantage of seeing and hearing the evidence of the principal witnesses to, and relating to, these events. For ourselves, we confirm that there was ample evidence confirming the UNDT's assessments of their occurrence and significance.

156. Taken together, including the inferential causative link between the events in relation to the South Korea mission and the subsequent workplace harassment of VO1, we conclude that the UNDT decided correctly there was clear justification for AAO's severance from the Organization. Finally, we are satisfied that there was no deprivation of AAO's due process rights in the way the Organization dealt with these allegations and its conclusions.

157. AAO's appeal must therefore fail.

Judgment

158. AAO's appeal is dismissed, and Judgment No. UNDT/2024/016 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 20th day of May 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar