



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

JENBERE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Susan Maddox, ALS/OHRM
Matthias Schuster, ALS/OHRM

Introduction

1. The Applicant is a former Chief, Geographic Information Systems (GIS) Officer with the United Nations Operation in Côte d'Ivoire (UNOCI).
2. In her application dated 21 July 2016, she is contesting the Under-Secretary-General for Management's (USG/DM) decision to impose on her the disciplinary sanction of a demotion of one grade with a deferment for two years of eligibility for consideration for promotion, together with a fine of three months' net base salary in accordance with staff rules 10.2(a)(v) and (vii) for misconduct consisting of failing to disclose her marital relationship with a candidate for a United Nations Volunteer (UNV) post during a recruitment exercise where she sat on an interview panel and made recommendations to the hiring manager with respect to the technical proficiency of the candidates.
3. The Tribunal held a hearing of the case on the merits on 21 June 2018 following which the parties filed their closing submissions on 10 and 13 August 2018. During the hearing the Tribunal received testimony from the Applicant.

Procedure

a. Background facts and Investigation

4. In mid-February 2015, in response to a call for candidates for a UNV post of GIS Analyst, the Applicant submitted her husband's (Mr. Kebede Bogale) *curriculum vitae* to Ms. Daria Ferrari, the hiring manager, for consideration.¹
5. On 2 March 2015, the Applicant was invited as a subject-matter expert to participate as a panellist in the interviews of two applicants including her husband.²

¹ Paragraph 10(a) reply; annex R-1 reply – Documents 043 and 044; and para. 18 of the OIOS Report of 11 September 2015.

² Paragraph 10(b) reply and annex R-1 reply – Document 043.

6. After the interview, the Applicant provided her opinion on the technical proficiency of both interviewed candidates stating that Mr. Bogale had the required technical proficiency. The Applicant insisted that the other candidate was not technically or professionally sound and that she would not give him access to the GIS server.³

7. Mr. Bogale was selected for the position, entered duty on 27 April 2015 and the other candidate was recruited for another position.⁴

8. During his induction, Mr. Bogale disclosed that he was the Applicant's spouse. His UNV contract was instantly terminated by mutual agreement.⁵

9. On 20 May 2015, the Investigations Division of the Office of Internal Oversight Services (OIOS) received, from the Conduct and Discipline Team (CDT) at UNOCI, a report of possible misconduct implicating the Applicant.⁶ It was reported that, in March 2015, the Applicant failed to disclose a conflict of interest during the recruitment exercise for the GIS Analyst job opening and that she, as a panellist for the recruitment interviews, failed to disclose her marital bond with one of the interviewed candidates and actively favoured him for selection.

10. As a result of OIOS' subsequent investigation on 11 September 2015, the Director of the OIOS Investigations Division transmitted the investigation report to the Under-Secretary-General, Department of Field Support (USG/DFS) on the failure by the Applicant to report a conflict of interest.⁷

11. By memorandum dated 21 December 2015 from the Chief, Human Resources Policy Service, Office of Human Resources Management (OHRM) to the Applicant, it was alleged that the Applicant had failed to disclose her marital relationship with a

³ Paragraph 10(c) reply and annex R-1 reply – Document 062 at para. 26, and document 064 at paras. 7 and 32; also the Applicant's response to allegations, annexed to the application at VII. 2.

⁴ Paragraph 10(d) reply and annex R-1 reply – Documents 033 and 037.

⁵ Paragraphs 10(e) and (f) reply and annex R-1 reply – Documents 043 and 039.

⁶ Annex R-1 reply – Memorandum from Director OIOS to USG/DFS.

⁷ Ibid.

UNV candidate for a UNV post in the context of a recruitment process where she sat on the interview panel and made recommendations to the hiring manager with respect to the technical proficiency of the candidates, resulting in a real or appearance of conflict of interest.⁸

12. On 25 February 2016, the Applicant submitted her comments on the allegations having been granted an extension of time to do so.

13. By letter dated 25 May 2016 and delivered to the Applicant on 30 May 2016, the Applicant was informed that the USG/DM had concluded that that it had been established by clear and convincing evidence that the allegations against her had been established. It was on this basis that the USG/DM was imposing on her the disciplinary measure of demotion of one grade with a deferment for two years of eligibility for consideration for promotion together with a fine of three months' net base salary in accordance with staff rule 10.2(a)(v) and (vii).

14. On 25 May 2016 the Applicant filed her resignation effective 30 June 2016.⁹

b. Procedure before the UNDT

15. The Tribunal heard the case on 21 June 2018 during which oral evidence was received from the Applicant. The Applicant and Respondent were afforded time to file their closing submissions which they did on 10 and 13 August 2018 respectively.

16. Throughout the proceedings, the Applicant, who was self-represented, made voluminous submissions most of which were not relevant to the subject of the present case. In an e-mail dated 2 May 2018 and directed to the Tribunal and the Respondent, the Applicant raised several issues, some of which relate to facts surrounding the misconduct attributed to her, some to matters discussed as part of an attempt to settle the dispute informally, some express claims regarding her benefits. On 3 May 2018,

⁸ Un-numbered annex to the application.

⁹ Un-numbered annexes to the application show that the Applicant had failed to sign her first resignation letter dated 23 May 2016, she filed a complete resignation letter on 25 May 2016.

the Tribunal issued Order No. 072 (NBI/2018), to put the Applicant on notice that the subject of the current proceedings is the decision in her disciplinary case and the present application cannot be broadened on other grievances such as she may have in relation to her benefits and entitlements. The Applicant was also directed to seek leave of the Tribunal before making any further submissions in her case.

17. During the hearing on 21 June 2018, the Applicant, who insisted that her resignation was forced, was directed to file with the Registry, within three days, email communications she had with her UNOCI supervisors before her resignation. The Applicant had also informed the Tribunal that she had filed several additional documents on the evening preceding the hearing. Having no record of such a filing on the Tribunal's e-filing portal, Counsel for the Respondent addressed emails to the Registry on 26 June 2018 and 2 July 2018 inquiring as to whether the afore-mentioned documents had indeed been filed.

18. On 3 July 2018 the Applicant informed the Registry that she had understood the directions from the Tribunal to mean that she should file the email communications at the same time as her closing submissions. She transmitted the email communications to the Registry and to the Respondent on 4 July 2018. Counsel for the Respondent informed the Tribunal of his objection to these submissions on the same date.

19. On 10 August 2018, the Applicant filed the additional documents referred to at paragraph 17 above. The Tribunal noted that the documents support the Applicant's testimony in the hearing regarding the circumstances that are either not contested or of limited relevance, or both, i.e., that there was shortage of personnel in her Section; that the other candidate obtained another UNV position at the same time; that the wife of the Chief Civilian Personnel was employed at UNOCI; that the Applicant expressed her reluctance to grant access to the GIS database to an untrained person prior to the interview; that her husband was qualified for the position and that the other candidate's curriculum vitae did not suggest the same. As such, the Tribunal decided that the parties' interests did not merit re-opening of the evidentiary proceedings on account of

these documents.

20. On 14 August 2018, the Applicant sent an email to the Respondent copying the Registry, containing, *inter alia*, some polemics regarding the closing submission filed by the Respondent. The Tribunal was forced to reiterate its Order to the Applicant on 22 August 2018 when the Applicant persisted in making submissions in her case after the closure of the evidentiary proceedings.

The Applicant's case

21. The Applicant's submissions, originating from her filings and testimony before the Tribunal, are summarized below to the extent they are relevant to the current proceedings.

22. The Organization could not impose a disciplinary measure on her given that she had submitted her resignation from the Organization prior to receiving the sanction letter on 30 May 2016.

23. UNOCI GIS experienced staff constraints from the time she joined. At the material time, she was the only international staff member in the GIS Unit assisted by five national staff members. There was work pressure due to reduced staff and a conflict existed between the GIS and JMAC which ended with GIS staff refusing to further assist JMAC over and above their defined roles and responsibilities. The hiring was a necessity in the face of urgent need to find a replacement for a person qualified to handle a database. It was in this context that, in an attempt to solve the problem, she had a discussion with Ms. Daria Ferrari, Senior Mission Planning Officer and the Chief of JMAC. Ms. Ferrari talked about some selected candidates who declined employment offers at GIS. It is then that the Applicant mentioned that she had someone in mind, without specifying that it was her husband so that he could be recruited purely on merit.

24. Her husband was in Abidjan and was looking for a job. She wanted them to work together, as many couples in the United Nations, as they had been separated for seven years. Without doubt, her husband was qualified for the job.

25. Her role in the interview was to check the technical background of the candidates. There were no other international staff members in the GIS group in her office familiar enough with the necessities of the job to sit this interview in her stead. It would have been possible to ask from other missions for international staff member to participate in the interviews by phone but such search did not seem reasonable given that the decision had already been made by Ms. Ferrari to hire.

26. Thus, the interview was just a formality; the result was known; no minutes were taken, just notes. She did not give any recommendation for her husband during the interview and there was no panel discussion.

27. There was no conflict of interest as there was another position available. It was clear that the two candidates interviewed would be hired and indeed the person competing with her husband was retained in another position.

28. She did not tell Ms. Ferrari that one of the candidates was her husband because she didn't want to influence her decision; she wanted her to hire him based on his technical capability and not because of their relation. Also, she did not have a chance to tell Ms. Ferrari that he was her husband because there was no time to do so.

29. She and her husband were not hiding the fact of their marriage. The hiring manager should have known that one of the candidates was related to her because she had recommended him to her; moreover, her husband named her as his reference.

30. There had been other instances of irregularities in hiring in the Mission. The practice of the UNOCI senior management had always been to identify desirable senior positions for their spouses as the pre-determined candidates and then stage-manage the recruitment and selection processes as a formality to comply with United Nations recruitment guidelines and procedures. The Applicant cited the example of Ms. Ferrari who was allegedly recruited irregularly on 8 August 2014 by her husband who was then Chief Civilian Personnel Officer for UNOCI. Also, Ms. Ferrari had told her that someone else's wife or husband had been hired in another section. Misconduct by

members of senior management generally goes unreported because the Conduct and Discipline Team CDT in UNOCI is known for its biased and racially discriminatory operations.

31. The sanction imposed was too severe as she did not have an improper motive. Losing one step or two was fine but losing a grade was too severe for “just one slight mistake”. In her entire career before this incident she had never committed misconduct.

32. Contrary to the Respondent’s submissions, her husband did not resign based on a mutual agreement but rather he was forced to resign. She thought that her husband’s resignation on 27 May 2015, 30 days after he was recruited, and the subsequent OIOS fact finding interview concluded the matter.

33. The Applicant maintains that she was forced to resign her position despite her illness because she was given the option of resignation or the prospect of an abandonment of post process against her being initiated. She became ill because of emotional stress, her family suffered financial distress since her salary was stopped due to the delay in her sick leave approval and delays in other entitlements.

34. The Applicant seeks the following remedies:

- a. compensation for all her medical expenses,
- b. compensation for loss of her job,
- c. relocation grant, her salary and benefits at the P-3 step 2 level; and
- d. education grant of USD50,000.

Respondent’s case

35. The scope of this case is limited to the disciplinary sanction imposed on the Applicant, i.e., a demotion by one grade and a fine. Other allegations go beyond the scope of this case.

36. The Applicant’s assertion that the Organization could not impose a disciplinary

measure on her given that she had submitted her resignation from the Organization prior to receiving the sanction letter is incorrect. On 26 May 2016, she remained subject to the Staff Regulations and Rules, which allow for the imposition of disciplinary measures on staff members of the Organization.

37. The facts are established by clear and convincing evidence. The Applicant has not contested the facts material to the misconduct.

38. At the hearing, the Applicant provided differing, and internally contradictory, accounts concerning the reason why she did not disclose that one of the candidates for the UNV position was her husband. She first argued that the interview was only a formality and its outcome a foregone conclusion; however, this is belied by the fact that the hiring manager, by the Applicant's own admission, had requested her to sit on the hiring panel to assess the technical proficiency of the two candidates. Finally, the Applicant claimed that she had a high workload at the time of the selection exercise and that she had intended to tell the hiring manager but forgot to do so; however, this does not explain why she did not inform the hiring manager when participating in the interviews as a member of the hiring panel.

39. None of the different explanations offered by the Applicant justify her failure to disclose that she was married to one of the candidates in the hiring process, in which she actively participated. On the contrary, the Applicant's testimony that her husband had been without employment for quite some time and that she was very happy for him to be hired for the UNV position demonstrates that she wanted him to be selected for the position. It explains her failure to disclose her marital relationship with one of the candidates during the recruitment process.

