UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/100
Judgment No.: UNDT/2022/087
Date: 22 September 2022
Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KAZAZI

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/OHR, UN Secretariat

Introduction

1. The Applicant is a former Claims Assistant in the Property Management Section working with the United Nations-African Union Mission in Darfur ("UNAMID"). He filed an application with the United Nations Dispute Tribunal ("UNDT/the Tribunal") in Nairobi on 26 November 2021 to contest the decision to impose on him a disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii), and to enter his name in the United Nations Clear Check Database ("sex offenders register").[1]

2. The Respondent filed a reply on 21 January 2022 and requests the Tribunal to reject the application.

3. The Tribunal held a hearing on the merits from 10 - 11 August 2022 and on 22 August 2022 at which the evidence of eight witnesses was taken.

4. The parties filed their closing submissions on 9 September 2022.

FACTS

5. The contested decision, taken by the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC"), was conveyed to the Applicant by a letter dated 1 September 2021 from the Assistant-Secretary-General for Human Resources ("ASG/OHR"). In this letter, it was stated 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 Under-Secretary-General, has concluded that the allegations against you [Applicant] are established by clear and convincing evidence and your actions [Applicant] constituted serious misconduct…".[2]

6. Regarding the factual background of the contested decision, the ASG/OHR

[1] Application, section V, para. 1.
[2] Reply, annex 6 (Sanction letter).

indicated that based on the memorandum of allegations, the Applicant had: (i) on 10 October 2019, at a social event, told inappropriate jokes and made comments of a sexual nature to two female personnel, V01 and V02, who were present at the social event; (ii) in September 2019, made inappropriate comments to V01 while offering her a lift home in his (the Applicant's) car; and, (iii) further in September 2019, at another party the Applicant lifted his T-shirt and made rude gestures towards V01.[3]

Standard of review in disciplinary cases

7. The Appeals Tribunal has clarified that "[w]hen judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered and examine whether the decision is absurd or perverse".[4]

8. In disciplinary cases "when termination is a possible outcome", the Appeals Tribunal has held that the evidentiary standard is that the Administration must establish the alleged misconduct by "clear and convincing evidence", which "means that the truth of the facts asserted is highly probable".[5] 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".[6]

9. In disciplinary cases, the Dispute Tribunal examines the following elements:

a. Whether facts were established by clear and convincing evidence;

b. Whether the facts amount to misconduct;

[3] Reply, annex 4, para. 2.
[4] *Sanwidi* 2010-UNAT-084, para. 40.
[5] *Turkey* 2019-UNAT-955, para. 32.
[6] *Negussie* 2020-UNAT-1033, para. 45.

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

d. Whether the sanction is proportionate to the gravity of the offence.[7]

10. It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him or otherwise "substitute its own decision for that of the Secretary-General". In this regard, "the Tribunal is not conducting a "merit-based review, but a judicial review" explaining that a "judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision".[8]

11. The Tribunal is required to determine whether it has been established that the Applicant:

a. on 23 or 27 September 2019, referred to V01 as "a hottie" and suggested that she should go to his residence,

b. at a party on 3 October 2019, mimicked the clothing worn by V01 by raising his T-shirt and stating words to the effect that he also had a 'sexy' stomach,

c. at a party on 10 October 2019, told V01 a sexual joke whose essence was that a man expressed interest in a woman and when she responded that her heart was taken, the man said that she had other organs,

d. at the same party, said to V01 "I will masturbate for you tonight",

e. at the same party, told V02 a joke of a sexual nature, involving a woman opening her legs, and

f. at the same party, said to V02, "I wish I had tits like yours" and then tried to claim that he had said "I wish I looked like you", to cover up what he

[7] *Miyzed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024.
[8] *Sanwidi, op. cit*.

had in fact said.

The statement that VO1 is a "hottie", and suggestion that she goes to the Applicant's home.

12. It is not in dispute that on or about 23 or 27 September 2019, the Applicant offered V01 a lift and that he commented on her physical experience. He explains that he realised that she had changed her hair colour, and said that "it is hot outside, and this colour looks nice on you". V01 maintains that he said she was a hottie. The Applicant denies making this statement.[9] The Tribunal, however, considers that there is a marked difference between the phrase, "you are a hottie", and the phrase "it is hot outside, and this colour looks nice on you". Both parties agree that the Applicant made a comment related to "hotness". It is also correct to say that since the comment was directed at V01 who was with the Applicant in his car, there is no possibility that she misheard or misunderstood him. Moreover, there is no reason she could tell lies against him. The Tribunal believed her evidence that he told her that she is a "hottie".

13. Regarding the second aspect of their encounter, the Applicant admits that he had told V01 that he would take her home[10] but denies that he suggested that she should go to his residence. The fact, however, that he had said that he was to take her home, but instead stopped her at his place[11] and she walked to her home sits uncomfortably with his denial that he invited her to his home. The Tribunal, therefore, believed V01's evidence that the Applicant suggested that she should go to his residence and finds that these facts and the fact that he called her a "hottie", are established by clear and convincing evidence.

14. Mr. BG and Mr. RK**,** who according to V01 and V02 saw the Applicant mimicking V01's clothing, heard him tell V01 a sexual joke about a man who told a woman that other than her heart which was with another man she had other organs, saw how both V01 and the Applicant reacted when the Applicant told her that "I will

[9] Hearing of 10 August 2022, Applicant's testimony, p. 10, lines 9-10.
[10] *Ibid.,* p. 9, ln. 25.
[11] *Ibid*., p. 10, ln. 13.

masturbate for you tonight", heard the Applicant tell V02 a joke of a sexual nature involving a woman opening her legs and tell her that "I wish I had tits like yours", denied having witnessed any of those events.

15. By their own admission Mr. BG and Mr. RK are the Applicant's close friends.[12] This must be borne in mind when considering their denials that they heard and/or saw the Applicant behave in the manner that is the subject of these proceedings. Their evidence indeed suggests that their friendship with the Applicant compromised their impartiality and affected their credibility.

16. Mr. RK does not, for example, dispute evidence that when V01 asked him for the Applicant's full names and indicated to him that she will report him for sexually harassing her, he refused to give them to her and instead invited her to his home for a discussion over her complaints.[13] His explanation that V01 already knew the Applicant's names ignores the fact that had she known them in the first place she would not have asked him for them. His admission that in her text message to him she misspelt the only one of the Applicant's names she knew (the second name)[14] proves that she did not know his full names.

17. Mr RK's explanation that he could not fulfil his obligation to report the sexual harassment after V01 informed him about it because he did not know what had happened[15], ignores the fact that V01 had indicated to him that the Applicant had sexually harassed her. That he instead asked her to meet him "and see … what is the problem, if there is something … that can be solved or can be apologised …"[16], and when he met her over coffee, he insisted that she should not report the Applicant,[17] discredits his explanation that he did not know what had happened.

[12] Hearing of 11 August 2022, Mr. BG's testimony, p. 22, lines 4- 8; Hearing of 22 August 2022, Mr. RK' testimony, p. 27, lines 18-19.
[13] Mr. RK's testimony, p. 28, lines 10-25.
[14] *Ibid*., p. 30, lines 13-15.
[15] *Ibid*., ln. 17.
[16] *Ibid.,* p. 29, lines 19-25.
[17] *Ibid.,* p. 30, ln, 22 and p. 31.

18. The Dispute Tribunal has held in *Hallal*[18] that,

> in sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required… [i]t is not always the situation in sexual harassment cases that corroboration exists in the form of notebook entries, email communications, or other similar documentary evidence, and the absence of such documents should not automatically render a complaining victim's version as being weak or meaningless". It was also held that "[a]s is always the case, any witness testimony should be evaluated to determine whether it is believable and should be credited as establishing the true facts in a case.

19. Since Mr. RK and BG's denial that they witnessed events which V01 and V02 are positive they had in fact witnessed is accounted for, these denials do not affect V01 and V02's credibility, especially since V01 and V02 had no ulterior motive in testifying against the Applicant as they did.

20. Counsel for the Applicant sought to impeach V01's credit, submitting that she lied in her Conduct and Discipline Team ("CDT") interview about why she left the 10 October 2019 party. Further, that she tried to falsely blame the Applicant for her having left the party. V01 however clarified that she left the party because she was not feeling good. She explained that she thought that what she told CDT just came in the context of what she was saying…, and that "it just was in the context of [her] telling the incident and also considering that [she] was still very offended and was emotionally very stressed out after the incident for some time…"[19] The Tribunal believed her explanation that she did not intend to tell lies.

21. All factors considered, the Tribunal believed V01 and V02's testimonies and finds that the following facts were established by clear and convincing evidence:

a. the Applicant mimicked the clothing which V01 wore and raised his T-shirt, and stated words to the effect that he also had a 'sexy' stomach;

[18] *Hallal* UNDT/2011/046, at para. 55 (affirmed by the Appeals Tribunal in *Hallal* 2012-UNAT-207).
[19] Hearing of 11 August 2022, V01's testimony, p. 54, lines 16, 24-25; p. 55, lines 2-9.

b. the Applicant told a sexual joke about a man who told a woman that other than her heart which was with another man, she had other organs;

c. the Applicant said to V01 that "I will masturbate for you tonight";

d. the Applicant told V02 a joke of a sexual nature involving a woman opening her legs; and

e. the Applicant told V02 that "I wish I had tits like yours".

22. The Applicant seems to question the categorisation of his actions and utterances which he maintains were meant to have been jokes,[20] as sexual harassment.

23. ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) provides a general definition of the term sexual harassment. Under section 1.5, "sexual harassment" is defined as any unwelcome conduct of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. Sexual harassment may occur in the workplace or in connection with work.

24. Section 1.6 provides that while typically involving a pattern of conduct, sexual harassment may take the form of a single incident. In assessing the reasonableness of expectations or perceptions, **the perspective of the person who is the target of the conduct shall be considered**. (Emphasis added).

25. Section 1.7 provides that sexual harassment is the manifestation of a culture of discrimination and privilege based on unequal gender relations and other power dynamics. Sexual harassment may involve any conduct of a verbal, non-verbal or physical nature, including written and electronic communications. Sexual harassment may occur between persons of the same or different genders, and individuals of any gender can be either the affected individuals or the alleged offenders. Sexual harassment may occur outside the workplace and outside working hours, including

[20] Applicant's testimony, p. 8 and p. 9 lines 1-3.

during official travel or social functions related to work. Sexual harassment may be perpetrated by any colleague, including a supervisor, a peer or a subordinate. An offender's status as a supervisor or a senior official may be treated as an aggravating circumstance. Sexual harassment is prohibited under staff rule 1.2(f) and may also constitute sexual exploitation or abuse under staff rule 1.2 (e).

26. Based on the wide and clear definitions of "sexual harassment" in ST/SGB/2019/8 and on the fact that Applicant's conducts towards V01 and V02 were (i) unwelcome, they were (ii) of a sexual nature, and they might (iii) reasonably be expected or be perceived to cause offence or humiliation, as they did with V01 and V02, whose perspective must be considered pursuant to section 1.6 of ST/SGB/2019/8, there can be no doubt that all the Applicant's conduct was properly categorised as amounting to sexual harassment.

27. Tribunal jurisprudence has, moreover, clarified that verbal or physical conduct or gestures of a sexual nature may constitute sexual harassment and that the perpetrator does not have to be aware of the offending character of his or her behaviour.[21]

28. There are many examples of conduct which the Tribunal has categorised as sexual harassment. Where the perpetrator grabbed the victim in an inappropriate manner, and she "just thr[e]w his hand" and told him "Please stop it. If you are not going to stop then I will report you for harassment", where the perpetuator repeatedly asked the victim for her room number, went in front of her to block her egress whenever she would step out, and asked her to share her room with him for the night and cook Thai food for him.[22], she was found to have been sexually harassed.

29. Where a perpetrator placed his face into the victim's cleavage while he was inebriated during a party, approaching her from behind during a party, putting his arm around her and lifting her breasts with his arm and hands and whispering in her ear *"it's me, your boyfriend, your one true love*". Putting the hand up the victim's back, underneath her shirt and touching her skin as they walked back with a group of

[21] *Adriantseheno* 2021-UNAT-1146-Corr. 1, para. 44.
[22] *Ibid.,* paras 6-7.

colleagues, and grabbing the victim's bottom on one occasion, have all been found to constitute sexual harassment.[23]

30. Touching a victim's breast with the flat hand against her will whilst dancing salsa with her in a salsa club, making sexual innuendos and advances towards the victim in the office by asking her whether she considered the perpetuator a handsome man and telling her that something would have happened if someone else had not been with them at the salsa club, discussing massages with the victim in sexually explicit detail at the office, inviting her to his apartment for massages and telling her that he was very good in bed and that she should try, making a physical sexual advance towards her in his office by brushing the inside of her thigh with his hands against her will, discussing massages with the victim in sexually explicit detail at the office and asking her to join him for massages in the future, massaging the victim's shoulders during a conversation with her in his office without her having given her consent, continuing to make sexual advances towards the victim after she had indicated to him that she felt uncomfortable by telling her that he would wait for her until she was ready for him "like good red wine", discussing massages with the victim in the office and asking her private questions about her relationship and sex, have all been found to amount to sexual harassment.[24]

31. Drawing on the above jurisprudence, the Tribunal finds that the Applicant's referring to VO1 as a "Hottie" and suggesting that she goes to his home, mimicking the clothing she wore by raising his T-shirt and stating words to the effect that he also had a 'sexy' stomach, his making a sexual joke about a man who told a woman that other than her heart which was with another man, she had other organs, saying to her that "I will masturbate for you tonight", his telling V02 a joke of a sexual nature involving a woman opening her legs, and telling her that "I wish I had tits like yours", which all have sexual innuendos and caused discomfort to each of V01 and V02, constituted sexual harassment.

[23] *Conteh* 2021-UNAT-1171, para. 3.
[24] *Adriantseheno, op.cit.,* para. 51.

Whether the facts amount to misconduct.

32. The Applicant's actions and utterances violated staff rule 1.2(f) as specified in sections 1.5, 1.6 and 1.7 of ST/SGB/2019/8 and staff regulations 1.2 (a) and 1.2 (f). 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.

33. As already pointed out, the Applicant's conduct towards V01 and V02 was (i) unwelcome, (ii) of a sexual nature, and (iii) they might reasonably be expected or be perceived to cause offence or humiliation, as it did to V01 and V02, whose perspective must be considered pursuant to section 1.6 of ST/SGB/2019/8. Further, his conduct (iv) interfered with their work and/or created for them an intimidating, hostile and offensive work environment, not forgetting that, (v) the Applicant's multiple acts at various occasions towards V01 and V02 involved a pattern of conduct. The Tribunal finds that the facts amount to misconduct.

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

34. The Applicant raises six grounds in arguing that his due process rights were violated: (i) violation of his presumption of innocence; (ii) violation of his rights by the 17 October 2019 CDT interview; (iii) failure by the Office of Internal Oversight Services ("OIOS") and the Respondent to test inculpatory evidence, seek exculpatory evidence and follow leads; (iv) the assessment of the witnesses' credibility was biased; (v) the audio recordings provided were incomplete; and (vi) the charge letter was authored by Ms. AT, the Director, Administrative Law Division, Office of Human Resources ("DALD/OHR") without any delegation of authority to do so.

35. With regard to the first argument of the violation of the presumption of innocence, the Applicant submits that on 13 October 2019 at 9:41 p.m., Mr. JMM of CDT wrote to Mr. MW, Chief Resident Investigator for OIOS in South Sudan with

copy to Mr. PH, Section Chief and acting Deputy Director for OIOS investigations in Entebbe and Africa, stating that "this morning, I have interviewed the affected person and in our assessment there are repeated instances of unwelcome sexual advances which if investigated will likely to [be] substantiate[d] as sexual harassment in violation of section 1.5 of ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority)".

36. The Applicant argues that since Mr. JMM had no authority or mandate to make those conclusions, there was a clear violation of his presumption of innocence and that such conclusion certainly influenced OIOS's predetermined goal to prove the allegations and to find the Applicant guilty by only focusing on obtaining inculpatory evidence and ignoring exculpatory evidence.

37. In the Tribunal s view, such a communication cannot be the basis for the claim that the Applicant's presumption of innocence was violated. The author was requesting for an investigation into a complaint he had received and assessed as he ought to have done. He did not indicate that his assessment was conclusive. There is, therefore, no evidence supporting the assertion that the Applicant's presumption of innocence was violated.

38. The Applicant claims that the CDT interviewed him on 17 October 2019 without observing his rights under section 6 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process). The Applicant was not permitted to bring an observer, he was not informed that he was a subject prior to or at the start of the interview, he was not given a pre-interview sheet to sign detailing the allegations against him, the interview was not recorded as required, no transcript was provided, and he was not given any opportunity to provide a statement after the interview.

39. The assertion that the CDT interviewed the Applicant is premised on a misunderstanding of the role of CDT. Mr. JMM explained that CDT is not mandated to conduct investigations. Further that the CDT's job is only to receive complaints,

make a preliminary assessment, record the matter and inform the head of the Mission.[25] In this case, the element of the assessment was based on the facts that were presented in the interview (the word interview is used in its ordinary sense) of the complainant.[26] He interviewed V01 because he needed more information from her to enable him to make a preliminary assessment.[27] Mr. BS explained that the word "interview" was probably the wrong word, since the CDT, is only a conduit through which complaints go to OIOS.[28] From this evidence it is clear that the "interview" which CDT conducted was not an investigative interview which would have called for securing of the Applicant's section 6 of ST/AI/2017/1 rights. The complaint that the CDT interviewed the Applicant on 17 October 2019 without observing his rights is without merit.

40. The Applicant complains that the OIOS and the Respondent failed to test inculpatory evidence, seek exculpatory evidence and follow leads. He cites the example of Captain EZ, Captain JV and Major SC who attended the 10 October 2019 party, but since their testimony failed to corroborate any of the allegations, the investigators disregarded it as containing "nothing of evidential value".

41. As explained by the Respondent, OIOS interviewed the above three persons and provided the audio recordings and summaries of their interviews. They are also addressed in the OIOS investigation report. "Nothing of evidential value" about the misconduct could be obtained from their statements since they did not witness or remember anything. This does not give their testimony exculpatory relevance. This claim fails as well.

42. It was alleged that the assessment of the witnesses' credibility was biased. The sanction letter states that the Applicant had no credibility and that Mr. BG and Mr. RK "are close friends of the Applicant and cannot be regarded as impartial and credible" with pejorative statements made about them for no other reason than they were countrymen and friends of his and because their statements did not support the

[25] Hearing of 22 August 2022, Mr. Malik's testimony, p. 53, lines 18-21.
[26] *Ibid.,* p. 54, lines 5-12.
[27] *Ibid.,* p.57, lines 3-10.
[28] *Ibid*, Mr. BS's testimony, audio recording 3:27:57.620 --> 3:28:12.390; 3:28:13.10 --> 3:28:21.980; 3:28:24.180 --> 3:28:30.250.

predetermined narrative that he was guilty. The Applicant was assumed to be guilty based solely on the accusations by V01 and V02, hearsay evidence from W01 (Colonel AM (Abu)) and statements with limited probative value from Lieutenant Colonel (LC) D.

43. Upon reviewing the available evidence, the Tribunal formed views similar to those expressed in the sanction letter. The Applicant indeed has no credibility, and the close friendship of Mr. BG and Mr. RK to the Applicant compromised their impartiality and credibility, as is demonstrated at paragraphs 12-15 above. This complaint and the complaint relating to the language used throughout section IV of the sanction letter which the Applicant asserts evidences the biased and racist position taken against him, are therefore rejected for lack of merit.

44. The Applicant claims that the audio recordings which were provided were incomplete. He, however, admits that he requested to be provided the full audio file of V02's testimony which was done on 23 November 2021. He asserts that there is no evidence that the version provided to him was in the hands of the Administrative Law Division at the time of issuing the 19 January 2021 charge letter or the 1 September 2021 sanction letter and that the Respondent relied solely on the OIOS synopsis document (ICF-000014) which is demonstrably unreliable. It is argued that statements attributed to V02 with no corresponding audio recording should not have been considered and footnotes 43, 44 and 45 of the sanction letter should be struck from the record.

45. Since the Applicant agrees that he was provided with the additional 12:36 minutes of the recording which were missing, his further assertions on this issue are without merit. He does not provide evidence that the version provided to him was not in the hands of the Administrative Law Division at the time of issuing the 19 January 2021 charge letter or the 1 September 2021 sanction letter and that the Respondent relied solely on the OIOS synopsis document (ICF-000014).

46. Regarding the Applicant's challenge of the authority of the DALD/OHR to sign the allegations of misconduct memorandum, section 8 of ST/AI/2017/1 provides that

the ASG/OHR decides whether to initiate a disciplinary process by issuing written allegations. As is submitted by the Respondent, this is what occurred; the ASG/OHR decided to issue the allegations and authorised the DALD/OHR to do so by email.[29]

47. 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.[30] In any event, there is no evidence of violation of any of the Applicant's rights. 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 sanction is proportionate to the gravity of the offence

48. 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.[31] 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.[32] 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

[29] Reply, annex 3.
[30] *Powell 2013*-UNAT-295.
[31] *Portillo-Moya* 2015-UNAT-523.
[32] *Samamdarov* 2018-UNAT-859, citing *Sanwidi* 2010-UNAT-084.

drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity and suitability.

49. Assertions that the facts do not support the charges and that the Applicant was wrongfully separated based on a biased, flawed and vindictive investigation designed from the outset to find him guilty where the presumption of innocence was not respected have been found lacking in merit. The Tribunal fully agrees with the submission that the sanction imposed on the Applicant accords with the practice of the Secretary-General in similar cases, is not the severest sanction available and accords with the policies of the Organization. The Applicant engaged in serious misconduct, affecting two staff members, V01 and V02 and there were multiple incidents of sexual harassment over a period of approximately one month.

50. There is evidence that the fact that the Applicant was a hard worker who served for over 10 years in a difficult mission-setting was considered as a mitigating factor.[33] The Tribunal finds that the sanction is proportionate to the gravity of the offences.

51. Based on the Tribunal findings, none of the remedies which the Applicant seeks, including the request for referral of CDT and OIOS for accountability is tenable.

JUDGMENT

52. The application is dismissed for lack of merit.

(Signed)
Judge Margaret Tibulya
Dated this 22nd day of September 2022

[33] Reply, annex 6 (sanction letter).

Entered in the Register on this 22nd day of September 2022

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi