



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

DESBOIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Julia Kyung Min Lee, OSLA

Dorota Banaszewska, OSLA

Counsel for Respondent:

Lucienne Pierre, ALD/OHR, UN Secretariat

Romy Batrouni, ALD/OHR, UN Secretariat

Introduction

1. On 8 April 2019, the Applicant, a former staff member in the United Nations Environment Programme (“UNEP”) in Paris, France, filed an application to contest the imposition of disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity, for physical assault.
2. The Respondent replied that the application was without merit.
3. For the reasons stated below, the application is rejected.

Facts

4. Before her separation, the Applicant served as a Programme Management Assistant at the G-6 level in UNEP in Paris.
5. On Friday, 25 November 2016, a farewell party for a departing staff member was held at the UNEP office in Paris, which was attended by, among others, the Applicant and MK (name redacted). Towards the end of the party, the Applicant and MK had a heated conversation that led to physical altercations. SK (name redacted) and EK (name redacted), staff members of UNEP’s office in Paris, were present when the incident occurred.
6. Over the weekend, both MK and the Applicant reported the incident to their manager, SN (name redacted). On 26 November 2016, MK reported to UNEP management that the Applicant “physically assaulted [her] by hitting [her] four very strong slaps in the presence of other colleagues”. On the next day, the Applicant reported to SN that there was a “violent altercation” as MK was “extremely aggressive”, “pushed [her]”, and she “had no choice than to respond to defend” herself.
7. On Monday, 28 November 2016, MK reported the incident to EV (name redacted), the Chief of Project Management and Administration Unit, who in turn obtained written statements from the Applicant, MK, SK, EK, RD (name redacted),

and JC (name redacted). RD and JC did not witness the incident but had some interactions with the Applicant and/or MK after the incident on 25 November 2016.

8. On 7 December 2016, MK submitted a memorandum to the then Executive Director of UNEP to report the alleged physical assault by the Applicant.

9. By memorandum dated 14 December 2016, UNEP referred the incident involving the Applicant and MK to the Office of Internal Oversight Services (“OIOS”) for investigation. On 15 December 2016, UNEP informed MK that her complaint of physical assault had been referred to OIOS for investigation.

10. On 16 December 2016, MK separately reported the 25 November 2016 incident to OIOS via OIOS’ hotline.

11. On 22 December 2016, MK and SK had separate meetings with the Deputy Director of her division and EV. MK told them that, among other things, since she was still very stressed, she went to see a doctor at the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) to discuss her stress who observed that her face was still swollen from the slaps. SK told them that she felt that she and perhaps EK might have left out some crucial details, which was that she, and most likely EK, did see the actual slapping by the Applicant, while EK’s statement only mentioned hearing slapping. SK said that she was surprised that EK might have said that she only heard slapping instead of seeing it.

12. OIOS interviewed several witnesses, including MK, SK, EK, and the Applicant. OIOS also obtained and reviewed MK’s medical records.

13. On 31 July 2017, OIOS issued an investigation report in which OIOS concluded that the Applicant slapped MK, at least, twice across the face and pushed her.

14. By memorandum dated 16 October 2017, UNEP referred the matter of the Applicant to the then Office of Human Resources Management (“OHRM”) for appropriate action.

15. By memorandum dated 14 June 2018, the Applicant was requested to respond to the formal allegations of misconduct.
16. On 23 July 2018, the Applicant provided her comments thereon.
17. On 13 November 2018, the Applicant was provided with further information OHRM received from OIOS.
18. On 28 November 2018, the Applicant provided her further comments.
19. On 7 January 2019, the Applicant received the sanction letter informing her that based on a review of the case, it had been established that she had committed misconduct and she was imposed the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.
20. On 8 April 2019, the Applicant filed the application with the Geneva Registry of the Dispute Tribunal.
21. On 8 May 2019, the Respondent filed the reply.
22. On 1 April 2021, the case was transferred from the Geneva Registry to the New York Registry.
23. On 12-14 October 2021, the Tribunal held a hearing during which the Tribunal heard testimonies of the following five witnesses: the Applicant, MK, EK, SK, and a lead OIOS investigator who conducted the investigation in this case.
24. Subsequently, the parties submitted closing statements in accordance with Order No. 94 (NY/2021).

Consideration

Standard of review in disciplinary cases

25. The general standard of judicial review in disciplinary cases requires the Dispute Tribunal to ascertain: (a) whether the facts on which the disciplinary measure

was based have been established; (b) whether the established facts legally amount to misconduct; and (c) whether the disciplinary measure applied was proportionate to the offence (see, for example, *Nyawa* 2020-UNAT-1024). When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (see, for instance, *Molari* 2011-UNAT-164, and *Ibrahim* 2017-UNAT-776).

Whether the facts on which the disciplinary measure was based have been established

26. The Administration concluded in the sanction letter that the Applicant had physically assaulted MK by pushing her and slapping her in the face. This finding was mainly based on the testimonies of MK (the complainant) and SK (a staff member, who testified that she witnessed the Applicant's slapping of MK), as well as medical reports of MK's injury. The Administration found that EK, a staff member, who testified that she did not see the Applicant slapping MK, was not credible.

27. The Applicant submits that the facts were not established by clear and convincing evidence, since MK and SK's testimonies were contradicted by other evidence and therefore not credible.

28. The Respondent argues that, based on interview records and oral testimonies of MK, SK, and EK, MK's statements submitted to UNEP, and medical reports documenting MK's injury, there is clear and convincing evidence that on 25 November 2016, the Applicant physically assaulted MK by slapping her in the face and by pushing her.

29. In order to determine whether the underlying facts are established, the Tribunal will review evidence provided by MK, SK, EK and the Applicant, as well as MK's medical records.

MK's evidence

30. In an initial statement submitted to UNEP, MK wrote that while MK and the Applicant were having discussions on work related matters at the farewell party on 25

November 2016, the Applicant started shouting at her that she should “shut-up” and then “violently slapped [her] on [her] both cheeks”. She was very shocked and told the Applicant to stop but the Applicant continued “hitting [her] on the chest and shoulder provoking [her], she continued pushing [her] violently until [she] bumped into the conference screen”. When she moved away and stood next to EK, the Applicant came after her and “violently slapped [her] again twice”. SK went out running to call other colleagues for help and she left the room and went down to her office. She was “very emotionally shaken and distressed after just being assaulted by [the Applicant]”.

31. The Tribunal finds that the testimony that MK provided to OIOS investigators and during the hearing before the Tribunal regarding the 25 November 2016 incident was consistent with her initial statement provided to UNEP.

32. MK also submitted medical reports to OIOS. In particular, the UNESCO doctor’s medical report dated 17 January 2017 indicates that he examined MK on 29 November 2016, a few days after the incident, and he noted that MK’s right cheek was sensitive to touch, and she was stressed.

33. MK also submitted her private doctor’s medical reports dated 3 and 10 December 2016 in which he prescribed ten sessions of physiotherapy for a sore knee, in addition to medication to assist her sleep. MK told OIOS investigators that she “started developing some pains all over” after the slapping incident, which she did not have before. She told OIOS investigators that her private doctor explained that “it could be because of just the nervousity and the medicine that [she] was prescribed”.

34. At the hearing, the Applicant’s Counsel pointed out to MK that her medical records showed that she had a pre-existing medical condition in her knee and vertebrae caused by bone spurs and joint problems for which she had been taking arthritis and rheumatism medications and that she had been taking anxiety medication over three weeks before the date of the incident. When asked if MK claims that her knee pain and joint problems were caused by the slapping incident, MK testified that she was not saying that these conditions were caused by the incident, but that she started developing pain all over from bad headache to pain on the left side after the incident.

SK's evidence

35. In an initial statement submitted to UNEP, SK wrote that after most colleagues left the farewell party, EK and she started cleaning up the room while MK and the Applicant were still chatting. At some point, she noticed that “they were raising voices at each other”. SK left the room to make a cup of tea and when she returned, she found MK and the Applicant “in a heated argument” and she heard the Applicant shouting “[MK], wake up, wake up” followed by 3-4 slaps. MK shouted back and said “[the Applicant], you are hitting me ... stop hitting me...” MK repeatedly said, “I’m not hitting you back, but if you hit me again, I will kill you!” SK and EK tried to ask them to stop but they continued screaming at each other. SK went downstairs and told a colleague, JC, what was happening and asked her to come upstairs to calm down MK and the Applicant. When SK came back upstairs with JC, MK already had left the room.

36. SK told OIOS investigators during her interview that at the farewell party, she noticed that MK and the Applicant were raising their voices at each other and then she told them jokingly, “Hey, guys ... even if you’ve taken some wine, you don’t have to shout at each other. Why don’t you just talk softly?” and the Applicant responded, “No, no, no. Let her talk. The wine is helping. Let it come out”. SK left the room to make a cup of tea and came back. And within a few minutes, MK and the Applicant were raising voices at each other and when she looked up, in a split-second, the Applicant was slapping MK saying, “[MK], wake up, wake up”. SK said that the Applicant was shaking MK saying, “Wake up, wake up” and MK said, “[the Applicant], you’re hitting me. Don’t hit me again” and that “they were pushing each other”. And at one point, MK said, “if you hit me again, I’ll kill you”. SK asked them to stop. She then got scared and went out to look for someone else. When she came back, MK already left the room.

37. When questioned at the hearing before the Tribunal, SK confirmed that she clearly saw the Applicant hitting MK. When asked if she observed any pushing, she testified that she would say shaking and that she saw the Applicant shaking MK.

EK's evidence

38. In an initial statement submitted to UNEP, EK wrote that after most colleagues had left the farewell party, the Applicant and MK were having a private discussion. She did not hear what they were talking about, and “it was only when [she] heard some slaps, (three times [she] think[s]), that [she] turned to look at what was going on”. She did not see “who hit who” but she heard the Applicant telling MK “Wake up [MK] ... wake up”. MK, who had been seated on the side of the table, stood up and moved back, telling the Applicant, “Hit me again and you will see ... hit me again ...”. They started raising voices and SK rushed out of the meeting room, and EK told them, “Stop it ladies, sort out your issues calmly”. She stood on one far end, not wanting to get involved, but MK and the Applicant came to where she was standing. The Applicant kept telling MK to wake up. After MK left, SK returned with two other colleagues. She then left the room and went to her office before going home.

39. OIOS interviewed EK twice. During her first interview, EK said that toward the end of the farewell party, while MK and the Applicant were chatting, SK and she were busy clearing the tables. She said that she was not looking at them but when she heard “slapping sound”, she turned to look and SK “also just started to look whether somebody had been slapped”. She said that almost immediately after the slapping sound, the Applicant said, “Wake up, [MK]”. She then heard MK stating that “Hit me again. Hit me again and you will see”. The Applicant responded, “[MK], wake up. Wake up, [MK], wake up”. EK said that they each repeated the same phrases several times and SK then rushed out. EK said that she just moved to a corner, not knowing what to do, and MK came toward her stating, “[EK], you’ve seen, no, you saw she hit me”. SK said that the Applicant followed MK and when they came close to her, they just stood there. SK said that she kept telling them to stop. SK returned with a few other colleagues but by then MK already stormed out. When questioned by an OIOS investigator, EK confirmed that she did not see slapping but she heard “the sounds of a slap” three times. While she did not witness the slapping incident, based on what she observed and by logic, EK concluded that the Applicant hit MK. EK stated that there was no pushing between them.

40. During the second interview with EK, OIOS investigators asked her to clarify her statement during the first interview that she believed that SK did not see who

slapped whom. EK stated that she was under the impression that SK did not see the slapping incident but that SK could have seen it. She further confirmed that MK and the Applicant did not push each other.

41. At the hearing, EK testified that she heard rapid “clapping sound”, which was followed by MK stating, “hit me again and I will kill you” and the Applicant stating “[MK], wake up”. EK stated that she did not see any physical contact between MK and the Applicant. EK stated that she had two big glasses of red wine, but she did not think that she was impaired. When questioned by the Applicant’s Counsel if it would be possible that MK said “hit me again and I will kill you” even though she was not hit, she responded that it could be possible.

The Applicant’s evidence

42. In an initial statement submitted to UNEP, the Applicant wrote that after discussing the issue of MK’s promotion and other matters at the farewell party, MK became aggressive and that “[a]t one point she pushed me, I pushed her back, I had no choice than to respond to defend myself and cannot tell exactly what happen[ed]”.

43. During interview with OIOS, the Applicant stated that at the farewell party, MK and she talked about an upcoming G-6 level vacancy in the Paris office. MK believed that someone else was going to be selected for the post and called the Applicant “a bad person”, “a mean person”, and “a devil person”. The Applicant said that at some point, she thought that she “wanted to hold her, calm her down” and told MK, “[MK], listen to me, try to listen to what I am saying” and that is when MK pushed her and then she pushed her back and then MK left the room. When asked by OIOS investigators if she slapped MK, the Applicant responded that she did not slap her, but she only placed her hands on MK’s cheeks to hold her and to calm her down as MK was screaming. When asked if MK stated, “hit me again and I will kill you”, she responded that MK did not say that. When asked if she followed MK in the room when she moved, the Applicant responded that she did not follow MK. The Applicant told investigators that she had an existing memory problem that makes it difficult to recall long-term memory.

44. At the hearing, the Applicant testified that MK had been frustrated for not getting promoted and when a G-6 level post became open, she believed that she would get that post, but she was contacted by another staff member who said that she got the G-6 level post. MK felt betrayed by the Applicant and called her “devil”. She said that since MK pushed her, she pushed her back, and she followed MK to finish the conversation. When questioned by the Respondent’s Counsel, the Applicant admitted that she held MK’s cheeks to calm her down. About her comment “wake up, wake up [MK]”, the Applicant explained that she meant “be realistic, don’t be naïve, you know how the system functions”. When asked how she could explain that one witness saw slapping (SK) and another witness heard slapping/clapping noise (EK), the Applicant responded that SK just repeated what MK said and she did not know why EK would say that.

45. Having considered all the evidence as discussed above, the Tribunal finds that MK’s statement that she was slapped by the Applicant is corroborated by SK’s testimony that she witnessed the Applicant’s slapping of MK. While it is true that SK did not explicitly write that she saw the Applicant slapping MK in her initial statement, she nonetheless wrote that she heard the Applicant saying, “[MK], wake up, wake up” followed by 3-4 slaps. This was further elaborated in her testimonies provided to OIOS investigators and at the hearing as she confirmed repeatedly that she saw the Applicant slapping MK.

46. MK’s testimony is further corroborated by EK’s testimony that she heard a slapping or clapping sound three times. Moreover, both SK and EK gave similar testimonies about MK’s remarks immediately after the incident. SK told OIOS investigators and testified at the hearing that after the slapping incident, she heard MK stating, “you are hitting me, stop hitting me” and “if you hit me again, I will kill you”. EK told OIOS investigators and testified at the hearing similarly that after she heard slapping or clapping sound, MK stated, “hit me again and I will kill you”.

47. The Applicant told OIOS investigators and testified at the hearing that she only held MK’s cheeks to calm her down but did not slap her, but this version of the event is not supported by any evidence. The Applicant asserts that SK lied about witnessing

the slapping by the Applicant, but the Applicant's version of the event cannot explain how both SK and EK mentioned from the initial statements slaps/slapping sound. At the hearing, when asked how she could explain the contradicting testimonies of SK and EK, she only said that SK repeated what MK said, but regarding EK's testimony, the Applicant stated that she did not know why EK had said that. The Applicant also denied that MK stated, "hit me again and I will kill you", but this testimony is also contradicted by the testimonies of SK and EK who confirmed hearing MK stating that.

48. Further, the UNESCO doctor noted in a medical report that when he examined MK a few days after the incident, MK's right cheek was sensitive to touch. This record further corroborates the fact that MK was slapped. The Tribunal notes that, while the Administration did not base the contested decision on MK's claim that the slapping incident caused her knee pain and joint problems, the evidence does not support MK's claim of injury in this regard.

49. The Applicant claims that MK and SK colluded and tried to align their stories as early as 16 December 2016 to corroborate each other by informing OIOS and UNEP management that SK had seen the Applicant slapping MK. However, the Applicant failed to present any evidence proving that they colluded to align their stories.

50. On the other hand, the Tribunal finds that the other claims by MK are not established. MK testified that after the initial slapping incident, the Applicant continued to hit her on the chest and shoulder, pushed her violently, and violently slapped her again twice. However, this version of the event is not corroborated by either SK or EK's testimonies. In fact, as noted above, EK consistently testified that there was no pushing between them nor was there any physical contact between them that she witnessed. While SK told OIOS investigators that they pushed each other after the slapping incident, at the hearing, SK said that there was no pushing between them but only shaking by the Applicant.

51. In sum, based on the record on file and the oral evidence provided at the hearing held on 12-14 October 2021, the Tribunal finds that it is established that the Applicant

slapped MK on 25 November 2016 but the rest of the allegations by MK are not established.

Whether the established facts legally amount to misconduct

52. In the sanction letter, the Administration found that the Applicant's actions constituted serious misconduct in violation of staff regulation 1.2(f) and staff rule 1.2(f), which provide that:

Regulation 1.2

Basic rights and obligations of staff

...

(f) ... [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 ...;

Rule 1.2

Basic rights and obligations of staff

...

(f) Any 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.

53. Under the jurisprudence of the Appeals Tribunal, it is undisputed that physical assault amounts to misconduct (see, for instance, *Toukolon* 2014-UNAT-407; *Ouriques* 2017-UNAT-745; *Majut* 2018-UNAT-862; *Sall* 2018-UNAT-889; *Halidou* 2020-UNAT-1070). Since it is established by clear and convincing evidence that the Applicant slapped MK, the established facts amount to misconduct.

Whether the disciplinary measure applied was proportionate to the offence

54. The principle of proportionality in a disciplinary matter is set forth in the staff rule 10.3(b), which provides that “[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct”.

55. The Administration has discretion to impose the disciplinary measure that it considers adequate to the circumstances of a case and to the actions and behavior of the staff member involved, and the Tribunal should not interfere with administrative discretion unless “the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity” (see *Portillo Moya* 2015-UNAT-523, paras. 19-21; and also *Sall* 2018-UNAT-889, *Nyawa* 2020-UNAT-1024).

56. The Appeals Tribunal held that “the Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose” (see *Toukolon* 2014-UNAT-407, para. 31).

57. The Appeals Tribunal has further stated, “But due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair”. The Appeals Tribunal further explains that this means that the Dispute Tribunal should “objectively assess the basis, purpose and effects of any relevant administrative decision” (see *Samandarov* 2018-UNAT-859, para. 24).

58. In the sanction letter, the Administration imposed on the Applicant the disciplinary measure of separation from service with compensation *in lieu* of notice and without termination indemnity based on the nature and gravity of the conduct, the past practice of the Organization in matters of comparable conduct as well as mitigating and aggravating factors.

59. In particular, the Administration considered that measures towards the severe end of the spectrum are imposed for misconduct involving physical assault.

60. As an aggravating factor, the Administration considered the fact that the Applicant continued to provoke MK after two staff members and MK had asked her to stop and followed MK as she attempted to walk away.

61. As mitigating factors, the Administration considered the Applicant's partial admission of her conduct, that she pushed MK and held her cheeks, and her long service with the Organization.

62. The Applicant submits that the Administration erred in finding the following as an aggravating factor given the unreliability of MK and SK's evidence: "[the Applicant] continued to provoke [MK], after two staff members, and [MK], had asked [the Applicant] to stop, and followed [MK] as she attempted to walk away".

63. Having considered the evidence in this case, the Tribunal finds that it does not support the Administration's conclusion that the Applicant kept provoking MK. Both SK and EK testified that MK repeated, "if you hit me again, I'll kill you" and the Applicant repeated, "[MK], wake up, wake up", and they asked both MK and the Applicant to stop. In addition, SK stated that they were shouting at each other. Therefore, the evidence does not establish that the Applicant continued to unilaterally provoke MK after she had asked her to stop. Therefore, the Tribunal concludes that the Administration erred in considering this element as an aggravating factor.

64. However, other than an erroneous consideration of an aggravating factor, the Tribunal finds that the Administration acted within the bounds of its discretion in finding that the Applicant's misconduct was serious in nature and the imposed sanction is in line with the past practice of the Organization in matters of comparable misconduct. In *Halidou* 2020-UNAT-1070, the Appeals Tribunal stated that "assaulting another human being is a fundamental violation of the values of the Organization", "there is no place for physical violence ... in the workplace", and thus the termination of a staff member's employment for physical assault was proportionate.

65. Considering the nature and gravity of the Applicant's misconduct, mitigating circumstances that the Administration took into account, as well as the past practice of the Organization in matters of comparable misconduct, the Tribunal finds that the imposed disciplinary measure was adequate in light of the Administration's scope of discretion in this matter.

Whether the staff member's due process rights have been respected

66. Finally, the Tribunal will review the Applicant's claim that OIOS investigation was biased and flawed, and it violated the Applicant's due process rights. Before reviewing the Applicant's specific allegations, the Tribunal recalls that the Appeals Tribunal held that "only substantial procedural irregularities will render a disciplinary measure unlawful" in *Sall* 2018-UNAT-889, paras. 33 and 39:

... under our consistent jurisprudence, only substantial procedural irregularities will render a disciplinary measure unlawful. Even a very severe disciplinary measure like separation from service can be regarded as lawful if, despite some procedural irregularities, there is clear and convincing evidence of grave misconduct, especially if the misconduct consists of a physical or sexual assault.

... Irrespective of any irregularities, the [Dispute Tribunal] should have conducted a further review of the disciplinary measure ... Save exceptional cases involving major violations of due process rights, it is not sufficient for [the Dispute Tribunal] to find procedural errors in a disciplinary process but, where necessary, it has to conduct a de novo review of the facts and a judicial review of the remaining aspects of the case.

67. Bearing in mind the above jurisprudence, the Tribunal will review the Applicant's allegation that the following procedural irregularities occurred during the investigation process:

a. OIOS failed to obtain an existing audio recording of the meeting held in the morning of 28 November 2016 that involved MK, which was relevant to the credibility of MK's testimony;

b. OIOS failed to verify the medical records submitted by MK in support of her assertion that the slapping incident caused her to have pains in her knee and left side that she had never experienced before;

c. OIOS investigator found EK to be not credible when she said that she did not see the Applicant slapping EK based on his approximation of distance between EK and the Applicant/MK but this was flawed;

d. OIOS failed to follow up about the Applicant's pre-existing medical condition affecting her memory even though she informed OIOS investigators about her condition during her interview;

e. EK's second interview record was left out of the final investigation report even though lead OIOS investigator included this record in the initial draft report. This shows that OIOS's investigation against the Applicant was biased as EK's second interview included her testimony that she did not believe that SK could have seen the slapping incident;

f. It was belatedly disclosed during the proceeding before the Tribunal that 18 witnesses were interviewed during the investigation and yet only eight witnesses' statements were mentioned/attached to the investigation report. A complete record included highly relevant, exculpatory evidence of some witnesses which show that SK lied to provide support for MK's complaint. Further, MK's complete medical records showing that MK lied about her pre-existing medical conditions were omitted from the report.

68. It is regrettable that the Administration failed to disclose certain records obtained by OIOS during the investigation and disciplinary process, especially the second interview record of EK, one of the key witnesses in this case. However, this evidence was eventually disclosed to the Applicant during the current proceedings, which enabled the Applicant to use it at the hearing. Further, at the hearing, the Tribunal conducted a *de novo* review of the facts and made findings on the credibility of witnesses and whether certain allegations were substantiated or not.

69. Despite some flaws in the process described above, the Applicant's due process right was largely respected as she was informed of the allegations against her with key supporting evidence and she was given the opportunity to comment on the allegations set forth in the charge letter. Moreover, as already discussed in detail, there is clear and convincing evidence that the Applicant slapped MK. Therefore, in light of the jurisprudence of the Appeals Tribunal, the Tribunal finds that there were no substantial procedural irregularities that rendered a disciplinary measure unlawful.

70. In light of the above, the Tribunal upholds the disciplinary measure imposed on the Applicant.

Conclusion

71. In light of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Joelle Adda

Dated this 15th day of February 2022

Entered in the Register on this 15th day of February 2022

(Signed)

Nerea Suero Fontecha, Registrar, New York