



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** Geneva

**Registrar:** René M. Vargas M.

IRAM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Raja Muhammad Farooq

**Counsel for Respondent:**

Mathias Schuster, UNICEF

Rosangela Adamo, UNICEF

## **Introduction**

1. The Applicant, a former Water, Sanitation and Hygiene (“WASH”) Officer at the Sindh Field Office (“SFO”) in Karachi, Pakistan, United Nations Children’s Fund (“UNICEF”), filed an application contesting the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity, in accordance with UN Staff Rule 10.2(a)(viii).

## **Summary of relevant facts**

2. On 11 September 2018, the Office of Internal Audit and Investigation (“OIAI”), UNICEF, received three complaints of possible misconduct from the Pakistan Country Office (“PCO”) against the Applicant. The complainants, a WASH Officer (“V01”), a WASH Specialist (“V02”), and a WASH Officer (“V03”), reported that the Applicant had engaged in workplace harassment by using offensive language, engaging in bullying, intimidation, and humiliation.

3. On 12 February 2019, the Applicant was notified by OIAI about said complaints.

4. On 7 November 2019, the Applicant was interviewed by OIAI.

5. On 20 November 2019, the Applicant submitted an official statement to the investigation with supporting documents.

6. On 26 December 2019, OIAI issued its investigation report concluding that the Applicant had failed to observe the standards of conduct and referred the matter to the Division of Human Resources (“DHR”) for appropriate action.

7. On 23 January 2020, the Director, DHR, issued a Charge Letter against the Applicant for misconduct on account of seven allegations: (a) bullying V01, (b) making abusive comments towards V01’s child, (c) repeatedly and unwelcomingly calling and messaging V01 and V02 after work-hours, (d) insulting V02 in the presence of other WASH personnel during a team meeting, (e) bullying

V03, (f) shouting at V03 in the presence of V01, (g) repeatedly and unwelcomingly touching and hugging V03 after he had told her it made him feel uncomfortable.

8. On 24 February 2020, the Applicant responded to the charge letter.

9. On 11 May 2020, the Deputy Executive Director (“DED”), Management, UNICEF, decided that the allegations against the Applicant were established by clear and convincing evidence and that her actions amounted to serious misconduct in violation of paragraph 21 of the Standards of Conduct for International Civil Service, Staff Regulations 1.2(b) and (f), paragraphs 6.1, 6.3 and 6.15 of POLICY/DHR/2019/001 (UNICEF Policy on the Disciplinary Process and Measures), and paragraph 1.1(b) of CF/EXD/2012-007 (Prohibition of Discrimination, Harassment, Sexual Harassment and Abuse of Authority). Accordingly, the DED decided to impose on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity, in accordance with UN Staff Rule 10.2(a)(viii).

10. On 8 August 2020, the Applicant filed an application before this Tribunal.

11. On 9 September 2020, the Respondent filed his reply.

12. On 18 October 2020, the Applicant filed a rejoinder.

13. On 27 October 2020, the Respondent filed a motion to strike the Applicant’s rejoinder.

14. On 30 October 2020, the Applicant filed a response to the Respondent’s motion.

15. On 10 January 2022, the instant case was assigned to the undersigned Judge.

16. By Order No. 28 (GVA/2022) of 2 March 2020, the Tribunal rejected the Respondent’s motion and granted him additional time to make comments on the Applicant’s rejoinder. Through the same Order, the Tribunal also asked the parties to file submissions on the necessity of an oral hearing.

17. On 9 March 2022, the Applicant indicated a desire for an oral hearing without justifying its need.

18. On 10 March 2022, the Respondent replied to the rejoinder and informed the Tribunal that, given the extensive case record, he did not see the need for an oral hearing.

19. By Order No. 38 (GVA/2022) of 15 March 2022, the Tribunal informed the parties that the case would be determined on the papers.

20. On 17 March 2022, the Applicant filed a motion requesting leave to submit additional comments and supporting documents.

21. By Order No. 40 (GVA/2022) of 21 March 2022, the Applicant's motion was denied.

#### **Parties' submissions**

22. The Applicant's principal contentions are:

- a. The complainants conspired against her to fabricate or overstate the incidents related to the alleged workplace harassment;
- b. The witnesses' testimonies are not credible, as they are too far removed in time, and the evidence provided is not sufficiently specific;
- c. Her due process rights were violated throughout the investigation as the evidence provided by her was unfairly ignored; and
- d. The disciplinary measure imposed on her is disproportionate to the allegedly established misconduct.

23. The Respondent's principal contentions are:

a. When reviewing disciplinary decisions, the role of the Tribunal is "to examine whether the facts on which the sanction is based have been established, whether the facts qualify as misconduct, and whether the sanction is proportionate to the offence" (see *Turkey* 2019-UNAT-995, *Miyzed* 2015 UNAT 550, *Applicant* 2013-UNAT-302);

b. There is clear and convincing evidence that the Applicant engaged in a pattern of bullying and using demeaning, abusive, and offensive language towards her colleagues, including supervisees, and engaged in intimidating actions, constituting harassment within the meaning of paragraph 1.1(b) of CF/EXD/2012-007;

c. By engaging in misconduct, the Applicant violated Staff Regulations 1.2(b) and (f), paragraph 21 of the Standards of Conduct for the International Civil Service, and paragraphs 6.1, 6.3, and 6.15 of POLICY/DHR/2019/001;

d. The witnesses provided detailed, consistent, and mutually reinforcing accounts of the Applicant's insulting and abusive conduct, while the Applicant only provided broad and unsubstantiated claims that their allegations were fabricated and that they conspired against her, with no proof or clear reason as to why they would do that;

e. The disciplinary measure imposed is proportionate to the misconduct;

f. UNAT jurisprudence establishes that a decision to impose a specific disciplinary measure for established conduct may only be reviewed by the Tribunal in "cases of obvious absurdity or flagrant arbitrariness". The sanction imposed was not arbitrary nor disproportionate. UNICEF takes workplace harassment seriously. The fact that the Applicant's conduct was particularly abusive and demeaning, included a series of events involved multiple victims, was repeated over a number of years, and that in one incident she was even acting as the Officer-In-Charge ("OiC"), thus, as one of the victim's Supervisors constitute aggravating circumstances;

g. The imposed sanction was not the harshest available, as the Applicant was not dismissed without receiving a termination indemnity; and

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

### **Consideration**

24. The decision-maker has the discretion to impose the disciplinary measure that he/she considers adequate having regard to the nature of the misconduct, the objective of punishment and deterrence, and other relevant considerations. The decision-maker also has the discretion to weigh aggravating and mitigating circumstances.

25. When reviewing disciplinary decisions, the Tribunal may only examine (i) whether the facts on which the sanction is based have been established, (ii) whether the established facts qualify as misconduct, (iii) whether the sanction is proportionate to the misconduct, and (iv) whether the staff member's due process rights were respected during the course of the investigation and disciplinary procedure. Also, when reviewing proportionality, the test applied by the Tribunal is whether the measure is blatantly illegal, arbitrary or discriminatory or otherwise abusive or excessive.

26. Accordingly, the Tribunal must examine each criterion individually to then proceed to rule on the legal issues that emerge in the case.

#### *Whether the facts have been established*

27. The sanction imposed on the Applicant derives from multiple incidents of harassment, set out in the charge letter, that were reported by three complainants and relate to various periods in time.

28. The charges with respect to the allegation that the Applicant bullied V03 by calling him a “munshe” have been dropped, as have the allegations that the Applicant bullied V01 by telling her she would not “take her place”, requesting her to resign, and following her to the bathroom to question V01 about her interactions with other colleagues.

29. However, the allegations against the Applicant that she (a) bullied V01; (b) made abusive statements about V01’s child; (c) repeatedly called and texted both V01 and V02 after working hours when she knew, or should have known from their reluctance to respond and/or unresponsiveness, that her contacting them after working hours was unwelcome; (d) made insulting remarks to V02 in the presence of other WASH personnel during a WASH team meeting on 6 July 2018; (e) bullied V03; (f) on 24 November 2017, shouted at V03 in the office in the presence of V01; and (g) repeatedly touched and/or hugged V03 after he had expressly told the Applicant that such contact made him feel uncomfortable, are established by clear and convincing evidence. As such, these allegations amount to serious misconduct in violation of paragraph 21 of the Standards of Conduct for International Civil Service, Staff Regulations 1.2(b) and 1.2(f), paragraphs 6.1, 6.3, and 6.15 of POLICY/DHR/2019/001, and paragraph 1.1(b) of CF/EXD/2012-007.

#### The incidents

30. From 2016 to 2017, both V01 and V03 individually submitted written complaints against the Applicant to the SFO management prior to the arrival of V02. V01 submitted complaints against the Applicant on 19 August 2016, 15 November 2016, and 20 April 2017. V03 first reached out to the then-OiC of the SFO to seek his assistance in dealing with “tens[ion]” in the WASH section on 16 August 2017 and submitted a written complaint on 27 November 2017.

31. All five of these complaints pre-dated V02’s arrival in January 2018 and four of them were submitted more than one year before the formal complaints that are at issue here.

32. Accordingly, the evidence shows that both V01 and V03 had been struggling with the Applicant's conduct for a considerable amount of time prior to V02's arrival and tried, individually, to resolve their respective matters by alerting SFO management.

33. In addition, a contemporaneous email dated 30 August 2018 shows that V01, V02, and V03 were advised to file an official complaint against the Applicant by the Chief Field Office ("CFO"), SFO, UNICEF, after she was made aware of the seriousness of the matter.

34. Given the timeline of the reported incidents, the contemporaneous evidence on record, and the fact that the complainants have been separately reporting said incidents to Senior Management for a while before the official complaint, the Applicant's claim that they were conspiring against her to fabricate or overstate the incidents relating to the alleged workplace harassment is neither credible nor supported by any evidence.

35. In contrast to the Applicant's claims, the evidence of the complainants and other witnesses is consistent regarding the Applicant's behaviour towards them and others. Such credible evidence supports a pattern of abusive and/or intimidating and demeaning behaviour on the Applicant's part.

36. On 23 August 2016, at a meeting held to mediate the conflict between the Applicant and V01, and on subsequent occasions, the Applicant made abusive statements about V01's child, who was born with a neurological ailment. In the meeting, the Applicant stated the following: "God ha[s] punished you by giving you a sick child. I prayed to God that you lose your child, that you can feel the pain I am going through, because I am an orphan. You are playing politics."

37. The account of V01 regarding this meeting is corroborated by the testimony of a former WASH Specialist and former Team Leader of the WASH section at the Sindh Field Office ("SFO"), who mediated said meeting and who confirmed hearing the Applicant's abusive statements. There is no indication on record that the accounts of V01 and the former WASH Specialist were fabricated or are otherwise not reliable.



38. There is also clear and convincing evidence that the Applicant bullied V01 by calling her names such as “garbage” and “asshole”. While there were no other persons present at the incidents reported by V01, her account is consistent with the statements of V02 and V03 that the Applicant used insulting and verbally abusive language towards them and others.

39. In addition, the former WASH Specialist and former Team Leader of the WASH section at the SFO also testified to having been subjected to and to witnessing the use of abusive language by the Applicant, such as “you are garbage”. Similarly, a Programme Associate, WASH section, testified to having witnessed the Applicant shout and use abusive language such as “bitch”, “fuck your sister”, and “fuck off”. In light of this consistent and corroborative evidence made by witnesses other than the complainants, the Applicant’s denials of the allegations are not credible.

40. Moreover, the Applicant repeatedly called and texted both V01 and V02 after working hours when she knew, or reasonably should have known from their reluctance to respond and/or unresponsiveness, that her contacts were unwelcome. The evidence includes statements by V01 and V02 who recalled that the Applicant repeatedly called and texted them outside of working hours. Records provided by V01 indicated that when she was not responsive to the Applicant’s communications, the latter would text her to ask why she was not taking her calls or texts and/or whether she had blocked her. For instance, on 30 May 2018, the Applicant tried to reach V01 eight times between 7:47 p.m. and 8:36 p.m. On 18 June 2018, she called V01 twice and then texted her at 8:01 p.m. and then called her again at 8:56 p.m. On 1 August 2018, the Applicant called V01 at 9:59 p.m. and 10:04 p.m. and then sent her a message, stating “seems you were sleeping just wanted to say hello [...]”.

41. Furthermore, the Applicant bullied V01 by accusing her of having an illicit relationship with another staff member of the WASH section, who was the Applicant’s supervisor at the time, i.e., the above-mentioned WASH Specialist and former Team Leader of the WASH section at the SFO. The Applicant also requested V01’s husband’s phone number so that she could inform him of the alleged

affair. V01 gave a clear and credible account of what she perceived as threatening behaviour, noting, in particular the cultural implications that such an accusation would bear:

Witness Statement of V01 (28 November 2018) (2018-132-ZJ08), para. 10 (stating, *inter alia*, “She accused me that I was having an illicit relationship with [a WASH Specialist and former Team Leader]. None of that was true. At one point she asked me to give her a telephone number of my husband, because she would like to inform him about my relationship with [a WASH Specialist and former Team Leader]. I can say that at that moment, I became very scared of her. If any such information indeed reached my husband, my life could have been in jeopardy, because I belong to Baloch tribe and there are thousands of reported incidents where women are being killed in the name of honour from this tribe”.

42. On 6 July 2018, the Applicant made insulting remarks to V02 in the presence of other WASH personnel during a WASH team meeting. The evidence is comprised of the statements of V01, V02, and V03. The discussion descended into a confrontation during which the Applicant shouted and levelled insults at V02 in front of the WASH team. This is consistent with other witnesses’ testimony that the Applicant’s communications with her colleagues were, at times, insulting and abusive.

43. The Applicant also bullied V03 by showing him sanitary pads, discussing her period in front of him, and accusing him of being gender insensitive. On one occasion, the Applicant entered the WASH office, told V01 that she had started her period, and then showed a package of sanitary pads to V03. She then asked him whether he knew what that was and told him that “[she was] having a monthly period and that [she was] going to use the pads.”

44. Contrary to the Applicant’s arguments, V03’s act of forwarding to the Applicant a work-related email concerning the importance of including feminine hygiene in educational programmes for young girls cannot be equated to showing him sanitary pads, discussing her period in front of him, and accusing him of being gender insensitive.

45. On 24 November 2017, the Applicant shouted at V03 when she was acting as OiC of the SFO WASH team. She shouted at V03 in the office in the presence of V01 telling him that he did not have the “guts” to support the team.

46. The Applicant also repeatedly touched and/or hugged V03 after he had told her that such contact made him feel uncomfortable. The Applicant told him that he was her brother and, therefore, that she could touch him. V03 was also touched and hugged by the Applicant in the presence of the former Chief, WASH, PCO.

47. Similarly, on many occasions, the Applicant hugged other male colleagues, which was reported by a Programme Associate, PCO, who also testified to having been uncomfortable.

48. Thus, V03’s accounts are both credible and consistent with witness testimony.

*Whether the established facts qualify as misconduct*

49. The Applicant’s conduct amounts to misconduct.

50. The Applicant’s established conduct towards her colleagues V01, V02, and V03, which included using demeaning, abusive, and offensive language, and intimidatory actions, was improper and unwelcome and could reasonably be perceived as causing offence or humiliation, bringing this conduct within the definition of harassment under paragraph 1.1(b) of CF/EXD/2012-007.

51. The fact that the Applicant engaged in a series of incidents is also consistent with the definition of harassment. Through her actions, she failed to uphold the highest standards expected of International Civil Servants that they must not engage in any form of harassment. International Civil Servants have the right to a workplace environment free of harassment and/or abuse. Managers and supervisors serve as role models, and they consequently have a special obligation to uphold the highest standards of conduct. The Applicant failed to observe these standards while serving as OiC.

52. Staff regulation 1.2 (b) provides that staff 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.

53. Under staff regulation 1.2(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. Staff rule 1.2(f) provides that 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. Staff rule 10.1(a) provides that the failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

54. The Applicant breached the highest standards of integrity in violation of staff regulation 1.2(b) and engaged in behaviour unbecoming of an international civil servant in violation of staff regulation 1.2(f).

55. The Applicant's conduct also constituted a violation of paragraph 21 of the Standards of Conduct for the International Civil Service, and paragraphs 6.1, 6.3 and 6.15 of POLICY/DHR/2019/001. As such her conduct constitutes serious misconduct.

*Whether the sanction is proportionate to the misconduct*

56. In determining the appropriate sanction, this Tribunal has considered the nature of the Applicant's actions, the practice of the Organization in matters of comparable misconduct, as well as whether any aggravating or mitigating factors apply to her case. UNICEF takes workplace harassment seriously. It is an affront to human dignity, contaminates the workplace, demoralizes personnel, and damages

the image and mission of UNICEF. In this regard, the detrimental effects of the Applicant's actions on the victims in this case are fully recognized.

57. Notwithstanding, staff rule 10.3(b) provides that one of the rights afforded to a staff member during a disciplinary process is that "any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct".

58. In addition, established jurisprudence holds that, given the range of permissible sanctions for serious misconduct, it is necessary to consider the totality of the circumstances to assess where to apply the appropriate sanction. Consequently, in the absence of such an analysis or in cases where these circumstances were partially observed by the Organization, the Tribunal has to determine the relevance of any circumstances that may have been ignored previously (see *Portillo Moya* UNDT/2014/021, and *Applicant* UNDT/2010/171).

59. In determining the appropriate sanction, UNICEF claims to have considered the nature of the Applicant's actions, its past practice in matters of comparable misconduct, as well as any aggravating or mitigating factors. It adds that the Applicant undermined the trust and confidence placed on her as a staff member and, given the unique nature of their work in difficult locations, in a multi-cultural setting, and with limited resources, such trust and confidence are essential for the continuation of the employment relationship. As a result, it found appropriate to impose the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity in accordance with staff rule 10.2(a)(viii).

60. The Tribunal is not aware of UNICEF having a compendium of disciplinary measures and the Respondent did not provide any jurisprudence as reference. As such, it finds it reasonable to analyse the proportionality of the imposed sanction in light of the practice of the Secretary-General over other cases of comparable conduct.

61. Having examined the evidence on record, the Tribunal is not convinced of the appropriateness of the chosen disciplinary measure.

62. Disciplinary measures imposed against comparable conduct have been consistently dealt with by the Secretary-General with demotion with deferment of eligibility for consideration for promotion, and/or loss of steps in grade (see Compendium of disciplinary measures, Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2020, cases 98, 136, 137, 159, 169, 458, and 517).

63. Accordingly, and in view of the foregoing, the sanction of separation from service with compensation in lieu of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii), is too harsh a penalty to pay in line with the past practice of the Secretary-General in matters of comparable misconduct.

64. Notwithstanding, beyond the comparison with other cases of comparable misconduct, the Tribunal finds it appropriate to also examine whether the context of the decision justifies the imposed sanction.

65. In this regard, the Tribunal notes that in the backdrop of the disciplinary process, there is an organizational unit that has been struggling to deal with behavioural issues in the workplace for years. Documentary evidence shows that, despite multiple complaints made to supervisors since at least 2015, UNICEF Management and Human Resources never formally acted upon those complaints. The situation appears to have only been seriously addressed after the complainants threatened to resign.

66. Thus, it weights against the Respondent the fact that the Applicant's supervisors never addressed any of the workplace issues in her performance evaluation, that they did not take formal action over the staff's complaints, that the only attempt at mediation was an informal meeting conducted by one of the Applicant's supervisors at the time, who himself had previously complained about her, and that the concerned staff were never given proper assistance until they threatened to resign.

67. Such context puts into question the appropriateness of the decision. By not taking formal action to address the complaints, the Respondent failed in his obligation to protect his employees. Had those issues been properly addressed earlier, perhaps the situation would not have escalated and, possibly, the feeling of dissatisfaction and impunity among the staff would not be the one apparently driving the actions.

68. In fact, the difficult and stressful nature of the functions required of the staff member, her performance record, and, especially, the lack of support and corrective action by UNICEF Management, should have been taken into account as mitigating factors.

69. Instead, the harsher disciplinary measure of separation from service for workplace harassment appears to have been decided more as a way to respond to the complaints of impunity within the staff, and to deal with the threats of resignation, rather than as an appropriate measure proportionate to the established misconduct.

70. For the reasons stated above, the Tribunal finds that the established facts legally amount to misconduct, but that the disciplinary measure imposed on the Applicant was disproportionate to said misconduct.

71. As per established jurisprudence, should the Dispute Tribunal establish that the disciplinary measure was disproportionate, it may order the imposition of a lesser measure (see *Halidou* UNDT/2019/172, *Yisma* UNDT/2011/061, *Perelli* UNDT/2012/034, *Abu Hamda* 2010-UNAT-022, and *Doleh* 2010-UNAT-025).

*Whether the Applicant's due process rights were respected*

72. The Applicant's due process rights were respected during the investigation and disciplinary processes. She was interviewed, given the opportunity to provide comments and countervailing evidence in response to the draft investigation report, as well as the charge letter.

73. Likewise, it reads from the record that the Applicant's comments were given proper consideration by the investigators, and that her performance record was considered as a mitigating circumstance in the calculation of the sanction.

74. Thus, there is no evidence on record that the Applicant's due process rights were ever violated.

### **Conclusion**

75. In view of the foregoing, the Tribunal DECIDES:

- a. The application is granted in part;
- b. The disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity is rescinded and replaced by that of demotion of one step in grade with deferment, for three years, of eligibility for consideration for promotion. Consequently, the Respondent shall reinstate the staff member and effect any back payments accordingly;
- c. Should the Respondent elect to pay compensation in lieu of reinstatement with the aforementioned demotion, the Applicant shall be paid, as an alternative and pursuant to art. 10.5(a) of the Tribunal's Statute, a sum equivalent to 12 months of her net-base salary at the rate that she would have been paid had she been demoted at the time of her separation, minus the termination indemnity that she received upon her separation; and
- d. Payment of the above amount is due within 60 days of the date at which this judgment becomes executable.

*(Signed)*

Judge Alexander W. Hunter, Jr.  
Dated this 26<sup>th</sup> day of April 2022

Entered in the Register on this 26<sup>th</sup> day of April 2022

*(Signed)*

René M. Vargas M., Registrar, Geneva