40. Finally, the Applicant also stated that the hiring manager should have known that one of the candidates was related to her because she had recommended him to the hiring manager; however, just because a staff member recommends an external job applicant for a position does not necessarily mean that they are related. In any case, it is undisputed that the hiring manager was unaware that the selected candidate was the

Applicant's husband until after he had been recruited.

41. The established facts legally amount to misconduct. The Applicant's actions involved an inherent lack of integrity in violation of staff regulation 1.2(b). Contrary to the Applicant's arguments, her actions also constituted a conflict of interest in violation of staff regulation 1.2(m), which explicitly states that a conflict of interest occurs when a staff member's personal interests interfere with the integrity, independence and impartiality required by the staff member's status as an international civil servant. In the present case, the Applicant's personal interests, namely, to provide her husband with employment, directly interfered with her responsibility to act with integrity and impartiality as a member of the hiring panel for the UNV position for which her husband was a candidate.

42. The imposed sanction fell within the Administration's discretion.

43. The Applicant's failure to disclose her spousal relationship during the hiring process was a serious lapse in judgement, denoting a marked failure to uphold minimal standards of integrity and having a direct impact on the impartiality and fairness of the hiring process.

44. What is at stake is the integrity of the Organization's selection exercises. All job applicants have a right to full and fair consideration. The Applicant's actions had the potential to tarnish the reputation of the Organization and the other staff members participating in the selection exercise, who may have been seen to be complicit in tolerating an improper process. Hence, the Applicant's misconduct deserved a sanction that sent a message to both the Applicant and to other staff members that such conduct would not be tolerated by the Organization. The sanction imposed on the Applicant reflected the seriousness of her misconduct, took into account the absence of mitigating or aggravating factors and was tailored to the Applicant's individual circumstances.

45. The Applicant could have retained her appointment with UNOCI. However, she resigned from the Organization voluntarily. Any financial difficulties the Applicant

may have had since then flow from that decision. They are not linked to the sanction in this case.

46. The Applicant's due process rights were respected throughout the investigation and disciplinary process.

Considerations

Jurisdictional issues

47. The scope of this case, as delineated by the application, is limited to the decision on the finding of misconduct and disciplinary sanction imposed on the Applicant, *i.e.* a demotion by one grade and a fine. The Applicant's claims related to her separation from the Organization and various entitlements do not identify any concrete administrative decisions and have not been submitted for management evaluation. As such, they are not properly before the Tribunal.

48. The Applicant's assertion that the Organization could not impose a disciplinary measure on her given that she had submitted her resignation from the Organization prior to receiving the sanction letter on 30 May 2016 is incorrect. At the hearing, the Applicant conceded that, while she had submitted her signed resignation letter on 25 May 2016, her resignation became effective only on 30 June 2016, close of business, and that she remained a staff member until that point. Hence, on 25 May, the date of the issuance of the sanctioning decision, as well as on the date when it was received by her, she remained subject to the Staff Regulations and Rules, which allow for the imposition of disciplinary measures.

Merits

49. The Applicant admitted the main facts material to the allegations of misconduct, namely that on 2 March 2015, she participated, as a subject-matter expert, in the interviews of the two candidates for the UNV position, one of which was her husband. The Applicant's opinion was required to make a determination on the two

candidates' technical proficiency. The Applicant did not disclose to the other members of the panel that the candidate was her husband. After the interview, the Applicant provided her opinion to the hiring manager concerning the technical proficiency of both candidates that were interviewed, stating that her husband had the required technical proficiency. As a result, the Applicant's husband was selected for the position.

50. While at the hearing, the Applicant maintained that it was not true that she had disqualified the other candidate in the interview, as there had been no genuine discussion about the candidates, this is belied by the statements of the co-panelists collected in the investigation, as well as by her own response to allegations of misconduct, which reads in the relevant part:

VII. Facts

2. [...]

If I had recorded the interview, I would have had proof that Mr. Manju didn't answer the entire interview questions not only the technical part, a fact well known by Ms. Daria and Michael. Despite all that he was hired on April 13 2015 and is still working. The candidate was not technically or professionally sound because when we finished the interview Michael who was part of the interview panel said that the candidate never gone to school, and Daria heard that but proceeded with the recruitment.

This was the basis of my reluctance to give him access to the GIS server because it risked jeopardizing the whole system and affect our ability to perform our duties. I have always exceeded performance expectations and am very careful to protect the integrity of our GIS Database system to avoid disrupting critical Mission operations.

51. The Tribunal finds, accordingly, that the facts underlying the impugned decision were correctly established.

Whether the facts amount to misconduct

52. These facts demonstrate that the Applicant's actions were undertaken in a conflict of interest in violation of staff regulation 1.2(m), which explicitly states that a conflict of interest occurs "when a staff member's personal interests interfere with [...]"

the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization". They also demonstrate lack of integrity in violation of staff regulation 1.2(b), which requires staff members to "[...] 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." In the present case, the Applicant's personal interests, namely, to provide her husband with employment, directly interfered with her responsibility to act with integrity and impartiality as a member of the hiring panel.

53. Circumstances advanced by the Applicant in arguing legality of her conduct, that her husband was qualified for the job and that the other candidate secured another position, do not remove the conflict of interest. The Tribunal reiterates that the issue lies not just in the competing interests of the candidates but also in the integrity of the process as such, whose impartiality and fairness is compromised by nepotism or cronyism. Even if her spouse was the sole candidate for position, the Applicant was precluded from participating in his interview. This idea is expressed by staff rule 4.7(c) which provides that a staff member who bears to another staff member any of the specified relationships, including spousal relationship, shall not participate in the process of reaching or reviewing an administrative decision affecting the status or entitlements of the staff member to whom he or she is related. Most directly on point, ST/AI/273 (Employment of Spouses), requires that "staff members whose official functions would involve them in the process of reaching or reviewing any decision affecting their spouses, shall disqualify themselves from undertaking or participating in such process". Along the same line, the Appeals Tribunal in *Finnis* stresses the importance of the appearances of impartiality in selection processes:

20. The guidelines in paragraph 9 of ST/AI/2006/3 provide that candidates need to be evaluated against pre-approved criteria. It is

reasonable to expect that the selection process is not only fair, but also seen to be fair. [...]

22. We refer to the persuasive holding by the Administrative Tribunal of the International Labour Organization (ILOAT) in *Varnet v. UNESCO*, Judgment No. 179, where the ILOAT stressed that:

It is a general rule of law that a person called upon to take a decision affecting the rights and the duties of other persons subject to his jurisdiction must withdraw in cases in which his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, he may consider himself able to take an unprejudiced decision; nor is it enough for the person affected by the decision to suspect its author of prejudice.

Persons taking part in an advisory capacity in the proceedings of decision-making bodies are equally subject to the abovementioned rule. It applies also to members of bodies required to make recommendations to decision-making bodies. Although they do not themselves make decisions, both these types of bodies may sometimes exert a crucial influence of the decision to be taken.¹⁰

54. Consequently, being the matter of a strict rule, the Applicant's failure to withdraw from the interview panel was in and of itself a breach of law.

55. Arguments put forth by the Applicant by way of exonerating circumstances also fail. Neither heavy workload and personnel shortage nor the absence of any other international staff member qualified to assess technical knowledge of the candidates qualify as extreme necessity. Difficult hiring processes are commonplace in United Nations missions and there are ways of dealing with them; they may include video-conferencing and/or conducting written tests to be evaluated remotely, if not physically bringing another subject-matter specialist. As admitted by the Applicant, there was a possibility to seek another panel member outside UNOCI.

56. Finally, the Applicant invokes her lack of awareness of her incapability to sit the interview in question, given that she was a technician and not human resources

¹⁰ *Finniss* 2014-UNAT-397.

personnel. The Tribunal considers the matter to be so fundamental that no specific knowledge is required to appreciate the problem. While the Applicant denounces nepotism at UNOCI, examples offered by her do not suggest spousal participation in the selection processes which could have confused her as to acceptance of such practice. The Tribunal agrees with the Respondent that none of the different explanations offered by the Applicant justify her failure to disclose that she was married to one of the interviewees. Rather, these shifting justifications indicate that she was aware that her participation in the panel would not have been accepted.

57. In conclusion, the impugned decision correctly found that the established facts legally amount to misconduct.

Proportionality of sanction

58. The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.¹¹ The Tribunal agrees with the Respondent that the offence's seriousness in this case lies mainly in the subjective element, being the marked failure to uphold minimal standards of integrity, and concerning the material element, in seriously endangering the reputation of the Organization and the co-panellists. There was, however, no lasting damage to other interests, considering the prompt, within one month, resignation of the Applicant's husband and the fact that the other candidate secured another position.

59. As concerns her employment record, the Applicant had eight years of service and, absent evidence to the contrary, never any problems with discipline. These circumstances were considered mitigating in another case relied upon by the Respondent¹², who nevertheless, had not found any mitigating circumstances in the present case. The Tribunal observed, however, that the Applicant appeared

¹¹ *Rajan* 2017-UNAT-781 at para. 48.

¹² Reply, para. 17, referring to *Baidya* UNDT/2014/106.

unremorseful for her actions and, as stated in the hearing, did not acknowledge any fault on her part and requested that she be cleared off all charges. In the investigation, her strategy was to blame other persons and the Mission in general. This attitude in the Tribunal's view is indicative of an irredeemable lack of understanding of the concept of impartiality and conflict of interest, and largely offsets the mitigation on account of the hitherto unblemished record.

60. Looking into the matter of the employer's consistency, the Tribunal recalls that in the aspect of promulgated rules, the prohibition of acting in the conflict of interest is consistently borne out by three different instruments, staff regulations 1.2(m) and staff regulation 1.2(b), staff rule 47 (c) and, the most express of them, ST/AI/273. As concerns the practice, disciplining staff for the related infractions took place mainly for violations of procurement rules and outside activities¹³, with only two other instances of a conflict of interest in the recruitment process where staff members did not disclose their prior knowledge of the candidates to whom they were not related. In these cases, the sanctions were: written censure after waiver of referral to the Joint Disciplinary Committee and a written censure and one-month salary fine.¹⁴ These cases may be distinguished based on a more remote connection with the candidates and a lack of personal and financial gain involved. In other cases involving conflict of interest, the sanctions ranged from written censure to dismissal. Factors of aggravating impact on the sanction apparently were: acting through deception, prolonged state of breach, generating financial gain.

61. The Tribunal notes, moreover, that the measure of demotion by grade was applied in matters involving lesser cases of misrepresentation and fraud, such as where a staff member submitted to the Organization, in connection with his recruitment, a secondary school report card containing altered grades; or made material omissions in

¹³ ST/IC/2007/47 (Practice of the Secretary General in disciplinary matters and cases of criminal behaviour, 1 July 2006-30 June 2007) dated 31 August 2007, pos. 38; Compendium of disciplinary measures – Practice of the Secretary General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2017. Office of Human Resources Management, (10 September 2018).

¹⁴ ST/IC/2007/47 pos. 38; *Baidya* UNDT/2014/106.

his PHP and accepted duties in a post for which he was ineligible; cheated on a written test administered by the Organization by submitting the model answers prepared by others for the test; attempted to cheat on an official language examination; assisted a superior in cheating on two written assessments; took a test in the prior knowledge of the test in the administration of which he participated; or falsely claimed dependency benefits but rectified the status during disciplinary proceedings.¹⁵ As can be seen here, there is a similarity with the conduct of the Applicant in the resort to deception in an attempt to gain a personal advantage. Against this background, the measure of demotion with deferment of eligibility for promotion imposed on the Applicant is not disproportionate.

62. The Tribunal, as a general matter, has reservations as to the reasonableness of imposing a fine in addition to demotion. It recalls that in the prevalent practice, a fine was applied either as a sole disciplinary measure or in addition to another non-pecuniary measure, such as written censure. Conversely, demotion, usually accompanied with deferment of eligibility for promotion, in most of the cases was applied as stand-alone sanction.¹⁶ This is logical, considering that demotion, especially by a grade, presents for the affected staff member not only a moral condemnation but also a significant financial onerousness, thus combining demotion with a fine defies this logic. In the Applicant's case, however, given her resignation, a fine remains the only measure of actual onerousness. The Tribunal, therefore, will not intervene in this respect.

Conclusion

The application is dismissed.

¹⁵ Compendium of disciplinary measures – Practice of the Secretary General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2017. Office of Human Resources Management, (10 September 2018).

¹⁶ Ibid.

Case No.: UNDT/NBI/2016/055

Judgment No.: UNDT/2019/010

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 25th day of January 2019

Entered in the Register on this 25th day of January 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi