



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/002

Judgment No.: UNDT/2022/081

Date: 20 September 2022

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LOTO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Sétondji Roland Adjovi, *Etudes Vihodé*

Counsel for the Respondent:

Jacob B. van de Velden, AAS/ALD/OHR, UN Secretariat

Andrea Ernst, AAS/ALD/HR, UN Secretariat

Introduction

1. The Applicant is a former Mail and Pouch Assistant at the FS-4 level working with the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (“MONUSCO”). He filed an application with the United Nations Dispute Tribunal (“UNDT/the Tribunal”) in Nairobi on 2 January 2022 to contest the decision to impose on him a disciplinary measure of dismissal, in accordance with staff rule 10.2(a)(ix).¹

2. The Respondent filed a reply on 4 February 2022 and requests the Tribunal to reject the application.

Facts

3. The contested decision, taken by the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/MSPC”), was conveyed to the Applicant by a letter dated 4 October 2021 from the Assistant-Secretary-General for Human Resources (“ASG/HR”). The letter states that,

based on a thorough review of the entirety of the record, including your [Applicant] comments, and on the basis of the considerations set out in the annex to this letter, the USG/MSPC has concluded that the allegations against you [Applicant] are established by clear and convincing evidence and your actions (Applicant) constituted serious misconduct in violation of staff regulations 1.2(b), staff rules 1.2(c), (e) and (g), and section 3.2(e) and (f) of ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse).²

4. The factual background for the contested decision as laid out by the ASG/HR in the memorandum of allegations is as follows:

a. In July 2019, V01, an employee of a service vendor at MONUSCO, informed the Applicant that she had been raped by Mr. JM, a United Nations Volunteer, on the night of 28-29 June 2019. The

¹ Application, section V, para. 1.

² Reply, annex 6 (Sanction letter).

Applicant failed to report the allegation to either the MONUSCO Conduct and Discipline Team (“CDT”) or to the Office of Internal Oversight Services (“OIOS”).

b. On 25 November 2019, after V01 made a complaint to the CDT alleging that Mr. JM had raped her, the Applicant facilitated a mediation between V01 and Mr. JM. The Applicant arranged a meeting between himself, V01, Mr. JM, Mr. JO, and Mr. BK to discuss V01’s complaint. During the meeting, the Applicant repeatedly urged V01 to withdraw her complaint from the CDT. He convinced her to say that she was withdrawing the complaint on her own volition and facilitated an agreement pursuant to which Mr. JM would pay USD2,000, with the Applicant’s financial assistance if required, in return for the withdrawal of her complaint and/or in connection with her complaint of rape.

c. On 11 December 2019, after receiving notice from OIOS investigators of the investigation into his conduct and of his upcoming interview, the Applicant arranged a meeting with Mr. JO and Mr. JM. During that meeting, the Applicant discussed the OIOS investigation and sought advice from Mr. JO regarding what he should say in his interview.³

Standard of review in disciplinary cases

5. The general standard of judicial review requires the 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; (c) whether the disciplinary measure applied was proportionate to the offence; and (d) whether the Applicant’s due process rights were respected during the investigation and the disciplinary process.

6. It is established that “when judging the validity of the exercise of discretionary

³ *Ibid.*

authority, ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. This means that the Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”.⁴ “The Dispute Tribunal is not conducting a “*merit-based review, but a judicial review*” which is concerned with “*examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker’s decision*”.⁵ Among the circumstances to consider when assessing the Administration’s exercise of its discretion: “[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which Tribunals may for good reason interfere with the exercise of administrative discretion”.⁶

7. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred⁷ and where termination is a possible sanction, the evidence of wrongdoing must be established with clear and convincing evidence⁸ which “means that the truth of the facts asserted is highly probable”.⁹ The Appeals Tribunal clarified that clear and convincing evidence can either be “direct evidence of events” or may “be of evidential inferences that can be properly drawn from other direct evidence”.¹⁰

⁴ *Sanwid* 2010-UNAT-084, para. 40.

⁵ *Ibid.*, para. 42.

⁶ *Ibid.*, para. 38.

⁷ *Liyanarachchige* 2010-UNAT-087, para. 17; *Hallal* 2012-UNAT-207, para. 3.

⁸ *Nyambuza* 2013-UNAT-364.

⁹ *Turkey* 2019-UNAT-955, para. 32.

¹⁰ *Negussie* 2020-UNAT-1033, para. 45.

Considerations

Whether the facts on which the disciplinary measure was based were established by clear and convincing evidence.

Failure to report misconduct

8. The facts that the Applicant failed to report misconduct are established by ample evidence, (including that of V01, Mr. AA's and the Applicant's admission).

9. According to V01, the Applicant was the first person she reported the rape to since he was the one who "had put [her] in touch" with JM (the alleged perpetrator). On being informed, the Applicant told her that the matter was going to be managed among themselves¹¹, but months passed without anything taking place.

10. When V01 was reporting the issue to one of Mr. AA's national staff, Mr AA joined in. In his presence, V01 stated that she had reported the incident to the Applicant¹², and that the Applicant knew who the alleged perpetrator was.¹³ Mr AA called the Applicant to his office to give him the name of alleged perpetrator, and since there was no information in AA's records that the incident had been reported, to find out whether the Applicant had made a report to any other entity.¹⁴

11. The Applicant gave him the name of the perpetrator whom he said was an international staff member. He also confirmed that he had not reported the incident to any entity.¹⁵

12. The Applicant admits that on 8 July 2019, V01 informed him by a WhatsApp message, of her alleged rape by JM on the night of 28 to 29 June 2019, and that he did

¹¹ Hearing of 8 August 2022, V01's testimony, p. 65, lines 18-25.

¹² *Ibid.*, Mr. AA's testimony, p. 24, lines 6, 11-17.

¹³ *Ibid.*, p. 21, lines 8-9.

¹⁴ *Ibid.*, p. 23, lines 20-24.

¹⁵ *Ibid.*, p. 24, lines 19-25.

not report the rape to the Organization. He admits that by a WhatsApp message he instead asked V01 to come and see him the next day.¹⁶

13. The Applicant, citing observations that,

It is only when the staff member receiving the information is subjectively, and in good faith, concerned or suspicious that misconduct took place, that a report must be made. This may reasonably exclude a situation where the staff member has knowledge of improper motives, such as malice or extortion, for the allegation against another person being disseminated. Making a report in such circumstances may put the staff member at risk of disciplinary action for malicious reporting. It may also deprive the staff member of protection against retaliation for making the report”,¹⁷ explains that he did not report the incident “because if the facts are not proven, it would be a slanderous denunciation. It was therefore, necessary to be very cautious. I did not find myself in proper place yet to report it to Conduct and Discipline Unit (“CDU”).¹⁸

14. That explanation is without merit. Based on evidence that the Applicant attempted to negotiate a payoff to V01 in exchange for her withdrawal of the complaint, the Applicant believed that the allegations were credible. This would distinguish this case from the authorities he seeks to rely on.

15. The Tribunal, moreover, determines that staff rule 1.2(c) which envisages the existence of “**officials whose responsibility it is to take appropriate action**” does not create a duty for staff members to first assess the credibility of information they have received before fulfilling their obligations under the rule. Even if it were true that the Applicant did not believe that the allegations were credible, it was not for him to make that judgment. His was to report the allegation as he received it.

16. Based on undisputed evidence that the Applicant was informed by V01 that she had been raped by Mr. JM, but that he did not report the allegation to the relevant authorities, the Tribunal finds that the facts on which the disciplinary measure relating

¹⁶ Hearing of 4 August 2022, Applicant’s testimony, p. 29, lines 17, 21 and 23.

¹⁷ *Loto* UNDT/2021/133, paras. 51-56; *Okwakol* UNDT/2021/135, paras. 44-51.

¹⁸ Application, annex 19, para (a) (Applicant’s response to the allegations).

to the Applicant's failure to report misconduct was based, were established by clear and convincing evidence.

The Applicant's alleged pressurising of V01 to withdraw her complaint of Sexual Exploitation and Sexual Abuse ("SEA") and his helping to negotiate a payment agreement between V01 and her alleged attacker in return for the withdrawal of her SEA complaint: the meeting of 25 November 2019 with V01.

17. The facts of the above charge are established by ample evidence, (including V01's testimony and the Applicant's admission).

18. V01's uncontroverted evidence was that when she filed a complaint and after the CDU office contacted the Applicant, he started calling her. He informed her about the 25 November 2019 meeting to which he invited her. When he would call her, he would ask her to help him so that he would not lose his job. He even went to her with his mother whom he said was sick, imploring V01 to feel sorry for him and his children.¹⁹

19. According to V01, she was surprised that at the 25 November 2019 meeting the Applicant was asking questions and speaking as if he was defending himself. He explained that he feared losing his job after having spent 25 years in the United Nations. He said that he had seen CDU cases and was afraid about her complaint, the reason he was keen on it.²⁰

20. V01 stated that the object of the meeting was to negotiate the withdrawal of the rape case,²¹ and that it was suggested that she withdraw her complaint in exchange for taking her to the United States of America. She was also offered USD2,000.²² She had gone to withdraw the complaint but when Mr. AA saw the Applicant who had followed

¹⁹ V01's testimony p. 70, lines 17-24 and p. 71, lines 1-4.

²⁰ *Ibid.*, p. 73, lines 8, 12-14.

²¹ *Ibid.*, p. 74, line 24, p. 75, line 1.

²² *Ibid.*, p. 73, lines 15-20.

her to confirm that she had withdrawn it,²³ he advised her not to sell her dignity. She decided not to withdraw the complaint.

21. The Applicant's account of events is on all fours with V01's testimony. He, for example, admits that he organised the 25 November 2019 meeting to which he invited both V01 and JM. He confirms that during the meeting V01 wanted an apology from JM for his sexual attack on her.²⁴ He admits that he told V01 that, "*they're going to say to you, 'Did he influence you. Did they intimidate you. Or did we call you to intimidate you,'*" coaching her to say, "*it was your heart.*" He also said to her that, "*If you love me, withdraw the case. You will always be my daughter for life. You don't have any idea what service you will give me and my whole family and all my generation and all of your brothers, you don't have any idea of the gift I can give you.*" He warned her that he would be "screwed" if she did not withdraw her complaint before it got to New York.²⁵

22. The argument that the Applicant merely advised V01 that the withdrawal of the complaint would be out of her own will, and she would decide based on what she wants is against the weight of evidence. Contrary to the Applicant's assertions, V01's testimony indicates that he pressured her and repeatedly urged her to withdraw the complaint.

23. Based on the above evidence, the Tribunal finds that the facts on which the disciplinary measure relating to the Applicant's pressurising of V01 to withdraw her complaint of SEA and helping negotiate a payment agreement between V01 and her alleged attacker in return for the withdrawal of her SEA complaint was based, were established by clear and convincing evidence.

Interference with the investigation: the meeting of 11 December 2019 with JO.

24. The Applicant admits that he met with JO and JM on 11 December 2019, after he received notice from OIOS investigators of the investigation into his conduct and of

²³ *Ibid.*, p. 73, lines 22-25; p. 74, lines 1-7.

²⁴ Applicant's testimony, p. 35, lines 2-7; 11, 13.

²⁵ *Ibid.*, p. 38, lines 7-16; 18-22.

his upcoming interview.²⁶ He also admits that during that meeting, he discussed the investigation and sought advice from JO on what he should say.²⁷ He further admits that JO advised him not to discuss the arrangement to pay USD2,000 to V01 but to instead say that the dispute was a misunderstanding about money between V01 and JM.²⁸

25. The Tribunal finds that the facts on which the disciplinary measure relating to the Applicant's interference with the investigation was based, were established by clear and convincing evidence.

Whether the established facts amount to misconduct

26. The Applicant did not address this issue and does not contest that the Respondent's assertion that he violated staff regulation 1.2(b), staff rules 1.2(c), 1.2(e) and 1.2(g) as well as sections 3.2(e) and 3.2(f) of ST/SGB/2003/13. The established facts indeed amount to misconduct as elaborated below.

Failure to report the alleged rape of V01

27. By failing to report to the Organization V01's report of rape, the Applicant violated: (i) staff regulation 1.2(b). He failed to uphold the highest standards of integrity required of staff members. He violated staff rule 1.2(c), as he failed to comply with his duty as a staff member to report any breach of the Organization's regulations and rules, and section 3.2(e) of ST/SGB/2003/13 by his failure to comply with the obligation on staff members to report concerns or suspicions regarding SEA, which itself constitutes serious misconduct, by a fellow worker. He also violated staff rule 1.2(e) and section 3.2(f) of ST/SGB/2003/13, by failing to comply with his obligation as a staff member to create and maintain an environment that prevents SEA. His failure to report SEA contributed to an environment in which SEA is able to persist.

²⁶ *Ibid.*, p. 39, lines 12-18.

²⁷ *Ibid.*, lines 20-25, p. 40, lines 2, 13-16.

²⁸ *Ibid.*, p. 40, lines 18-20; lines 9-12.

Setting up the meeting to pressure V01 to withdraw her rape-complaint

28. The Tribunal agrees with the Respondent's submission that by arranging and participating in the meeting with V01 and Mr. JM on 25 November 2019, urging and pressuring V01 to withdraw her SEA complaint, repeatedly telling her to say that she had not been influenced to withdraw her complaint and negotiating a financial agreement between V01 and Mr. JM in return for the withdrawal of the complaint, the Applicant violated staff regulation 1.2(b), staff rule 1.2(e) and section 3.2(f) of ST/SGB/2003/13. Further, by attempting to prevent an allegation of SEA from being investigated, by urging an alleged victim to withdraw a SEA complaint and facilitating payment to the victim in connection with such a withdrawal, contributes to an atmosphere in which SEA may go un-investigated and unpunished.

Interference with the investigation

29. The Tribunal agrees with the Respondent's submission that by arranging a meeting with Mr. JO and Mr. JM about the investigation into his conduct and his upcoming interview, discussing the OIOS investigation, and seeking advice as to what to say during his interview, the Applicant violated staff regulation 1.2(b). He failed to uphold the highest standards of integrity expected of staff members. He also violated staff rule 1.2(g) by interfering with the OIOS investigation.

Whether the Applicant's due process rights were respected during the investigation and disciplinary process

30. The Applicant maintains that his due process rights were violated in the following ways: (i) violation of his presumption of innocence; (ii) violation of his rights by Mr. AA of the CDT who ordered him to go to the CDT office and informed him of the investigation and the allegations; (iii) the illegality of V01's audio recording during the 25 November 2019 meeting; and (iv) the charge letter was authored by the Director, Administrative Law Division, Office of Human Resources ("DALD/OHR") without any delegation of authority to do so.

The alleged violation of his presumption of innocence

31. Regarding the alleged violation of his presumption of innocence, the Applicant submits that OIOS had already improperly concluded that he was guilty before he was charged by the Administration.²⁹ He seeks to support this assertion by the fact that the investigation report is entitled “investigation report on prohibited conduct” such reports in other case are titled, “allegations of prohibited conduct”. In his view, the attributions of misconduct in section VIII of the 18 June 2020 investigation report did not respect his presumption of innocence and violated his due process rights. Therefore, the OIOS investigation was biased against him, their report was unreliable and should be dismissed.

32. The Tribunal, however, considers that the mere wording of the title to the investigation report does not amount to evidence that the Applicant’s presumption of innocence was violated. In the absence of concrete evidence to substantiate this complaint, the Tribunal finds it lacking in merit.

Violation of his rights by Mr. AA.

33. The Applicant submits that by informing him of the investigation and the allegations, Mr. AA committed a serious violation of the requirement for maintaining confidentiality of a report of sexual abuse by an alleged victim as governed by section 10.1 of ST/AI/2017/1 (Unsatisfactory conduct, investigations, and the disciplinary process).

34. The Tribunal, however, accepts Mr. AA’s explanation³⁰ that he needed to provide the Applicant with some reasonable information to trigger his memory so that he could name the perpetrator, in keeping with the legal provision under which the CDT receives and assesses all complaints of allegations of misconduct. It is accepted

²⁹ Application, annex 14.

³⁰ Hearing of 8 August 2022, AA’s testimony, p. 26, lines 9-10; p. 30, lines 23-25 and p. 31, lines 1-8.

that the release of reasonable information to the Applicant was warranted by the circumstances of the case.³¹

35. The Applicant also complains that Mr. AA pulled him out of a training and informed him about V01's allegations. Further that he informed him that he would be investigated, sent home without salary, and that he was going to have a bad Christmas. He argues that by doing so, Mr. AA violated his rights and committed harassment and serious abuse of authority contrary to ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).

36. The Tribunal notes that apart from the undisputed evidence that when Mr AA called the Applicant, he was attending a training, Mr. Awuah denied that he threatened him, or that he told him that he would be sent home without salary and have a bad Christmas.³² This allegation remains unproved and without merit.

The alleged illegality of V01's audio recording

37. The Applicant contests the admissibility of the recording of the 25 November 2019 meeting on the ground that it is incomplete. He argues that the beginning of the meeting when he introduced the subject matter of the meeting referring to the financial dispute between V01 and Mr. JM which he was trying to resolve, is missing.

38. This assertion is, however, against V01's testimony that she is the one who decided to record the meeting. She states that "it was my own idea, to be able to prove". She also states that she recorded the meeting from its onset to the end, leaving out nothing. In her words she says, "From the start to the end, when I got in, and they said hello to me in Kiswahili, that's when I started recording. I missed nothing. "I had a right to use my phone, nobody could have stopped me, when I got in -- in the room, because I did not know why they had invited me to the meeting."³³ Assertions that the OIOS tried to cover up how the recording was undertaken, who instructed V01 to take

³¹ *Ibid.*, p. 31.

³² *Ibid.*, p. 25, lines 5-10.

³³ V01's testimony, p. 71, lines 12-25; p. 72.

it and how it was provided to the OIOS are therefore satisfactorily clarified in V01's testimony.

39. The Applicant further argues that the recording violates privacy laws and principles against illegally obtained evidence. He also argues that it violated Congolese law.

40. The Appeals Tribunal has however, provided the following guidance concerning the handling of secret recordings;³⁴

... There is no difficulty in principle regarding the admissibility of the recorded conversation on the basis of the manner in which it was procured, even though it perhaps involved an element of entrapment. Where evidence has been obtained in an improper or unfair manner it may still be admitted if its admission is in the interests of the proper administration of justice. It is only evidence gravely prejudicial, the admissibility of which is unconvincing, or whose probative value in relation to the principal issue is inconsequential, that should be excluded on the grounds of fairness. Hence, the problem in this case is not the secret recording of the conversation; it is rather the weight to be given to it. ...

41. As has been found, the purpose of the meeting at which the recording was done was to negotiate the withdrawal of a SEA complaint against a member of staff. Money was offered to the victim in exchange for her withdrawal of the complaint. There can be no doubt that a SEA complaint is high stakes, considering the Organization's SEA zero-tolerance policy. The Applicant's actions of trying to secure a withdrawal of the complaint was, therefore, similarly high stakes and could only be executed with very high levels of secrecy. These factors support a conclusion that the recording was the only reasonable way of obtaining credible evidence about the Applicant's misconduct. This alone would ground the reception of the recording in evidence.

42. It is recalled that the Applicant himself organised the meeting in which he pressured V01 into withdrawing her rape complaint in exchange for monetary compensation. He therefore had no fair expectation for that meeting to stay secret. To

³⁴ *Asghar* 2020-UNAT-982, para. 43.

the contrary, V01 had reasonable concerns to prepare this recording as a precaution where she meets her alleged rapist.

43. The Tribunal also finds the recording, which documents the Applicant's participation in the negotiations, as having probative value and not prejudicial to him since he admits the material particulars of its contents. Its admission is therefore, in the interest of the proper administration of justice.

44. In conclusion, since the meeting at which the recording was done indeed took place and the contents of the recording represent what transpired at the meeting, there is no basis for the assertion that reliance on this evidence is unfair.

The complaint that the 29 January 2021 charge letter was authored by DALD/OHR without any delegation of authority to do so.

45. The Applicant's complaint that the letter of allegations was authored by the DALD/OHR without delegation of authority from the ASG/HR is factually incorrect. Section 8 of ST/AI/2017/1 provides that the ASG/HR decides whether to initiate a disciplinary process by issuing written allegations. As is demonstrated by the Respondent, the ASG/HR authorised the DALD/OHR to do so.³⁵

46. The Tribunal moreover recalls that the Appeals Tribunal's jurisprudence emphasizes that all the due process rights provided in former staff rule 110.4 and ST/AI/371 (Revised disciplinary measures and procedures) (abolished) cannot apply during the preliminary investigation because they would hinder it, and that these provisions only apply in their entirety once disciplinary proceedings have been initiated.³⁶

47. Even if the Tribunal were to find that acts and omissions amounting to violations of the Applicant's rights indeed existed, since he does not dispute the factual basis of the decision and does not claim that he suffered any prejudice on account of

³⁵ Reply, annex 3.

³⁶ *Powell* 2013-UNAT-295.

any procedural transgression, the Tribunal would not be inclined to grant the remedies he seeks.

48. In any event, the Tribunal does not agree with the assertion that any of the Applicant's rights were violated. The Respondent has demonstrated that the investigation and the disciplinary process leading up to the disciplinary sanction were conducted in accordance with the legal framework and investigation guidelines. The Applicant was interviewed and was provided with an audio-recording of the interview, and all supporting documentation. He was informed of the allegations against him and afforded his right to seek the assistance of counsel. He was provided the opportunity to comment on the allegations, and his comments were duly considered. The Tribunal finds that the Applicant's due process rights were respected during the investigation and disciplinary process.

Whether the disciplinary measure applied was proportionate to the offence

49. It is established that the Organization has a wide degree of discretion in determining the appropriate disciplinary measure. The Tribunal will only overturn a measure as disproportionate if it finds it to be excessive or unreasonable.³⁷ The Appeals Tribunal has also held that the proportionality principle limits discretion by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result.³⁸ The purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the Administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity and suitability.

50. The Applicant does not directly address the issue of proportionality of the disciplinary measure to the offence. He only repeats the argument that the established facts do not support the charges, and therefore, the disciplinary measure imposed on

³⁷ *Portillo-Moya* 2015-UNAT-523.

³⁸ *Samandarov* 2018-UNAT-859, citing *Sanwidi* 2010-UNAT-084.

him cannot stand. Since it has been found that the established facts support the charges³⁹ (see paras. 8-25 above), this argument falls on its face.

51. The Applicant's assertion that he was wrongfully dismissed based on a biased, flawed and vindictive investigation designed from the outset to find him guilty where the presumption of innocence was not respected, and his rights violated (para. 32 above), must also fail in view of the finding that his due process rights were respected during the investigation and disciplinary process.

52. The assertion that in sanctioning him, the Administration failed to consider the fact that his actions were in response to a great deal of stress which would never have occurred if not for the overt acts of misconduct by Mr. AA of CDT and the violation of his due process rights is vague. He does not indicate what the great deal of stress he refers to was, and as has been found, there was no misconduct on Mr. AA's part.

53. It has been established that the Applicant not only failed to report an allegation of SEA, but he in addition took active steps to conceal the allegation from the Organization. He also sought to interfere with its ordinary investigative processes. The Tribunal fully agrees with the Respondent that the Applicant engaged in serious misconduct under Chapter X of the staff rules. It is also true that the sanction imposed on him accords with the practice of the Secretary-General in similar cases and accords with the policies of the Organization. The Tribunal finds that all relevant factors were considered in determining the appropriate sanction. The disciplinary measure applied was proportionate to the offence.

JUDGMENT

54. The application is dismissed for lack of merit.

³⁹ See paras. 8-25 above.

(Signed)

Judge Margaret Tibulya
Dated this 20th day of September 2022

Entered in the Register on this 20th day of September 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi