



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1567

Anastasia Rotheroe
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Graeme Colgan Judge Abdelmohsen Sheha
Case No.:	2024-1962
Date of Decision:	27 June 2025
Date of Publication:	14 August 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	George G. Irving
Counsel for Respondent:	Angélique Trouche

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Anastasia Rotheroe, a former Deputy Director of Investment Management in the Office of Investment Management (OIM) of the United Nations Joint Staff Pension Fund (UNJSPF or the Pension Fund), contested the disciplinary decision to separate her from service for several counts of misconduct involving harassment, abuse of authority, misuse of United Nations property, failure to report possible misconduct, and efforts to disclose sensitive information and influence Member States (contested decision).
2. By Judgment No. UNDT/2024/061 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT) dismissed the application on the merits. Ms. Rotheroe appeals.
3. For the reasons set out below, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure²

4. The Pension Fund has two major components: Pension Administration and OIM. Under the leadership of the Representative of the Secretary-General (RSG), OIM is divided into multiple sections, including the Investments section. The Investments section, responsible for achieving the optimal investment return for UNJSPF, consists of several teams, including North American Equity; European Equity; Asia Pacific Equity; Global Emerging Markets Equity; Real Assets; Alternative Investments; Trade Execution; External Managers; and Fixed Income and Treasury.³
5. In 2002, Ms. Rotheroe joined the Organization as a P-4 Investment Officer in OIM. At the time of the contested decision, Ms. Rotheroe was serving at the D-1 level as Deputy Director of Investment Management with a permanent contract.⁴ At the time of the events in question, she was also the Gender Focal Point in OIM and as such offered guidance to interview panels on gender balance and acted as a resource and guide for women in the department.⁵
6. On 1 July 2019, the then RSG (former RSG) approved the Information Sensitivity, Classification of Documents and Records Management Policy (Information Policy) reminding staff members that all official communications on OIM matters must be conducted on official

¹ *Rotheroe v. Secretary-General of the United Nations*, Judgment dated 13 September 2024.

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

³ Impugned Judgment, paras. 6-7.

⁴ *Ibid.*, para. 8.

⁵ Investigation Report, p. 18.

information and communications technology (ICT) resources and forbidding use of personal e-mail for official business.⁶

7. On 19 July 2019, a colleague of Ms. Rotheroe, a Senior Investment Officer named Mr. Hunt, filed with the Office of Internal Oversight Services (OIOS) a complaint against the then RSG, who had been appointed effective 1 January 2018, and the then OIM Director, D-2 (H.B.). The complaint was filed on behalf of the following individuals: Ms. Rotheroe, a Senior Investment Officer of the Private Equity team (T.H.), a Senior Investment Officer of the Asia-Pacific team (M.S.), an Investment Officer of the Private Equity team (E.C.), a Senior Investment Officer (T.B.), and a Senior Investment Officer of the Fixed Income team (T.W.).⁷

8. On 23 September 2019, Ms. Rotheroe signed an annual certification for 2019 certifying that she had read, understood, and agreed to abide by the policies, including the Information Policy for the purposes of ensuring compliance and the maintenance of UNJSPF's reputation and integrity. She later also signed the annual certifications for 2020 and 2021.⁸

9. In October 2019, Vo3, an OIM staff member, submitted a complaint against Mr. Hunt. The complaint was that Mr. Hunt had made defamatory comments against her, including sending e-mails to multiple colleagues, including Ms. Rotheroe, and instructed them to not work with her because she served as the former RSG's Special Assistant.⁹

10. An ICT review of e-mail exchanges between Mr. Hunt, Ms. Rotheroe, and colleagues (the group) was conducted that included a review of their personal e-mails that referred to the sharing of internal OIM information with external parties.¹⁰ During the investigation of the complaint against Mr. Hunt, OIOS also identified e-mail communications, predominantly from Mr. Hunt's archives, suggestive of prohibited conduct towards Vo3 by several OIM staff members, including Mr. Hunt and Ms. Rotheroe. Further, a review of Ms. Rotheroe's official mobile phone was found to contain extensive *iMessage* chats with a Senior Programme Management Officer (S.P.) that included numerous disparaging messages about colleagues (Vo1 and Vo2).¹¹ Those e-mails and messages will be referenced in more detail below.

⁶ *Ibid.*, p. 10.

⁷ Impugned Judgment, para. 8.

⁸ *Ibid.*

⁹ Investigation Report, p. 9.

¹⁰ *Ibid.*, pp. 2 and 11.

¹¹ *Ibid.*, pp. 6-7.

11. On 27 November 2019, the Secretary-General wrote to OIOS with concerns of reported underperformance in OIM portfolios managed by Senior Investment Officers, including Mr. Hunt, T.B., and T.W., who were signatories to the complaint against the former RSG of July 2019. This communication from the Secretary-General emanated from e-mails sent by the former RSG on 16 November 2019 and resulted in a Special Review, the findings of which were issued 26 February 2020.¹²

12. On 13 March 2020, Mr. Hunt filed a written complaint directly to the Secretary-General about “concerns regarding actions taken by [the former RSG] over the past two years”. The complaint was filed on behalf of the following individuals: Ms. Rotheroe; the Deputy Director of Equities (T.S.); a Chief Operating Officer (W.W.); T.W.; T.H.; M.S. and E.C. In it, Mr. Hunt referred to a “toxic culture (...) created by the OIM leadership” and the absence of professional collaboration and retaliation. The complaint led to a second Special Review by OIOS.¹³ On 30 March 2020, the former RSG resigned, and the Secretary-General appointed an Acting RSG (new RSG).¹⁴

13. In July 2020, OIOS issued to the Chef de Cabinet and the new RSG its report on the “Audit of governance mechanisms and related processes in the Office of Investment Management of the United Nations Joint Staff Pension Fund” (the Governance Audit).¹⁵ In it, OIOS made recommendations for developing and implementing a culture transformation programme to cultivate a harmonious, high-performing and ethical culture in OIM and a plan to address “the concerns surrounding the OIM’s organizational culture” by “driving behavioral change”.¹⁶

14. According to the Secretary-General, on 24 November 2021, OIOS identified numerous exchanges indicating possible misconduct by Ms. Rotheroe and, on 23 February 2023, transmitted its Investigation Report to the Office of Human Resources.¹⁷

15. On 8 May 2023, Ms. Rotheroe was granted the opportunity to respond to formal allegations of misconduct, which she did on 30 June 2023.¹⁸

¹² *Ibid.*, pp. 8-9.

¹³ Impugned Judgment, para. 8.

¹⁴ *Ibid.*

¹⁵ Investigation Report, p. 9.

¹⁶ Allegations Letter, para. 10.

¹⁷ Impugned Judgment, para. 10.

¹⁸ *Ibid.*, para. 8.

16. On 14 July 2023, Ms. Rotheroe submitted her resignation, requesting it to take effect on 18 August 2023.¹⁹

17. On 7 August 2023, Ms. Rotheroe was informed of the contested decision essentially confirming the allegations as formulated. The Sanction Letter stated:²⁰

(...) It is established, by clear and convincing evidence that, between October 2019 and September 2021, you, together with other senior managers at the OIM (...), engaged in a course of behaviour targeting Vo3 (...).

...

(...) It is established, by clear and convincing evidence, that between July 2019 and April 2020, you:

- Together with other OIM staff members, and in opposition to the then RSG (...), participated in discussions suggestive of collaborative efforts and/or contemplations to disclose without authorization sensitive information relating to the OIM to the media, blogs and/or Permanent Missions.
- In doing so, used your personal e-mail address in violation of the OIM [Information Policy], which you had undertaken to comply with.
- In doing so, supported and/or contributed to possible violations of the Staff Regulations and Rules and the Organization's policies arising from unauthorised disclosure of sensitive information concerning the OIM and/or OIOS to external parties, including the media, a blog and/or a Permanent Mission; and failed to report the possible misconduct of the staff members.

...

(...) It is established by clear and convincing evidence that, between September 2020 and June 2022, using your official iPhone, you exchanged with [S.P.] numerous messages in which you and [S.P.] used objectively offensive and derogatory nicknames and/or made disparaging remarks concerning Vo1 and Vo2, which, if known to them, would reasonably be expected to cause offence and distress.

...

By your established conduct, you violated Staff Regulations 1.2(a), 1.2(b), 1.2(e), 1.2(f), 1.2(g), 1.2(i), and 1.2(q), Staff Rules 1.2(c), 1.2(f), and 1.2(j), sections 4.1 and 5.1 of [Secretary-General's Bulletin] ST/SGB/2004/15 [Use of information and communication technology resources and data], and OIM [Information Policy].

...

¹⁹ *Ibid.*

²⁰ *Ibid.*; Annex to the Sanction Letter, paras. 15, 29, 39, 64-65.

(...) In light of the foregoing, as aggravating factors, the USG/DMSPC [Under-Secretary-General of the Department of Management Strategy, Policy and Compliance] has taken into account that: (a) you acted in concert with others in your misconduct engaging in numerous acts/statements in violation of various (...) regulations and rules over a period of time; (b) you attempted to conceal your conduct by using your personal e-mail account; (c) your conduct was part of concerted activities attempting to manipulate the public/Member States and/or the new RSG to further the interests of the group you belonged to; and (d) your conduct could harm the Organization's operations and reputation.

(...) As mitigating factors, the USG/DMSPC has accepted that: (a) you have a long positive service with the Organization with no prior disciplinary record; (b) the record indicates a toxic work environment at the time, which may have affected your conduct; and (c) your communications with [S.P.] occurred exclusively when the COVID-19 pandemic was at its peak, and defusing tensions/dissatisfaction in the workplace through personal interactions was difficult, if not impossible, albeit that this context does not excuse your conduct.

18. On 27 October 2023, Ms. Rotheroe filed an application to the UNDT.

The impugned Judgment

19. The UNDT dismissed the application.

20. At the outset, the UNDT found that Ms. Rotheroe was not a whistleblower under Secretary-General's Bulletin ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations) (PAR Bulletin).²¹

21. In terms of the alleged misconduct, the UNDT noted that the material facts were based on evidence that Ms. Rotheroe did not challenge.²²

22. First, the UNDT held it had been proven by clear and convincing evidence that Ms. Rotheroe had engaged, together with other senior managers at OIM, in a course of behaviour targeting Vo3 (Count 1). She engaged in collecting and sharing information or comments suggestive of collaborative efforts to a) undermine Vo3's professional standing (Count 1.1), b) influence the new RSG against Vo3 (Count 1.2), c) instil animosity and hostility against Vo3 (count 1.3), and d) impede Vo3's professional circumstances, including her return to her P-3 level position at OIM following the conclusion of her temporary assignment at the P-4 level (Count 1.4), and e) shared information given to her in good faith by Vo3, including her résumé, in group

²¹ Impugned Judgment, para. 42.

²² *Ibid.*, para. 44.

discussions disparaging Vo3 and in the context of contemplation of interfering with Vo3's professional circumstances (Count 1.5).²³

23. Second, the UNDT held that there was clear and convincing evidence that between July 2019 and April 2020, together with other OIM staff members, and in opposition to the former RSG, Ms. Rotheroe had participated in discussions suggestive of collaborative efforts and/or contemplations to disclose, without authorization, sensitive information relating to OIM to Permanent Missions (Count 2.1) and the media (Count 2.2) (collectively, Count 2).²⁴

24. Third, the UNDT held that it was proved by clear and convincing evidence that between September 2020 and June 2022, using her official United Nations mobile phone, Ms. Rotheroe exchanged with S.P. numerous messages in which they used offensive and derogatory nicknames and/or made disparaging remarks concerning Vo1 and Vo2 (Count 3). It was not relevant that Vo1 and Vo2 did not see the messages and were not hurt by them.²⁵

25. The UNDT found that the Administration had not exceeded its authority in concluding that Ms. Rotheroe's behaviour amounted to misconduct²⁶ and that the sanction was proportionate to the offences. Each of the three allegations is serious on its own. Since there is sufficient evidence that all the aggravating and the mitigating factors were given due consideration, there is no basis to interfere with the sanction.²⁷

26. Finally, the UNDT found that Ms. Rotheroe's due process rights had been respected.²⁸

Submissions

Ms. Rotheroe's Appeal

27. Ms. Rotheroe requests the Appeals Tribunal to reverse the impugned Judgment, rescind the contested decision and order i) reinstatement of the lost pension coverage or payment of the differential in pension benefits, and ii) compensation for material and moral damage, including harm to *dignitas*.

²³ *Ibid.*, paras. 44-114.

²⁴ *Ibid.*, para. 141.

²⁵ *Ibid.*, paras. 149-151.

²⁶ *Ibid.*, para. 155.

²⁷ *Ibid.*, para. 157-160 and 164.

²⁸ *Ibid.*, para. 169.

28. She argues that the UNDT erred on matters of fact and law and committed significant procedural irregularities. The UNDT overlooked important factual background relating to the complaint against the former RSG and his ultimate replacement.

29. Specifically, Ms. Rotheroe submits that the UNDT erred on a question of fact when it found that she had not satisfied the criteria for whistleblower protection pursuant to the PAR Bulletin. She had engaged in protected activity in filing a joint report to OIOS in July 2019 and another to the Secretary-General in March 2020 and cooperating with OIOS during the audit. Retaliation is a separate issue. The UNDT also incorrectly conflated her right to whistleblower protection and her right to report to external sources six months after inaction. The UNDT placed undue emphasis on private discussions and ignored the fact that the publicly reported losses to UNJSPF's investments were already being questioned.

30. Further, she disputes the Secretary-General's formulation of the misconduct charges against her using problematic terms. As regards allegations concerning VO3, Ms. Rotheroe submits that they arise entirely from private e-mail communications via her private e-mail address and private devices. The UNDT erred in fact when it concluded that her e-mails were sent using United Nations issued devices removing them from the realm of complete privacy.²⁹

31. Ms. Rotheroe argues that the UNDT erred in law in interpreting the policy on harassment. Without reasons, the UNDT disregarded the testimony of the new RSG. The UNDT seemingly confused selection processes. The UNDT ignored facts which created a rebuttable presumption that Ms. Rotheroe's concerns about VO3 were well-founded. The UNDT made conclusions based on unverified information and erred in law when it failed to address that the Secretary-General had suppressed evidence proving that her criticism had been justified: the Secretary-General refused to provide two Special Reports and the preliminary findings of the audit of governance mechanisms in OIM (Governance Audit). This resulted in a miscarriage of justice.

32. Ms. Rotheroe submits that she had no control over decision-making in what information would be conveyed to the Permanent Mission, did not seek instructions, involve other colleagues and did not derive any personal gain from any colleague's alleged meeting with the Permanent Mission. She never made any complaint of misconduct to outside entities or participated in discussions relating to sharing sensitive information as alleged, never spoke to

²⁹ Ms. Rotheroe submits that the only exception was using a United Nations device to send text messages to S.P.

anyone in the media, and never visited her Permanent Mission. The UNDT's findings on what information was leaked are unsupported.

33. Regarding allegations of disclosure to the media, Ms. Rotheroe submits that the UNDT's conclusion on the information being sensitive because she and her colleagues felt the need to report it defies logic. She says that the UNDT failed to appreciate that clarity of policy occurred only after the appointment of the new RSG and disciplinary measures were applied to only four of the whistleblowers as co-conspirators in a selective manner.

34. Ms. Rotheroe contends that the UNDT was incorrect in finding that Count 3 was misusing United Nations IT equipment. The charge was based on using offensive and derogatory nicknames, which, if *known*, would have distressed the individuals but they were not known to them. The UNDT failed to address the circumstances imposed by the Covid-19 pandemic wherein permission was given to use personal and United Nations equipment interchangeably. Also, no account was given to the fact that the other staff member involved, S.P., was not sanctioned.

35. Ms. Rotheroe argues that while the creation of a hostile working environment is a serious charge, it is unclear how that conclusion was reached, given that the communications in question all remained private exchanges and never entered the workplace and she was never accused of any act of harassment.

The Secretary-General's Answer

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

37. The Secretary-General argues that the UNDT correctly concluded that the facts were established by clear and convincing evidence and amounted to misconduct. Ms. Rotheroe has not contested her conduct under Count 3 but argues that it does not amount to misconduct. She has failed to demonstrate any error by the UNDT, warranting intervention, but has simply disagreed with the outcome of the impugned Judgment.

38. The Secretary-General submits that Ms. Rotheroe has failed to show any error by the UNDT regarding Counts 1, 2 and 3. First, all the digital evidence is retrieved from official devices. Using a personal e-mail address to avoid detection does not make such communication private. Even if Ms. Rotheroe's concerns about VO3 had been well-founded (which is not accepted), they

would not have justified targeting VO3. Second, she failed to bring before the UNDT any evidence of her claim that the information to be shared with the Permanent Missions was public and failed to show to the UNDT that the information shared with the press was not sensitive. Third, Ms. Rotheroe has not brought any evidence of the purported “permission” to use personal and United Nations equipment interchangeably, and has not demonstrated any error by the UNDT, nor shown how this “permission” would have excused her disparaging messages against VO1 and VO2.

39. The Secretary-General submits that Ms. Rotheroe has not shown any error with the UNDT’s finding that she could not claim whistleblower protection. There is no legal basis for her claim that her communications related to making her complaint of possible misconduct, an allegedly protected activity, were also protected. It was for the Ethics Office, not the UNDT, to determine whether she engaged in protected activity. She has not demonstrated that the Ethics Office made this determination in the instant case.

40. The Secretary-General contends that the UNDT correctly concluded that the disciplinary measure was proportionate.

41. The Secretary-General submits that the UNDT correctly rejected Ms. Rotheroe’s claim for remedies. She has not brought any evidence of harm. She received compensation in lieu of notice which she would not have been entitled to in the event of resignation.

Considerations

42. The misconduct alleged against Ms. Rotheroe involves collaboration with other staff members, one of whom is Mr. Hunt who also was terminated for misconduct and is the subject of another appeal. As many of the facts and allegations are similar in both cases, the Appeals Tribunal issues associated judgments.³⁰

43. The conduct complained of against Mr. Hunt and Ms. Rotheroe is part of a complicated and “toxic” workplace environment that appeared to be rife with disagreements with and complaints against the former RSG and staff members who worked closely with him, including VO3. In July 2019, Mr. Hunt, Ms. Rotheroe, and other Investment Officers filed a complaint against the former RSG and H.B., who was a Director in the Pension Fund, alleging mismanagement, abuse of power and harassment by them. Amongst other things, they

³⁰ *Ernest Hunt v. Secretary-General of the United Nations*, Judgment No. 2025-UNAT-1566

complained about the absence of six Senior Investment Officers (including the complainants) and the Risk Team from committees and studies, as well as a change in reporting lines. It is clear that the complainants, including Ms. Rotheroe, were not happy with the changes undertaken by the former RSG. A complaint was also sent to the Secretary-General on 13 March 2020. Before the investigation of these complaints could be concluded, the former RSG resigned on 30 March 2020.

44. In October 2019, VO3 filed a complaint of prohibited conduct against Mr. Hunt whom she alleged had made defamatory comments against VO3, including sending e-mails to multiple colleagues (including Ms. Rotheroe), critical of the Global Infrastructure Partners (GIP) IV (Investment Fund transaction) co-led by VO3, and instructing colleagues not to work with her. In the course of the investigation of this complaint, the Administration determined that the involvement of Ms. Rotheroe also constituted prohibited conduct, ultimately, resulting in the contested decision against Ms. Rotheroe.

45. Preliminarily, Ms. Rotheroe submits that she has been retaliated against by the Administration in making the complaint against the former RSG and H.B., a protected activity, contrary to the PAR Bulletin that protects a staff member who reports misconduct from retaliation.

Whether Ms. Rotheroe's actions were protected activity

46. Ms. Rotheroe submits that the UNDT erred when it ignored the entire context and rationale for Ms. Rotheroe's communications, even those expressing concern over VO3's involvement in questionable investment practices. She argues that her reporting possible misconduct of the former RSG and H.B. (some of which included references to VO3) was a protected activity of a whistleblower, therefore, the communications she engaged in pursuant to that protected activity were also protected. She says that instead of offering her protection as a staff member speaking up against abuse of authority, the Administration targeted her by charging her for misconduct.

47. Section 1 of the PAR Bulletin sets out the duties and protections on reporting misconduct. It is the duty of staff members to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action. An individual who makes such a report in good faith has the right to be protected against retaliation.³¹ Retaliation against individuals who have reported misconduct or who have cooperated with audits or investigations

³¹ PAR Bulletin, Section 2.

violates the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Organization in view.

48. Section 3 outlines the process of making such reports. It provides that, except as provided in Section 4, reports of misconduct should be made through the established internal mechanisms: to OIOS, the Assistant Secretary-General for Human Resources Management (ASG/HRM), the head of department or office concerned or the focal point appointed to receive reports of sexual exploitation and abuse.

49. Ms. Rotheroe and her colleagues complied with the internal reporting mechanism pursuant to Section 3 and reported to OIOS what they believed was mismanagement, abuse of power and harassment against the former RSG and H.B. She argues that, as such, she was entitled to protection from retaliation.

50. Despite this and perhaps because of the complaint to the Secretary-General of 13 March 2020 (which was an outside reporting mechanism) or providing information to the media, the UNDT analyzed the Section 4 criteria for reporting externally.

51. Section 4 of the PAR Bulletin provides protection from retaliation to individuals who report misconduct *outside* of established internal mechanisms as follows:

Notwithstanding staff regulation 1.2 (i), protection against retaliation will be extended to an individual who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:

(a) Such reporting is necessary to avoid:

- (i) A significant threat to public health and safety; or
- (ii) Substantive damage to the Organization's operations; or
- (iii) Violations of national or international law; and

(b) The use of internal mechanisms is not possible because:

- (i) At the time the report is made, the individual has grounds to believe that he/she will be subjected to retaliation by the person(s) he/she should report to pursuant to the established internal mechanism; or

(ii) It is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) he/she should report to pursuant to the established internal mechanisms; or

(iii) The individual has previously reported the same information through the established internal mechanisms, and the Organization has failed to inform the individual in writing of the status of the matter within six months of such a report; (...)

52. The UNDT held that Ms. Rotheroe was not protected under Section 4 as she did not meet the criteria contained in subparagraph (b). Regarding subparagraph (b)(iii), the UNDT found that Ms. Rotheroe had been informed of the outcome of her complaint against the RSG and H.B. outside of the statutory six-month period, i.e. the Organization had failed to inform her in a timely manner and had done so only after the expiry of the six-month time limit specified in the subsection. The UNDT concluded, however, that she had participated in discussions regarding disclosure of information relating to OIM before the six-month period had ended and therefore, those activities could not have been protected.

53. The UNDT then considered whether the former RSG had retaliated against Ms. Rotheroe or whether the request for protection against retaliation related to the former RSG or OIOS. It found that she had not shown that, at the time of the complaint, she had grounds to believe that she would be subjected to retaliation by OIOS or the ASG/HRM (the offices and officials that she should report to as established internal mechanisms).

54. We agree. Further, there is no evidence that the contested decision regarding Ms. Rotheroe's conduct towards VO3 was retaliation for her participation in reporting a complaint against the former RSG or H.B. Retaliation means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken "for the purpose of punishing, intimidating or injuring an individual because" that individual engaged in a protected activity.³²

55. The investigation into Ms. Rotheroe's conduct arose in the normal course of an investigation into the conduct of Mr. Hunt. There is no evidence that the investigation into Ms. Rotheroe's conduct or the contested decision was initiated for the purpose of punishing, intimidating or injuring Ms. Rotheroe because she reported the former RSG or H.B. There is no evidence that the investigation against her or the contested decision was tied in any way to the

³² PAR Bulletin, Section 1.4.

complaint against the former RSG or H.B. Rather, the allegations against Ms. Rotheroe related to her conduct against VO1, VO2 and VO3.

56. Therefore, regardless of whether Ms. Rotheroe was a whistleblower engaged in a protected activity pursuant to Section 2, there is no evidence that she was retaliated against by commencement of the disciplinary process.

Standard of review in disciplinary cases

57. In hearing an application challenging an administrative decision imposing a disciplinary measure, it is well-established that the Dispute Tribunal must consider: (a) whether the facts on which the sanction is based have been established by the Secretary-General by clear and convincing evidence when termination is a possible outcome; (b) whether the established facts qualify as misconduct under the Staff Regulations and Rules; (c) whether the sanction is proportionate to the offence and the circumstances; and (d) whether the staff member's due process rights were observed.³³ The Administration has the burden of establishing the facts underlying the alleged misconduct resulting in termination or separation from employment. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; it means that the truth of the facts asserted is highly probable. To meet this standard, "[t]here must be very solid support for the finding",³⁴ including "direct evidence of events, or (...) evidential inferences that can be properly drawn from other direct evidence"³⁵.

58. Ms. Rotheroe submits that the UNDT made "incorrect findings due to serious mistakes of fact and mistakes of law leading to an erroneous conclusion that the Appellant engaged in conduct warranting her separation from service". We review the UNDT's conclusions below.

Whether Ms. Rotheroe's due process rights were observed

59. Ms. Rotheroe disputes the Secretary-General's formulation of the misconduct charges against her by using language such as "comments *suggestive* of collaborative efforts or *contemplations* to undermine VO3", "contemplation of interfering with VO3's *professional circumstances*", "collaborative efforts and/or *contemplations* to disclose without authorization

³³ *Maguy Bamba v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1259, paras. 37 and 40 (internal citations omitted); *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, paras. 29-30 (internal citation omitted).

³⁴ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, para. 64.

³⁵ *Sisay Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033, para. 45.

sensitive information”, “*possible* violations...remarks...that, *if known*, would reasonably be expected to have caused offence and distress”.³⁶

60. Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), Section 8.3(a), reads that the allegations of misconduct “should include the specific obligations or standards of conduct that the staff member breached”. As we have held in AAD, “it is a very basic principle of due process in a disciplinary case that each of the relevant facts and allegations of misconduct be presented to the employee or staff member in such a manner that they can easily understand them, and they be afforded an adequate opportunity to respond to those allegations”.³⁷

61. The Administration’s formulation of the charges against Ms. Rotheroe, alleging “contemplations” of undermining VO3 or of disclosing sensitive information without authorization, is problematic. Similarly, the allegation that Ms. Rotheroe shared information given to her in good faith by VO3, including VO3’s résumé, in support of a disparaging group discussion around VO3 and in the context of “*contemplation*” of interfering with VO3’s professional circumstances, as well as “*possible*” violations of policy. Accusing a staff member of “contemplating” prohibited conduct or “possible” policy violations is vague and seems to imply that the Administration is sanctioning staff members over “thoughts” or “considerations” rather than actual conduct.³⁸ While the commission of misconduct or assisting purposively in the commission of it by another may be sanctionable, contemplation alone of misconduct is problematic. How, for example, might the Administration deal with a staff member who admitted considering a wrongful course of action before electing not to do so and pursuing a lawful and correct one?

62. However, this vague language is part of a larger set of alleged facts which are set out in detail in the Allegations Letter and in the contested decision. It may be that the Administration was referring to Ms. Rotheroe’s intentions, nevertheless, there are sufficient alleged facts contained in the allegations that identify the specific conduct being investigated and sanctioned.

63. In terms of process, Ms. Rotheroe had ample opportunity to defend herself adequately and was sufficiently appraised of the allegations against her. She was interviewed twice in the investigation process and each time, the investigators put specific communications to her for

³⁶ Emphasis in the original.

³⁷ AAD v. Secretary-General of the United Nations, Judgment No. 2022-UNAT-1267/Corr.1, para. 67.

³⁸ “Contemplation” is defined by the Merriam-Webster dictionary as “an act of considering with attention” or “the act of regarding steadily”.

comment and explanation. In addition, she was given the opportunity to comment and respond in writing during the investigation and the disciplinary process. Finally, she had the opportunity to respond during the UNDT process, including testifying and adducing her own evidence and witnesses.

64. Therefore, in these circumstances, any irregularity or vagueness in the formulation of the charges against Ms. Rotheroe did not, in itself, vitiate the finding of misconduct or the imposition of the disciplinary measure.

Whether the Administration established the facts on which the sanction was based by clear and convincing evidence and whether these facts constitute misconduct

65. As determined by the Secretary-General in the contested decision and upheld by the UNDT in the impugned Judgment, Ms. Rotheroe engaged in:

- i) prohibited conduct towards VO3 that constituted harassment and abuse of authority under Staff Rule 1.2(f) and Secretary-General's Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) and using her office for personal reasons to prejudice the position of VO3 in breach of Staff Regulation 1.2(g),
- ii) disclosure of sensitive information contrary to Staff Regulation 1.2(b), 1.2(e) and 1.2(i), and Staff Rule 1.2(j) as well as failing to report under Staff Rule 1.2(c) and using personal e-mail address regarding these matters contrary to the OIM Information Policy and ST/SGB/2004/15, and,
- iii) exchanging inappropriate messages about VO1 and VO3 with S.P. contrary to Staff Regulation 1.2(a), 1.2(b), 1.2(f) and 1.2(q).

I. Did Ms. Rotheroe engage in prohibited conduct towards VO3 that constituted harassment and abuse of authority, and did she use her office for personal reasons?

66. In the contested decision, the Secretary General found that between October 2019 and September 2021, Ms. Rotheroe, together with other senior managers at OIM, engaged in a "course of behaviour targeting VO3" that included the following:

- Collecting and sharing information or comments suggestive of collaborative efforts or contemplations to undermine VO3's professional standing, influence the new RSG against VO3, instil animosity/hostility against VO3, and impede VO3's professional circumstances, including her return to her P-3 position at the OIM following the [non-extension of her temporary assignment as a Special Assistant] at the P-4 level.
- Sharing information given to Ms. Rotheroe in good faith by VO3, including VO3's resume, [in support of a disparaging group discussion] around VO3 and in the context of contemplation of interfering with VO3's professional circumstances.

67. These allegations are primarily based on the following e-mail exchanges between Ms. Rotheroe, Mr. Hunt and other colleagues in the group:

- i) On 17 October 2019, a member of the group sent an e-mail to the others, including Ms. Rotheroe and Mr. Hunt, in which VO3's role was discussed, including describing that the former RSG's "devotion to VO3 is unnatural" and their relationship appeared to be "intimate and bizarre". Ms. Rotheroe replied: "Probably both lying about their background".³⁹
- ii) On 11 January 2020, another member of the group e-mailed Ms. Rotheroe and Mr. Hunt about VO3 looking "sullen" and having "[w]asted money on cosmetic surgeries".⁴⁰
- iii) On 7 and 8 April 2020, shortly after the former RSG's resignation, Ms. Rotheroe was involved in an exchange concerning VO3's possible movement to a position at OIM and discussions with the new RSG about VO3's return to a P-3 position from her temporary P-4 level position. Ms. Rotheroe wrote: "Before our call with [the new RSG] today, can you tell us what impression you think [the new RSG] has about [VO3]. Does he know that she is most definitely part of the problem? We will reinforce the point today (...)." Ms. Rotheroe sent the other staff members in the e-mail exchange, including Mr. Hunt, VO3's résumé and bio and reference material shared with her by VO3.⁴¹

³⁹ Investigation Report, p. 15.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, pp. 15-16. Ms. Rotheroe admitted, at the oral hearing, to having shared documents with colleagues such as an old résumé of VO3.

- iv) On 9 April 2020, in response to Mr. Hunt's request, Ms. Rotheroe sent him two e-mails "with some background information" on VO3. On the same day, Ms. Rotheroe also sent to her own personal e-mail address what VO3 had shared with her as reference materials on 13 December 2011 and a copy of VO3's résumé from 2003. In response to Mr. Hunt's, T.S.'s and M.S.'s e-mails about VO3's professional history, Ms. Rotheroe stated: "I sent you the bios she has provided. Fraud!"⁴²
- v) On 13 April 2020, in response to Mr. Hunt's report on his second one-on-one meeting with the new RSG, Ms. Rotheroe wrote that "no one wants [VO3] back in equities". On 14 April 2020, in response to M.S. asking what could be done to "prevent [VO3] from coming back to public equities", Ms. Rotheroe replied: "My suggestion to [T.S.] was to put [VO3] [on a different post that was about to become vacant]"; "[p]utting [VO3] back would not be harmonious".⁴³
- vi) On 2 July 2020, Ms. Rotheroe forwarded an automated e-mail notification relating to VO3's LinkedIn profile to M.S. In response to M.S.'s comment that VO3 had "doubled her lies in there", Ms. Rotheroe replied: "This needs to be highlighted." In response to M.S.'s comment about the Chartered Financial Analysts institute, referenced in VO3's qualifications, Ms. Rotheroe replied: "Maybe this is the entity that needs to be informed." On 22 July 2020, she forwarded another automated e-mail notification about VO3's LinkedIn profile to M.S., asking: "Now what?"⁴⁴
- vii) On 5 November 2020, Mr. Hunt e-mailed Ms. Rotheroe and M.S. that he was worried that the "gender parity issue" might allow VO3 to be promoted to a P-4 role over a named male candidate, adding: "We don't want [VO3] to get it by default".⁴⁵
- viii) On 23 August 2021, in response to M.S.'s text messages about "[getting] rid of [VO3]" and not ever "even want[ing] to 'see' her", Ms. Rotheroe responded: "Big surprise." Mr. Hunt then commented about VO3 that "[t]his [was] a good result for everyone".⁴⁶

⁴² Impugned Judgment, paras. 101-103.

⁴³ *Ibid.*, para. 60.

⁴⁴ *Ibid.*, paras. 105-106.

⁴⁵ Investigation Report, p. 17.

⁴⁶ Impugned Judgment, para. 93.

- ix) Ms. Rotheroe also participated in other e-mail exchanges dated 6 May 2020, 23 December 2020, and 17 September 2021 that shared and spread comments undermining VO3 and her professional standing.

68. In explanation, Ms. Rotheroe confirmed that she had known VO3 for years and that VO3 had previously worked for her. She raised concerns about VO3 due to her lack of qualifications and that when VO3 worked for the former RSG, she became a “different person”. During this time, Ms. Rotheroe was also in the role of Gender Focal Point in OIM. She confirmed that, in October 2020 she served on the selection panel when VO3 applied for a P-4 promotion. She suggested to the panel that VO3 was “lying about her background” in that VO3 had inflated her years of experience but the “panel was ok with it”. VO3 was rostered but not given the position. VO3 was subsequently promoted to P-4 in January 2022.⁴⁷

69. Ms. Rotheroe denied “targeting” VO3 and initially did not recall to the investigators that she had participated in any disparaging discussions about VO3 or there having been a strategy to deny VO3 any positions. When shown the e-mails, she confirmed that her suggestion that VO3 and the former RSG had lied about their backgrounds had been because, in her opinion, they were not qualified for their roles. She confirmed that VO3 had not been in her team and could not explain why VO3 had been a concern for her other than she had been part of a “greater team”.⁴⁸

70. Regarding the allegation that Ms. Rotheroe worked to influence the new RSG against VO3, although there are e-mail discussions within the group about speaking to the new RSG about VO3 which Ms. Rotheroe was privy to or participated in, the evidence from the new RSG does not prove that he was influenced. In the investigation interview, the new RSG stated that he did not recall Mr. Hunt or M.R. seeking to influence his opinion of VO3 or speaking to him about her. He said he was not influenced in decisions to move VO3’s role and the decision to discontinue her P-4 temporary assignment was in line with an ongoing process to reduce the higher number of such positions in OIM. He denied being influenced in matters affecting VO3 or her role. The group, including Ms. Rotheroe, discussed speaking to the new RSG about VO3 but, according to the new RSG, this did not occur.

71. We find that the UNDT did not err when it held that there was clear and convincing evidence supporting the facts underlying the allegations in Count 1. The e-mail exchanges clearly

⁴⁷ Ms. Rotheroe’s 23 November 2022 written response to her 11 November 2022 OIOS interview; interview transcript.

⁴⁸ *Ibid.*

indicate that Ms. Rotheroe discussed with others her disapproval of VO3's role with the former RSG and the need to ensure that she did not return to the OIM North American Equity team. This included Ms. Rotheroe sharing information given to her by VO3 early on and information about her professional qualifications in order to question and undermine those qualifications. Moreover, Mr. Rotheroe could not explain why she was involved in these discussions when VO3 did not work on her team. We agree with the UNDT's finding that Ms. Rotheroe actively participated in the discussions, as both a recipient and an originator.⁴⁹ Further, regarding Count 1.5, her assertions that VO3's résumé and the vacancy announcement of VO3's subsequent employer was public information, and LinkedIn is a public social media website, are irrelevant.⁵⁰

72. Notably, she did so while acting as the OIM Gender Focal Point in a selection panel before which VO3 was a candidate. Given her participation and knowledge of discussions concerning VO3 and her qualifications and role with the former RSG, including disparaging remarks about the relationship between VO3 and the former RSG, Ms. Rotheroe should have recused herself from that selection panel but instead, she attempted to influence the other panel members against VO3, albeit unsuccessfully as VO3 was rostered. This conduct, along with the sharing and collecting of information on VO3 was intended to undermine VO3's professional circumstances and standing in the OIM.

73. The question is whether this conduct constitutes harassment and abuse of authority. For reasons set out below, we find that it does.

74. Staff Rule 1.2(f), which is part of the basic rights and obligations of staff, provides that "[a]ny form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited".

75. Section 1.3 of ST/SGB/2019/8 defines harassment as "any unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment". Section 1.4 provides that harassment "may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another. Harassment may be directed at one or more persons based on a shared characteristic or trait as set out in section 1.2 above. Harassment normally implies a series of incidents."

⁴⁹ Impugned Judgment, para. 78, 90 and 97.

⁵⁰ *Ibid.*, para. 111.

76. Section 1.8 defines abuse of authority as follows:

Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses their influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation, working conditions or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion.

77. Although VO3 was not aware of the specific communications and conduct of Ms. Rotheroe concerning her, she was aware that there was a “group of people that were connected in their (...) intentions towards the prior RSG” and because VO3 worked directly for him, she “wasn’t too favoured by them too”. VO3 stated that she reached out to Ms. Rotheroe as the Gender Focal Point but Ms. Rotheroe did not offer her any assistance. Further, VO3 stated that there was a group which included Ms. Rotheroe, who “collectively influenced decisions[,] including recruitment and internal committees, and together exercised power within the OIM”. VO3 “felt” that Ms. Rotheroe had lobbied against her being promoted to the P-4 position as part of the selection panel on which Ms. Rotheroe sat and diminished VO3’s experience. Therefore, it is clear that, although much of the communications against VO3 did not occur in front of VO3, VO3 was generally aware that there was a group she called a “clique”, “a mafia”, and “a pack of hyenas”, including Ms. Rotheroe, that was not pleased with her and, in the case of Ms. Rotheroe, lobbied against her in a selection process.⁵¹

78. We find that Ms. Rotheroe’s conduct was unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation. This includes commenting on or acquiescing to comments on her appearance (i.e. looking “sullen” and wasting money on plastic “surgeries”), on her relationship with the former RSG (i.e. as being “unnatural” and “bizarre” and the insinuation resulting from these comments) and suggesting that she “lied” about her qualifications. This most certainly created or contributed to a hostile or toxic work environment for VO3. The work environment would also suffer from the group’s clandestine collaboration, consistent communication and surveillance regarding VO3 and her moves within OIM and about influencing the new RSG (even if it did not come to fruition).

⁵¹ Investigation Report, pp. 17-18.

79. Further, we find that Ms. Rotheroe used her office, particularly as the Gender Focal Point, for personal reasons to prejudice the positions of those she did not favour, namely VO3, contrary to Staff Regulation 1.2(g).

II. Did Ms. Rotheroe disclose sensitive information, fail to report, and use her personal e-mail address regarding these matters contrary to the Staff Rules and Regulations and OIM Information Policy and Administrative Instructions?

80. Staff Regulation 1.2(i) imposes on staff members an obligation that they “exercise the utmost discretion with regard to all matters of official business” and that they “shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General”.

81. Staff Rule 1.2(j) further provides:

Staff members “shall not seek to influence Member States, principal or subsidiary organs of the United Nations or expert groups in order to obtain a change from a position or decision taken by the Secretary-General, including decisions relating to the financing of Secretariat programmes or units, or in order to secure support for improving their personal situation or the personal situation of other staff members or for blocking or reversing unfavourable decisions regarding their status or their colleagues’ status.

82. The e-mail communications relevant to the finding of misconduct in Count 2 are as follows:

- i) On 19 July 2019, Mr. Hunt e-mailed the group, including Ms. Rotheroe, that he had submitted their joint complaint against the former RSG and H.B. to OIOS, and commenting that this was “the first of many steps we will need to take to try to save our pension fund from a [megalo]maniac”, to which Ms. Rotheroe replied with thanks and added: “I am referring to us as the Magnificent 7 (...).”⁵²
- ii) On 26 July 2019, Ms. Rotheroe started an e-mail exchange involving E.C., T.H., M.S., T.W., T.B., and Mr. Hunt), which stated: “Lots of updates today- lengthy article”. The interlocutors discussed writing an article for a blog. Ms. Rotheroe replied: “Maybe a retiree can ask some of the questions. The blogger already

⁵² *Ibid.*, p. 11.

identified concerns about the website and how much staff is/isn't involved in some decision making. I was happy to see [a] reminder that this is a conservative fund and the approach has served beneficiaries well for 70 years." Mr. Hunt suggested: "Let's work through the staff union on the blog issue. They might set up a meeting between us and the blogger."⁵³

- iii) On an unspecified date, Mr. Hunt e-mailed the group and M.R. (who was closely associated with blogs and social media articles critical of OIM senior management and investment decisions), and asked the recipients to explain to M.R. about OIM decisions to invest in China and India, calling it "*irrational and ill[-]timed*".⁵⁴
- iv) On 13 September 2019, in response to Mr. Hunt's "long list of harassment issues" against the former RSG and request to add "any harassment items" to "form the basis of an eventual harassment filing with the [United Nations Dispute] Tribunal", Ms. Rotheroe replied: "Wow, what a list! No wonder we all have a headache." She provided comments on Mr. Hunt's list and thanked him "for all [his] hard work!!!".⁵⁵
- v) On 21 October 2019, Mr. Hunt informed the group that the OIM Chief Operating Officer (COO) had received a reply from the United States Permanent Mission to the United Nations agreeing to a meeting and suggested that others in the group meet with their Missions.⁵⁶
- vi) On 31 October 2019, Mr. Hunt e-mailed Ms. Rotheroe, listing 13 points that Mr. Hunt had shared with the COO to be discussed with the US Mission and contained internal OIM information, including on staffing.⁵⁷ At the hearing, Ms. Rotheroe was asked why the talking points included "American staff being sidelined" and "[p]reponderance of Chinese and Indian nationals" and "TJO" hires (staff members on temporary appointment). She could not answer why this was

⁵³ *Ibid.*

⁵⁴ *Ibid.*, pp. 11-12.

⁵⁵ Impugned Judgment, para. 117.

⁵⁶ Investigation Report, p. 12.

⁵⁷ Mr. Hunt's 31 October 2019 e-mail.

included and was not sure if some of it was public information, in particular regarding the “TJO” hiring.⁵⁸

- vii) On 13 November 2019, Ms. Rotheroe thanked Mr. Hunt for having spoken to a former OIM staff member (W.S.) after he had informed the group that he had shared with W.S. a “staff table” document which contained details of a number of OIM staff members. Mr. Hunt stated that W.S. had suggested that the table should be “given to our missions ASAP”.⁵⁹ When asked at the hearing about the content of the staff table and the sharing of the document, Ms. Rotheroe did not know what Mr. Hunt had meant by this despite her response to the e-mail. Further, the e-mail from Mr. Hunt indicated that a document referred to as the “IC minutes” should be shared with W.S. At the hearing, it was confirmed that the IC minutes was an internal OIM document whereas Mr. Rotheroe stated that she did not know whether it was a public document.⁶⁰
- viii) On 20 November 2019, Mr. Hunt e-mailed the group, updating them on a meeting with the COO and members of the US Mission and adding that he had shared the staff table document and mentioned further documentation.⁶¹
- ix) On 6 December 2019, Mr. Hunt sent to the group a copy of his e-mail that he sent to M.R. in which he had asked M.R. to forward to the Financial Times information on the former RSG’s recusal from the GIP IV transaction proposal and an excerpt of minutes from a meeting on the matter.⁶² At the hearing, Ms. Rotheroe admitted that some of the information in the e-mail would not be public but because it was communication with M.R. as a retired staff member, she thought it was acceptable, even though the purpose was to share the information with the media.⁶³
- x) On 12 December 2019, Mr. Hunt e-mailed the group, attaching an article regarding the GIP IV transaction. In response, Ms. Rotheroe wrote: “Thanks for this. The article mentions in numerous places ‘investing in more external managers’ which sounds like outsourcing the fund.” Mr. Hunt commented that the journalist

⁵⁸ Transcript of the UNDT oral hearing of 15 July 2024.

⁵⁹ Investigation Report, p. 12.

⁶⁰ Transcript of the UNDT oral hearing of 15 July 2024.

⁶¹ Investigation Report, p. 12.

⁶² *Ibid.*

⁶³ Transcript of the UNDT oral hearing of 15 July 2024.

responsible for the article had copies of OIM documents and that she wanted to work “off the record” with him.⁶⁴

- xi) On 14 February 2020, Mr. Hunt e-mailed Ms. Rotheroe and others that he had given the US Mission, in advance, information on OIM investment matters. Ms. Rotheroe responded: “*Ooh I love a good ‘stir’!*”⁶⁵ At the hearing, she initially stated that she was referring to Mr. Hunt talking about a “stir” with the former RSG’s e-PAS but then stated that she was referring to relaxing on the weekend with that phrase.⁶⁶ Another member of the group e-mailed the others on 16 February 2020 and wrote of the former RSG: “This psycho needs to be removed a.s.a.p.”⁶⁷

83. Ms. Rotheroe’s response to the investigators was to initially deny being a part of any discussions related to sharing information with journalists, missions, or blogs and did not recall any information being shared. When shown the e-mail exchanges, she denied any involvement with blogs or journalists and suggested that it was “all talk and no action”.⁶⁸ She claimed not to recall receiving any documents or communication relating to sharing information with missions and, when shown the e-mails, denied meeting with the missions herself. Subsequently, she objected to the “intercept[ion]” of personal e-mails and claimed the purpose of the e-mails was to develop a plan to deal with the issues raised in their complaint against the former RSG and H.B. She argued that “[p]ersonal e[-]mails were used because there were concerns that there was a risk that internal OIM e[-]mails were being monitored by management”.⁶⁹

84. At the hearing, Ms. Rotheroe testified that she did not think there was anything wrong with going to the Missions and fully supported her colleagues doing so, but she did not do so herself. As for the October 2019 e-mail that attached a staff table, she first said it contained public information but then agreed that there was private information included.⁷⁰

85. The UNDT, therefore, did not err when it found that Ms. Rotheroe had admitted that she had been aware that Mr. Hunt was meeting with the representative of his country’s Permanent

⁶⁴ Impugned Judgment, para. 133.

⁶⁵ Investigation Report, p 13.

⁶⁶ Transcript of the UNDT oral hearing of 15 July 2024.

⁶⁷ Investigation Report, p. 13.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, pp. 13-14.

⁷⁰ Transcript of the UNDT oral hearing of 15 July 2024.

Mission to the United Nations and that she had mentioned that other colleagues should also go to their respective countries' Permanent Missions. Further, the fact that Ms. Rotheroe thanked Mr. Hunt for sharing confidential information critical of the former RSG with a former staff representative of UNJSPF (M.R.) "to forward to [a news media entity]", meant that she understood and supported Mr. Hunt's actions. The information disclosed to the Permanent Mission of Mr. Hunt's country involved issues of risk and liquidity, staffing, North American portfolio, redeployment of funds towards emerging markets, the sale of securities of a certain country, and investing in a certain country. Much of this was not public information. The evidence leaves no doubt that she participated in the censured discussions. She also did not object to or withdraw from the group's discussions, plans or actions, and did not report the possible misconduct by other staff members.⁷¹

86. The e-mail exchanges clearly show Ms. Rotheroe privy to and/or participating in discussions regarding the sharing of and/or disclosure of internal OIM information with external parties, including private information on OIM staff members and criticisms surrounding OIM decisions. As such, she did not meet her obligation under Staff Regulation 1.2(i) to exercise utmost discretion in all matters relating to official business and was involved in communications with persons for purposes of making information public outside of her normal course of duties and without authorization of the Secretary-General. Further, she violated Staff Regulation 1.2(j) by seeking to influence Member States or expert groups in order to obtain a change from a decision taken by the Secretary-General or secure support for improving her personal situation or the personal situation of other staff members.

87. She was aware of the attempts by those in the group, including Mr. Hunt, which would have breached the Staff Rules and Regulations and therefore, failed to meet her duty under Staff Rule 1.2(c) to report any breach of the Organization's regulations and rules to the officials whose responsibility is to take appropriate action.

88. By using her personal e-mail address to exchange OIM information and to impact Vo3's status in OIM, she also breached OIM Information Policy, and ST/SGB/2004/15 that prohibits users of ICT resources to engage in:⁷²

⁷¹ Impugned Judgment, paras. 118, 122-130.

⁷² ST/SGB/2004/15, Section 5.1.

(b) Knowingly, or through gross negligence, making ICT resources or ICT data available to persons who have not been authorized to access them; [and]

(c) Knowingly, or through gross negligence, using ICT resources or ICT data in a manner contrary to the rights and obligations of staff members[.]

III. Did Ms. Rotheroe exchange inappropriate messages with S.P. about VO1 and VO2 contrary to Staff Rules and Regulations?

89. In the contested decision, it is alleged that between September 2020 and June 2022, Ms. Rotheroe using her official mobile device, exchanged with S.P., a Senior Programme Management Officer, numerous messages in which they used objectively offensive and derogatory nicknames and/or disparaging remarks concerning VO1 and VO2 that if known to them, would reasonably be expected to cause offense and distress. VO1 was S.P.’s supervisor. VO2 was Ms. Rotheroe’s colleague reporting to S.P. on Human Resources related matters at OIM.

90. OIOS identified numerous messages between Ms. Rotheroe and S.P., including those referring to apparently contemporaneous work meetings, conducted remotely, attended by one or both of them, during which they shared comments by *iMessage* between themselves.⁷³ These include the following:

1. Messages relating to VO1:

- i) Between late 2020 and June 2022, Ms. Rotheroe and S.P. frequently referred to VO1 as “Lumpy” or “Lump”. On other occasions, VO1 was referred to as “fat ass”, “fatso”, “Clueless fat ass”, “fats”, “Not fat enough”. They never referred to VO1 by name.⁷⁴
- ii) Many of the references to VO1 appear to be in the context of a remote video meeting during which Ms. Rotheroe and S.P. exchanged such comments referring to VO1 as being overweight, to eating, and being an “Uber Eats” driver.⁷⁵
- iii) On 8 March 2021, Ms. Rotheroe referred to “Lumpy” joining a meeting from his car, suggesting he may be “moonlighting as an Uber” to which S.P. suggested in

⁷³ Investigation Report, p. 23.

⁷⁴ *Ibid.*, pp. 23-24.

⁷⁵ *Ibid.*, p. 24.

successive messages that “Uber eats”, “Lumpy eats the food and does not deliver”, and “[t]hat explains [his] size”.⁷⁶

- iv) On 18 November 2021, Ms. Rotheroe and S.P. discussed the presence of “Lumpy” on a call in which Ms. Rotheroe said: “Lump is on the call now, must have put the sandwich down”.⁷⁷
- v) On 30 March 2022, S.P. sent Ms. Rotheroe a message that “Lumpy doing a dance for you”, attaching a GIF file of an animated pig dancing.⁷⁸
- vi) On 17 June 2022, Ms. Rotheroe suggested that VO1 be given “some cotton candy”, “A lot of it”.⁷⁹
- vii) On 23 June 2022, S.P. asked if “lump” had said anything at a meeting, to which Ms. Rotheroe replied: “Not a peep from lump, mouth must have been full.”⁸⁰

91. In the investigation, Ms. Rotheroe agreed that “Lump” was a nickname S.P. had for VO1 and admitted using it herself. She said they did not mean any harm and denied any disrespect towards VO1 as they had not said it to his face. She argued the comments were “light-hearted”.⁸¹

2. Messages relating to VO2:

- i) In the message exchanges between S.P. and Ms. Rotheroe, VO2 was variously referred to as “Princess”, “not doing her job”, “out of control”, “should have been fired”, “very selfish” and “craves attention”. VO2 is criticized for taking maternity leave which S.P. complained caused S.P. additional work and that “[s]he is buzy [sic] breast feeding” and “[c]annot work 8 months off”.⁸²
- ii) On 24 September 2021, S.P. and Ms. Rotheroe suggested VO2 colluded with a previous RSG to “cheat” in the hiring process.⁸³

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, pp. 30-31.

⁸² *Ibid.*, p. 26.

⁸³ *Ibid.*

- iii) On 30 September 2021, S.P. wrote: “Let’s keep the princess busy [*sic*] when she comes back [from maternity leave,] I a[m] very annoyed to be filing for her during crunch time.”⁸⁴
- iv) On 21 April 2021, Ms. Rotheroe mentioned to S.P. that Vo2, whom she referred to as “your lady”, wanted to “run”, to which S.P. replied, “[y]es losers become staff reps” before calling Vo2 “very emotional” and agreeing with Ms. Rotheroe’s assertion that Vo2 was lazy and “not literate”.⁸⁵
- v) Further exchanges call Vo2 as “idiot” and “not bright”.⁸⁶
- vi) On 17 June 2022, S.P. described Vo2 to Ms. Rotheroe as “so emotional” and “center of the universe and thinks she is the most beautiful and smartest”. Ms. Rotheroe replied that Vo2 was “[s]poiled?”.⁸⁷

92. Again, initially Ms. Rotheroe did not recall the exchanges in her investigation interview. When shown the messages, she referred to them as “light-hearted” and blamed work stress and frustration. She subsequently argued that the messages were taken out of context and were not meant to harm anyone. She also objected to the seizure of her ICT equipment by OIOS as being retaliatory towards her due to the complaint against the former RSG.⁸⁸

93. There is no dispute that Ms. Rotheroe used her official mobile device to exchange these messages with S.P. about Vo1 and Vo2. These messages are disparaging and offensive. They are not “light-hearted”. As a high-ranking staff member, including eventually at the D-1 level, it is unacceptable to describe colleagues and staff members by offensive names and nicknames, comment negatively on their weight and appearance, and then encourage this behaviour with other colleagues.

94. Staff Regulation 1.2(q) obligates staff members to “use the property and assets of the Organization only for official purposes” and “exercise reasonable care when utilizing such property and assets”. By using her official mobile device to engage in an exchange of disparaging and

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*, pp. 31-32.

offensive comments about her colleagues, Ms. Rotheroe did not use the property and assets of the Organization for official purposes and did not exercise reasonable care.

95. As international civil servants, staff members of the United Nations must uphold a high standard of conduct. Staff Regulation 1.2(a) provides that “[s]taff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them[.]”

96. Pursuant to Staff Regulation 1.2(b), “[s]taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status[.]”

97. Further, Staff Regulation 1.2(f) provides that staff members “shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status[.]”

98. Ms. Rotheroe’s actions were contrary to the high standards of conduct expected of staff members as international civil servants and, as such, constituted misconduct.

Whether the sanction of separation was proportionate to the offence

99. Ms. Rotheroe submits that in considering the proportionality of the sanction, the UNDT inappropriately referred to exchanges between an OIOS investigator and another colleague, although she was not responsible for any of these and they did not form part of the alleged misconduct. She argues that the UNDT seems to have been unconcerned that the purpose of these exchanges was to prevent retaliation of someone with a protected status and no consideration was given to her efforts to fulfil her duty to protect the assets of the Pension Fund. Ms. Rotheroe contends that unlike the former RSG, she was not allowed to resign and was terminated just weeks before her early retirement would have taken effect. She also objects to her colleagues that were involved in the conduct in question not also being sanctioned, including S.P.

100. Generally, it is relevant to compare disciplinary measures imposed on staff members who are involved in similar misconduct. In this instance, at the hearing, the evidence was that four out of the seven in the group were terminated. As for S.P., Ms. Rotheroe testified at the hearing that she did not know the outcome of her case but knew that she still worked in OIM.⁸⁹ Therefore, other staff members involved in the group and S.P. were investigated and some of them also received termination as a disciplinary sanction. There is insufficient evidence regarding S.P. and the other three staff members in the group. There could be several reasons why a staff member was not sanctioned, e.g., resignation or non-renewal before a disciplinary process is completed.

101. As we noted in *Szvetko*:⁹⁰

(...) There are limits to the parity principle and perfect consistency will be difficult to achieve in a multiple agency Organisation operating in different contexts around the globe. No approach will provide clear cut answers as to what constitutes a suitable disciplinary sanction in every single case. The imposition of a sanction is not a mechanistic process which leads to easily predictable solutions. The Administration has to consider a wide range of often conflicting considerations which may be difficult to resolve. Sanctions applied in previous cases are no more than a guide, and the Administration, in accordance with the principle of deference, should enjoy a margin of appreciation to flexibly impose different sanctions provided they fall within a reasonable range of proportionate options.

102. Further, we have previously held that the Administration's apparent lack of action with respect to other staff members who may have also been involved, even to a greater degree than the appellant, does not reduce his or her accountability.⁹¹

103. The Administration has a broad discretion in imposing the disciplinary measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved and is best suited to select an adequate sanction. The Tribunals will only interfere and rescind or modify a sanction imposed by the Administration "where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity".⁹² The Secretary-General also has the

⁸⁹ Transcript of the UNDT oral hearing of 15 July 2024.

⁹⁰ *Balint Szvetko v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1311, para. 57.

⁹¹ *Konaté v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-334, para. 24.

⁹² *Ravi Karkara v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1172, para. 72 (internal citations omitted).

discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.⁹³

104. In the present case, the Administration weighed the aggravating and mitigating circumstances and considered the nature of the conduct and lack of tolerance towards harassment and abuse of authority. It took into account mitigating and aggravating factors; weighed the appropriate measure in light of past practices as reflected in the compendium of disciplinary measures; the staff member's intent or whether the action was accidental, careless, reckless or deliberate; the nature of the misconduct; the harm and damage to the Organization, colleagues and staff members; and the disciplinary history or future of the staff member.

105. There is no evidence that the Administration considered irrelevant considerations or ignored relevant ones. As for her argument that the purpose of the exchanges was to prevent retaliation and to protect the Fund, the facts underlying the misconduct have been proven and involved her conduct towards VO1, VO2, and VO3. Given the nature of the misconduct, the sanction is neither excessive, arbitrary, absurd nor discriminatory.

106. Therefore, the UNDT did not err when it held the sanction to be proportionate.

Whether Ms. Rotheroe should be awarded compensation as requested

107. On appeal, Ms. Rotheroe seeks reinstatement of the lost pension coverage or payment of the differential in pension benefits, and compensation for material and moral damage, including harm to *dignitas*.

108. However, as we have found the contested decision lawful, there can be no award for lost pension coverage or benefits nor for compensation. The UNAT jurisprudence on the issue of compensation has been consistent that for compensation for harm, there must be evidence to support the existence of harm, illegality, and a nexus between the two.⁹⁴

109. As there is no illegality, there can be no award for compensation for material or moral damage.

⁹³ *Ibid.*

⁹⁴ *Elmira Ela Banaj v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1357, para. 115 (internal citation omitted).

Other contentions

110. During the UNDT proceedings, in Order No. 072 (NY/2024) (the Order), the UNDT ordered the Secretary-General to produce information on the outcome of investigations in the cases of two other staff members, two OIOS Special Review reports, the draft of the Governance Audit report, and interviews by OIOS of VO1 and VO3 in which Ms. Rotheroe was discussed.

111. The Secretary-General did not produce the OIOS Special Review reports nor the draft Governance Audit report, submitting that OIOS had informed them that the documents were confidential and it was not appropriate to produce them pursuant to General Assembly resolutions 48/218B, 54/244, 59/272, 67/258 and 74/181. The Secretary-General further argued that failure to comply with the Order should not result in an adverse inference against the Secretary-General as the documents ordered to be produced were not compellable, were beyond the Secretary-General's control, and irrelevant.

112. Ms. Rotheroe argues that it is troubling that the UNDT remained silent on this non-compliance of its Order and did not draw adverse conclusions against the Secretary-General.

113. As to the relevance of the documents, they largely appear to reference facts that are not disputed or not relevant to the specific allegations against Ms. Rotheroe. By Ms. Rotheroe's own submissions, the first Special Review dealt with the former RSG's accusations of underperformance against three of Ms. Rotheroe's colleagues. The second Special Review report reported on the substance of their concerns about the former RSG's investment decisions and their effect on the Pension Fund and led to the recommendation that the former RSG be replaced. Ms. Rotheroe argues, without evidence, that the draft or preliminary findings of the Governance Audit were critical of the handling of the GIP IV transaction, leading VO3 to write to the new RSG, blaming and disparaging the other staff. She submits that the Governance Audit was critical of the working environment in OIM and the handling of conflicts of interest, but the final report was extensively edited. These documents refer to the context of the complaints against the former RSG and H.B. and the "toxic" workplace environment which is not in dispute. In the Investigation Report (see pages 8-9), the OIOS audit activities are laid out. It is unclear what evidence is relevant to the determination of the allegations concerning VO1, VO2, and/or VO3. Therefore, we find the UNDT did not err by not drawing an adverse inference against the Secretary-General for non-compliance of the Order.

114. However, without prejudice to the foregoing, the Appeals Tribunal finds it troubling that the Secretary-General expressly refused to comply with the UNDT's Order and that the UNDT was silent on the non-compliance. If the Secretary-General could not comply with the Order, the option was to bring an application to the UNDT for reconsideration or to appeal the Order to the Appeals Tribunal. It is not an option for a party to blatantly disregard a Tribunal order and to simply not comply. The Secretary-General is fortunate that the UNDT did not impose sanctions for this conduct. The internal justice system cannot operate on parties unilaterally deciding not to comply with Tribunal orders without consequences.

115. In future, if there is such a blatant or deliberate disregard of a UNDT Order or direction and a failure to take proper and lawful steps to alter such an Order or direction, it is open to the UNDT to refer for possible action to enforce accountability the non-complying party, even if it is the senior official who (on behalf of the Secretary-General who is the nominal respondent) made the decision not to comply with the Order.

116. In conclusion, the UNDT did not err in the impugned Judgment and, therefore, the appeal must fail.

Judgment

117. Ms. Rotheroe's appeal is dismissed, and Judgment No. UNDT/2024/061 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of June 2025 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 14th day of August 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar