



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George Irving

Counsel for Respondent:

Lucienne Pierre, AAS/ALD/OHR, UN Secretariat

Nicola Caon, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Representative of the New York Liaison Office (“LO”) for the United Nations Office on Drugs and Crime (“UNODC”), appealed the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) to impose on her the disciplinary sanction of demotion of one grade (D-1 level to P-5 level) with deferment, for three years, of eligibility for consideration for promotion.
2. The Respondent contends that the application is without merit and should be dismissed.
3. For the reasons stated below, the application is rejected.

Relevant facts and procedural history

4. On 31 May 2005, the Applicant commenced service with the Secretariat. Prior to her demotion, she served as Representative at UNDOC LO, at the D-1 level.
5. In 2016 and 2017, four complaints of prohibited conduct were submitted against the Applicant alleging, *inter alia*, that the Applicant created an intimidating, hostile and/or offensive work environment at the UNDOC LO.
6. The four complaints consisted of the following: (i) By letter dated 19 May 2016 to JL, Director, Division for Policy Analysis and Public Affairs, UNODC HQ, Vienna, former and then current staff members and interns of UNODC LO filed an anonymous complaint; (ii) By letter dated 9 November 2017 to JL, three then-staff members of UNODC LO filed a formal complaint; (iii) By letter dated 14 November 2017, a former intern of UNODC LO, filed a formal complaint; and (iv) By letter dated 7 December 2017 to the Executive Director, UNODC, a staff member of UNODC LO filed a supplementary formal complaint.
7. On 12 January 2018, UNODC initiated the fact-finding investigation on allegations of misconduct concerning the Applicant pursuant to ST/SGB/2008/5 (“Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”).

8. During the investigation, the fact-finding panel (“investigation panel”) interviewed 17 witnesses in connection with the complaints. The witnesses consisted of twelve current or former professional and general service staff members and interns of UNODC LO, New York; three current staff members of UNODC HQ, Vienna; and two additional witnesses who did not work for UNODC but interacted with the Applicant on work-related matters.

9. On 11 July 2018, following the completion of the investigation, the Director, Division for Management, UNODC HQ, Vienna, referred the Applicant’s case to the then Office of Human Resources Management (“OHRM”) for appropriate action.

10. By memorandum dated 13 November 2018 (the “Allegations Memorandum”), the Applicant was requested to respond to formal allegations of misconduct. The memorandum indicated that she had two weeks from receipt to provide written comments. The Applicant received the Allegations Memorandum on 27 November 2018.

11. On 4 March 2019, following a number of extensions of time, the Applicant submitted comments on the allegations of misconduct. On 10 March 2019, the Applicant provided a revised version of her comments. On 14 March 2019, the Applicant provided additional documents related to her comments.

12. On 7 May 2019, the Applicant was informed, by letter dated 3 May 2019 (“Sanction Letter”), that, based on a review of her entire dossier, including her comments, the USG/DMSPC had concluded that it had been established by clear and convincing evidence that between 2005 and 2018, the Applicant created an intimidating, hostile and/or offensive work environment at UNODC LO. In particular, the Applicant targeted the following staff members: a) LB, Administrative Assistant, between October 2005 and April 2007; b) SK, Programme Management Officer, between January 2010 and January 2012; c) YC, Programme Management Officer, between November 2015 and March 2018; d) SA, Administrative Assistant, between January 2017 and March 2018; and e) JO, Programme Assistant between December 2016 and

December 2017. In addition, the Applicant behaved improperly towards interns at UNODC LO.

13. In the Sanction Letter, the Applicant was informed that the USG/DMSPC had decided that her actions amounted to misconduct in violation of staff regulations 1.2(a) and (f), staff rule 1.2(f) and sections 2.1 and 3.2 of ST/SGB/2008/5 and that the disciplinary measure of demotion of one grade with deferment, for three years, of eligibility for consideration for promotion in accordance with staff rule 10.2(a)(vii) would be imposed on her.

14. On 4 August 2019, the Applicant filed an application with the Dispute Tribunal contesting the disciplinary measures imposed on her by the USG/DMSPC.

15. At the request of the Applicant, on the basis of medical reasons, the Tribunal suspended the deadline for the submissions in this case on several occasions from 2 November 2020 to 30 June 2022.

16. From 16 to 18 November 2022, a hearing was held via Microsoft Teams at which the Applicant; AC, former Executive-Director of UNODC; FL, Investigation Panel member; PB, former Programme Management Officer at UNODC; MP, Programme Management Officer at UNODC; YC, Programme Management Officer at UNODC LO; and SA, Administrative Assistant at UNODC LO, gave testimony. The Tribunal expresses its appreciation for the parties' assistance with organizing the hearing.

17. By 1 February 2023, the parties filed their closing statements.

Consideration

Standard of review in disciplinary cases

18. 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, *Abu Hamda* 2010-UNAT-022,

Haniya 2010-UNAT-024, *Portillo Moya* 2015-UNAT-523, *Wishah* 2015-UNAT-537, *Turkey* 2019-UNAT-955, *Ladu* 2019-UNAT-956, and *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). For any other disciplinary measure, the applicable standard of proof under sec. 9.1 (b) of ST/AI/371, is a preponderance of the evidence (more likely than not that the facts and circumstances underlying the misconduct exist or have occurred).

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

19. The Sanction Letter stated that the Applicant created an intimidating, hostile and/or offensive work environment at UNODC LO. In particular, it stated that the Applicant targeted the following staff members: a) LB, Administrative Assistant, between October 2005 and April 2007; b) SK, Programme Management Officer, between January 2010 and January 2012; c) YC, Programme Management Officer, between November 2015 and March 2018; d) SA, Administrative Assistant, between January 2017 and March 2018; and e) JO, Programme Assistant, between December 2016 and December 2017. In addition, the Applicant behaved improperly towards interns at UNODC LO.

20. The USG/DMSPC concluded that the allegations against the Applicant were established by a preponderance of the evidence and that the Applicant's actions constituted misconduct in violation of the Staff Rules and Regulations.

21. The Tribunal will examine whether the underlying facts of each of the charges are established by a preponderance of the evidence.

Targeting LB, Administrative Assistant, October 2005- April 2007

22. The Sanction Letter states:

10. LB stated that from your second day in UNODC LO, you commenced “bullying” her. LB stated that she believed your behaviour was deliberate. LB stated that she asked you to speak to her in a respectful manner several times, but you refused.

11. LB stated that you sent her text messages in capital letters in the middle of the night with work-related questions, and “yell[ed]” at and “berat[ed]” her as soon as you arrived in the office in the morning.

12. LB recalled an incident in which a UNODC Goodwill Ambassador, AB, witnessed you “yelling” at LB, and then you started yelling at AB. AB replied “I am not one of your staff, so you don’t talk to me that way. You back off”.

13. On one occasion, you required LB and AP, former UNODC LO Programme Assistant, to stand outside in very cold temperatures at the entrance of the UN Secretariat during a UNODC LO event, to wait for attendees for two hours after the event had started, which was unnecessary because most of the attendees had already arrived. LB stated that you instructed her to do so by “yelling on the phone”, and she contracted a fever the following day because of the cold.

14. LB stated that you forced her to reply to emails “in a nasty way” using her own email account.

15. LB stated that you asked her to buy your food, and that she was made to pay for it. In this regard, she stated that you owe her over \$100 USD, but you failed to reimburse her.

16. When LB received a call informing her that her brother had died, you questioned LB for having been on the phone too long. LB stated that after the call, she asked you if she could leave the office, but you refused.

[...]

23. The Tribunal notes at the outset that LB worked with the Applicant as an Administrative Assistant from October 2005 to April 2007, and gives limited weight to LB's statement in light of the time elapsed since their interactions. In this regard, the Appeals Tribunal has stated that "the credibility of testimonies can be disputed due to the lapse of time or based on the hearsay nature of the evidence, however, there is no period of limitations with respect to investigation of allegations of misconduct or any prohibition against admitting hearsay evidence" (*Zaqout* 2021-UNAT-1183).

24. The Respondent relied on the statement of LB and noted the adverse impacts of the Applicant's actions on LB. LB stated that, because of the Applicant's "bullying", there were times when her blood pressure reached dangerous levels. LB stated that she had tried to do whatever the Applicant wanted her to do, and whatever pleased the Applicant, and had hoped that the "bullying would stop", but it did not.

25. The Applicant submits that LB is not a reliable witness and that her statement contains a "variety of egregious and unbridled fantastical fabrications" and that there is no corroborative evidence to support LB's allegations. The Applicant states that the investigators simply recorded whatever LB said, without ascertaining the truthfulness of the facts that she alleged. The Applicant further notes that she was not interviewed about the allegations raised by LB and therefore denied the opportunity to respond to them.

26. Following a review of the evidence on record, the Tribunal finds that although some of the charges in relation to LB are not sufficiently supported by evidence, there is a preponderance of evidence that LB was harassed by the Applicant.

27. In particular, the Tribunal notes that LB's allegations about the toxic environment are supported by AT, a former Terrorism Prevention Expert who served between October 2005 and March 2010 at the Terrorism Prevention Branch, UNODC LO in New York. AT was an extra-budgetary project staff member and reported directly to UNODC HQ in Vienna. AT stated that although she rarely saw the Applicant, her experience was that "the environment was very tense and very

unhealthy” and “toxic”, and that she was the one who stated in the anonymous letter of May 2016 that the Applicant was deliberately trying to destroy staff. LB states that she went to the Office of Internal Oversight Services (“OIOS”) in 2006 with AT to complain, but OIOS failed to follow up. AT said that after witnessing the Applicant’s treatment of staff she referred the Applicant’s behaviour to AC, the then-Executive Director of UNODC. AT also confirms that she went to OIOS to complain. AT stated that she believed that the Applicant “was supported by the Executive Director so she was untouchable.”

28. The Tribunal finds that the allegation that LB was bullied by the Applicant is corroborated by the testimony of AT, who has no self-interest in supporting it. In addition, the Tribunal finds that the record establishes that the Applicant at times demeaned LB (making rude remarks like “use your brain”) and failed to communicate respectfully with LB as documented in email exchanges between them. In addition, the fact that the Applicant was used to yelling often is confirmed by several other testimonies on the record.

29. The Applicant alleges that the fact that LB referred her complaints to the then-Executive Director is contradicted by AC’s testimony, and that there is no evidence that LB is reliable. However, the Tribunal finds that AC, who was based in Vienna, was not especially aware of the way the Applicant treated her subordinate staff in the New York LO, since he seldom visited it.

30. In terms of the allegation that the Applicant improperly asked two staff members to stand outside in the cold, the Tribunal finds that it is not supported by a preponderance of evidence. The Tribunal notes that the first part of this charge is only mentioned in the anonymous complaint filed in May 2016. The Applicant did not have the opportunity to respond, except at the hearing, when she claims that this accusation is vague (for example, there is no date of the alleged event, no witnesses, or evidence of sick leave related to the purported resultant fever).

31. The Tribunal finds the allegations that the Applicant forced LB to send emails in a “nasty way”, forced her to buy food without reimbursing her, or insensitively responded to LB’s news of family bereavement to not be supported by a preponderance of evidence. These incidents were supposed to have happened 13 years before the Sanction Letter and are not corroborated by any evidence.

32. The Tribunal finds no merit in the suggestion that LB resigned due to the Applicant’s actions as the record shows that LB resigned for personal family reasons.

33. Based on the above, and particularly on facts mentioned at paras. 28 and 29 above, the Tribunal concludes that it is established that the Applicant bullied and created a hostile work environment towards LB.

Targeting SK, Programme Management Officer: January 2010-January 2012

34. The Sanction Letter states:

19. You shouted at and belittled SK on one or more occasions. SK described working with you as the most difficult experience in [his] life... He stated that in the two years that he worked at UNODC LO on a temporary appointment as a Programme Management Officer at the P-2 level, you were verbally abusive to him personally, that everyone was afraid of you, and that you created an environment of fear. SK described the situation as “an abusive cycle”.

20. SK stated that you yelled out his name across the office, sometimes from the moment that he walked into the office, and “if one doesn’t come within 5 seconds, [you] would yell over and over until [the person] would come to [your] office”.

21. You forced SK to send emails dictated by you so it would appear that the email came from him rather than you. SK stated that it was a very intrusive way of working, and on at least one occasion you made him send an email that you had dictated, which was “incredibly rude, aggressive and inappropriate”, and he had to reach out afterwards to the recipient to apologize.

[...]

22. SK stated that he continuously felt frustrated about his professional life and described working for you as “an abusive cycle”. SK stated that he was not treated as a professional “in his own right”, but that he was treated as your professional assistant, as your management style was “master-and-servant”.

[...]

35. The Tribunal notes that SK was at the UNODC Liaison Office from January 2010 to January 2012, on a temporary appointment at the P-2 level. SK’s contract was continuously renewed during the 2-year period, after which point his contract expired. In his testimony to the Panel, SK states that he had “personal reasons not to stay which are irrelevant to this case.” SK, however, stated in his testimony that in the two years that he worked in the New York Liaison Office, the Applicant was verbally abusive to him personally, shouted at, and belittled him on one or more occasions. SK stated that everyone was afraid of the Applicant, and that the Applicant created an environment of fear.

36. The Tribunal finds SK’s testimony in respect of being verbally abused and belittled to be credible. SK’s testimony clearly indicates how shocked and impacted he was by the Applicant’s behaviour. SK described his working relationship with the Applicant as “the most difficult experience” in his life. The specific facts stated by SK fall into a pattern of behaviour of the Applicant which is corroborated by several testimonies. For example, the fact that the Applicant would shout throughout the office is confirmed by several other witnesses. In particular SC, who was a Programme Assistant, at the GS-6 level at the UNODC Liaison Office where she had worked for, testified “[w]hen asked about the working environment in the Office while she was with UNODC, she answered that it was one of “daily shouting”. SC stated that the Applicant “would usually shout out orders to the staff from her office.” Also, SC testified that “[the Applicant] was particularly hard on SK. SK was [SC’s] buffer when [SC] was there.”

37. In respect of the allegation that the Applicant forced SK to send aggressive and inappropriate emails from his own email account, SK only mentions this fact in passing as having happened one time. SK does not provide any copies of such emails or any details regarding this behaviour. The Tribunal, therefore, cannot determine the veracity of such an allegation by a preponderance of evidence.

38. The Applicant submits that SK's testimony is not credible for the following reasons. First, SK's allegations are contradicted by the content of the Applicant's e-PASes which acknowledge the Applicant's integrity and her professional skills. Second, SK resented her as he worked as a P2 level staff on a P3 level temporary job opening, and was deemed ineligible to compete for the P3 level fixed position by Human Resources. The Applicant stated that SK probably thought that the Applicant was the reason why he was finally not recruited, which was not true. Third, the Applicant tries to rely on the statement made by SN, an Administrative Assistant who worked for four months in 2011 (July through October 2011) and the statement from MM, an intern for three months, who testified that the Applicant was a respectful person or that MM had a good experience when she briefly worked with her.

39. The Tribunal finds the Applicant's claims unpersuasive. Her e-PASes are completed by the Applicant's managers. The issue in this case is the Applicant's managerial behaviour toward her subordinate staff, which was not known by her reporting officers before the first complaint of 2016. Even if there could be a partial truth to the Applicant's interpretation that SK had reason to resent her, this argument does not invalidate SK's testimony as to the difficult work environment created by the Applicant, which is supported by other witnesses. In regard to the statements of SN and MM in support of the Applicant, the Tribunal notes that these statements, which were not made under oath, and come from people who worked very briefly in the Applicant's office, are not sufficient in themselves to counterbalance the charges which are supported by numerous other testimonies.

40. Based on the above, the Tribunal concludes that SK's testimony in respect of being verbally abused and belittled is established by a preponderance of evidence.

Targeting YC, Programme Management Officer: November 2015 to March 2018

41. The Sanction Letter states:

24. You shouted at and belittled YC, and caused her to cry, on one or more occasions. YC stated that she was repeatedly driven to tears, often as a result of “small infractions” by her, for which your aggressive response was unwarranted and disproportionate. YC stated that she cried a lot in the office, and at home, that you would “scream” at her in front of other people, and became “aggressive and angry” if she tried to respond. YC stated that she felt embarrassed and humiliated by you “many times”, due to your “open-door scoldings”, and the “degrading” manner in which you spoke to her.

25. YC stated that you “constantly and repeatedly” criticized her, including for being “too eager” to help UNODC HQ. YC stated that these unnecessary restrictions on her freedom to communicate with UNODC HQ caused her stress and professional difficulties, because UNODC LO is a liaison office and, therefore, functions to support UNODC HQ.

26. On 15 September 2016, you called YC by telephone at UNODC LO, insisted that she place the call on loud speaker, shouted at YC over the phone, which shouting was audible to others in the office, stating things such as: “who do you think you are?”, “you need to be reminded who is in charge [...]”, “maybe I should cut you off entirely”. YC stated that by the end of the conversation she was “crying openly” and had to go to her office to compose herself.

27. YC stated that between 25 and 27 January 2017, you subjected both YC and MC (an intern) to “repeated scoldings and lectures”, and MC “ended up repeatedly in tears”.

28. You instructed YC, and interns, to submit fictitious names to the UN Department of Safety and Security (“DSS”), so that there would be surplus passes available, which could be distributed at the last minute to fill UNODC LO events. YC stated that she found this process stressful in her interactions with DSS, who questioned the improper process. For example, on 3 March 2017, for an event on human trafficking, YC stated that she was made to distribute surplus passes with fictitious names to attendees who had confirmed their attendance late, and, therefore, whose names were not on the attendance list submitted to DSS. YC stated that you instructed interns to distribute remaining passes to anyone who looked “legitimate” just before the event commenced.

29. On 5 June 2017, you called YC on her personal mobile phone after normal working hours, to scold her about leaving the office to collect her children without notice to you. YC stated that she was “shaking and near-tears” during the conversation, and that her daughter was also “shaken” by what she heard.

30. On 12 June 2017, you sent YC an email specifying that she be available on certain days/times to support you on a project. When YC explained that she needed time to make childcare arrangements and rearrange pre-approved annual leave, you became unhappy and repeatedly pushed her to acknowledge your email. YC made the necessary arrangements to attend the project meetings as you had requested; however, you subsequently removed YC from the project without telling her. When YC attended the first project meeting on 29 June 2017, as instructed by you, you told her that she was no longer needed, and publicly instructed her to “get back” to the office.

31. During another meeting, you also warned YC to be careful of what she told colleagues, since you had many friends at UNODC HQ, and that no secret was kept from you. YC stated that the meeting made her feel disparaged and belittled, and that she felt herself “tearing-up”.

32. YC stated that on 12 October 2017, you called YC to your office and “berated” YC for having had a work-related coffee with a representative of a Member State the previous day. YC stated that on 13 October 2017, you “scolded” her for returning from lunch at 03:10 p.m. after a 50-minute break, and threatened that you would start documenting YC’s hours, as you had done with JO. YC stated that both these conversations were “extremely hostile”.

33. YC stated that it became “effectively impossible” for her to function in her role and serve the interests of UNODC and the Organization, and she could not maintain the quality of her work. YC stated that she was repeatedly driven to tears, often as a result of “small infractions” by her, for which your aggressive response was unwarranted and disproportionate and made her feel “targeted and harassed”. YC stated that she felt embarrassed and humiliated by you “many times”, due to your “open-door scoldings”, and the “degrading” manner in which you spoke to her. This “hurt” YC’s personal life, and caused her to suffer depression. YC stated that she had been seeing the Staff Counsellor regularly since November 2017, in addition to an external therapist, and is on medication, including for anxiety.

42. The Tribunal notes that YC served as a Programme Management Officer at the UNODC Liaison Office from November 2015 to March 2018. YC worked closely with the Applicant and provides a wide account of incidents in her testimony which were established as amounting to misconduct. YC provided testimony at trial and was visibly distraught during her recollections of interactions with the Applicant. In summary, YC stated that she felt “targeted and harassed” by the Applicant because of the Applicant’s conduct, including managing YC in a hostile, authoritarian style, having disproportionate and unpredictable reactions.

43. YC confirmed her prior statements that the Applicant would regularly shout at her, belittle her, and cause her to cry, including in front of other people. YC stated that the Applicant would “lash out” at her (and others) for unpredictable reasons and try to “beat” them down. The Applicant would “raise her voice”, “shout” and “scream” if she was upset with something YC had done, including in front of others. When YC would try to explain herself, the Applicant would cut her off and continue shouting for long periods. YC stated that this behaviour was humiliating, difficult and hurtful. She said although the Applicant was entitled to express dissatisfaction and criticism with YC’s work, the Applicant’s reactions were not proportionate or warranted.

44. At hearing, YC discussed two of the many examples she had previously provided. YC stated that on or about 15 September 2016, the Applicant called YC at the office and requested the call to be placed on speaker. The Applicant shouted at YC for between 10 to 15 minutes to the hearing of others in the office for a purported mistake, without letting YC explain. YC found this humiliating and it caused her to cry.

45. YC also testified that, in about June 2017, the Applicant called her as YC was walking her children home and “screamed” at her for a purported error. YC tried in vain to explain the situation to the Applicant, the shouting was so loud it was audible even when not on speaker. The Applicant’s shouting went on and on and when the call ended, YC’s daughter asked her what she had done to make the Applicant so mad. It caused YC to break down at home. YC said she recalled the incident vividly

because of her daughters' presence and described it as "traumatic and humiliating". YC stated that this type of behaviour occurred "quite often".

46. The Tribunal found YC's hearing testimony about the Applicant's conduct to be compelling and genuine and was consistent with her 9 December 2017 report and her interview with the investigation panel. YC was clearly distressed when recollecting her experience of the Applicant. The Tribunal took note that YC testified that she did not bring forward her complaints about the Applicant's conduct lightly. YC stated that she tried to manage the situation in the office as best she could, modifying her behaviour in ways she hoped would cause the Applicant to not yell at her; she sought help from the Organization's internal resources; and she spoke to a senior official (JL). YC only filed an official complaint as a last resort, though she feared that speaking up would mean the end of her UN career.

47. Upon review of the record, the Tribunal finds that YC's claim that the Applicant would shout at her is confirmed by several other witnesses. In particular, the statements of JO; TL Research Officer, Studies and Threat Analysis Section, UNODC Vienna; and GM, Director, Chief, Public Affairs and Policy Support Branch and Deputy Director, Division for Policy Analysis and Public Affairs, UNODC Vienna who stated that UNODC LO staff members, including YC, contacted her regularly, with regard to the Applicant's behaviour, told her that they were scared of the Applicant, and would cry on the phone. Even one of the Applicant's own witnesses, MP, Programme Management Officer, stated that he saw YC crying in the office once in 2016, following a discussion with the Applicant. MC, a former Intern at UNODC LO, in her statement said that the Applicant "virulently yelled" at her and YC for not completing an administrative task to her satisfaction. The Tribunal, therefore, finds these charges are supported by a preponderance of evidence.

48. In terms of the June 2017 purported phone call by the Applicant to YC during which YC claimed that the Applicant called her after work hours and yelled at her while she was with her child, YC recalled this incident with deep emotion at the hearing. The Tribunal notes that there was no witness of this event, and the Applicant opposed some arguments which cast a doubt on the event (such as YC's child referring to the Applicant as "Aunty" although the Applicant has never met the child). The Tribunal considers that even if this incident is not established by corroborative evidence, it is credible as it is consistent with the Applicant's pattern of behaviour.

49. In respect of the 12 June 2017 email sent by the Applicant to YC requesting her availability at certain times and the email exchanges that followed, the Tribunal finds no evidence that this amounted to misconduct. The investigation panel did not investigate this exchange and the Applicant provides a rational explanation relating to the possible need for the Applicant to take medical leave. The Tribunal, therefore, considers this charge as not established by a preponderance of evidence.

50. The Applicant contests the credibility of YC's testimony. She states that YC was an ambitious staff member who was disgruntled for various reasons, including being denied a lien on her post at UNODC LO. In terms of the purported impact of the Applicant's conduct on YC's wellbeing, the Applicant challenges YC's account by pointing that it was only "[s]hortly after YC, JO, and SA, signed said 7 November 2017 complaint letter, they suddenly commenced making visits to the staff counselor, and [Medical Service Division]".

51. The Tribunal finds no merit in the Applicant's arguments. The fact that there is no record of YC seeking support from the staff counselor and Medical Services prior to the complaint, does not absolve the Applicant of responsibility for her conduct. The Tribunal notes that victims may need additional support after they speak up about their experience, not only can filing a complaint be a stressful and re-traumatizing process and also the process that may bring clarity in relation to the deeper impact of the misconduct. It was clear from YC's testimony at trial that she initially tried to please the Applicant and reason with her many times for better treatment to make the working relationship less hostile.

52. The Applicant states that YC's testimony is not reliable and relies on the statement of PB, a former Programme Management Officer at UNODC at the P-4 level and his testimony during the hearing according to which, because the office was small, "[the Applicant] didn't use the phone to call colleagues rather her voice. She has a strong voice. The same practice was occurring between colleagues". Even if this is true, PB's explanation is not sufficient to rebut the fact that almost all the witnesses confirmed that it was common for the Applicant to yell and berate her staff, especially those at lower levels (P-3 and below).

53. Furthermore, the argument, submitted by the Applicant that, on 15 September 2016, "neither SA nor JO worked for UNODC" and that they are mentioned among the witnesses by YC does not suffice to invalidate the fact that the Applicant had a practice of shouting at her subordinate staff.

54. In light of several testimonies verifying similar accounts of the adverse impact of the Applicant's loud and aggressive management style, the Tribunal cannot but conclude that the Applicant failed to meet the standard of care required of her as a manager to YC. The Applicant stated that either YC was providing dishonest accounts or was too sensitive in the face of her management style. The Tribunal notes that how communication is received, especially by subordinate staff members matters in the UN. Managers are required to have a depth of emotional intelligence, respect and sensitivity in managing staff. The evidence on the record establishes that the Applicant failed to create a healthy work environment towards YC in this respect.

55. In relation to the charge concerning the Applicant instructing YC, and interns, to submit fictitious names to the DSS, this charge came from the letter of complaint from 17 anonymous complainants (16 May 2016) and YC's complaint letter (7 December 2017). YC stated (para. 15 of her complaint) that this was one of "numerous practices" at UNODC LO that she was uncomfortable with, but when she questioned the Applicant, she was met with "incredulity, and then hostility" from her. The Tribunal notes that the same allegation was made by JR, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, UNODC Vienna in his statement (25 January 2018). JR usually works in Vienna,

but worked in the UNODC Liaison Office from June 2014 until end of October 2015 where he worked directly with the Applicant. He mentioned that AB, then the Applicant's Administrative Assistant, "was asked by [the Applicant] routinely to submit fake names to security for badges, to be given to people to attend UNODC events". This allegation is therefore based on a hearsay. He did not see this fact himself. AB, who was in SLWOP after her maternity leave, was never interviewed by the panel. The Tribunal notes that the Applicant correctly points out that this allegation was never investigated in any manner whatsoever. The investigators never asked YC about this alleged incident in her interview. Nor did the investigators inform or ask the Applicant about this allegation. There are also no complaints from DSS about improper actions in this regard. The Tribunal concludes that this charge is not supported by a preponderance of evidence.

56. Based on the above, the Tribunal concludes that the charges related to the Applicant shouting at, belittling YC and making her cry are supported by a preponderance of evidence.

Targeting SA, Administrative Assistant: January 2017 to April 2018

57. The Sanction Letter states:

36. You shouted at and belittled SA and caused her to cry, on one or more occasions. SA, who was on a temporary appointment, stated that when you called her from your office, you expected her to respond "within a second", and that if she was even a "split second too late", you would "castigate" her for not responding fast enough. SA stated that you used a "sarcastic tone [which] was extremely distressing".

37. On 16 March 2017, you told SA to purchase food for you and other individuals who had visited your office. When SA looked shocked by this request, you stated aggressively: "What? Why does your face look like that?"

38. You requested that SA share her medical appointment schedule with you and told her that her medical appointments were too frequent.

39. On 30 November 2017, you required SA to work on tasks from 09:00 a.m. to 02:30 p.m., then forced her to stay in your office to observe a technician from the Office of Information and Communications Technology (OICT) while he worked on your computer. SA stated that when you eventually allowed her to take a break, you requested that she first collect your food that had been delivered to the lobby downstairs. SA stated that, when she returned, you spoke to her in a way that made her feel that you “begrudged” her for taking a lunch break.

40. On 1 December 2017, you made SA accompany you to OICT and wait with you for three hours between 03:00 p.m. and 06:00 p.m., even though she had nothing to do there. On 8 December 2017, you made SA return to OICT for the same matter, and on your way out of the office you shouted instructions at her, and repeated the instruction “in an even louder tone without waiting even for one second” for a reply.

41. SA stated that on 19 December 2017, you assigned her a task until around 02:30 p.m., at which point she took a break, and when she returned you “berated” her for taking a break without having told you, and told her to only take breaks between 01:00 p.m. and 03:00 p.m., despite making that impossible for her. SA stated that you made her feel that she was “always doing something wrong, even something as simple as taking a lunch break”.

42. SA stated that you promised her a fixed-term appointment as a Research Assistant once JO had left. In this regard, SA stated that “[i]t felt like a carrot-and-stick strategy”, and that you reminded her of the possibility of obtaining this position when she had to work late “till 9 or 10pm [...]”. SA stated that she felt she had no choice but to comply with anything you asked of her because of her status as a G staff on a temporary appointment and because every extension and/or renewal of her contract was decided solely by you. On 4 December 2017, you invited SA to a meeting, in which you told SA that if she was unhappy with her work, she should “deal with” it, implying that SA could resign if she was unhappy. At the meeting, you then told SA that you had been “fighting” UNODC HQ with regard to the fixed-term Research Assistant post that you had reserved for her. SA stated that the meeting upset her, that she felt pressured, that she could not express dissatisfaction with her work, regardless of what you made her do, and that you implied that you might change your mind about the Research Assistant position if SA continued to “displease” you “by being unhappy”.

[...]

43. SA stated that the way you treated people in the office was “demeaning, harassing, like being twisted/forced to do something, like consenting to slavery” and that it came to a point where she would get panic attacks whenever she received an email from you. SA’s psychiatrist advised her to take a break to recover.

44. SA stated that you controlled staff members, and UNODC LO “felt like a prison”. SA stated that she felt extremely isolated and cut-off from her colleagues. SA stated that you made her feel as though she was your personal attendant/servant, or private property, that your conduct was abusive, demeaning, intimidating, belittling, humiliating, that you created an “extremely toxic work environment”, which caused her to suffer emotional distress, mental anguish, and psychological effects.

58. The Tribunal notes that SA served as an Administrative Assistant from January 2017 to April 2018. SA worked closely with the Applicant. SA testified at the hearing providing an account of incidents which were established as amounting to misconduct. In summary, SA stated that the Applicant would shout at her, address her aggressively, excessively monitor SA’s movements and restricted SA’s breaks. The Applicant’s conduct caused SA emotional distress and created a hostile work environment. SA described the atmosphere as “very stressful”. SA stated that she walked “on eggshells” and tried to modify her behaviour to appease the Applicant so that she would not yell, but “it seemed there was no pleasing” the Applicant, who would react badly when something was not to her liking. SA stated that the Applicant made her feel as though she was her personal attendant/servant, that her conduct was abusive, demeaning, intimidating, belittling, humiliating, that she created an “extremely toxic work environment”, which caused SA to suffer emotional distress, mental anguish, and psychological effects.

59. The Tribunal found SA’s testimony to be compelling and genuine and consistent with her 9 November 2017 complaint and her interview with the panel. YC’s oral testimony supports the facts in relation to the Applicant’s conduct towards SA. At the hearing, YC described the way the Applicant treated SA as “terrible”. She confirmed that the Applicant often shouted at SA. The Tribunal finds SA’s claim of being shouted at and belittled by the Applicant consistent with several other testimonies on the Applicant’s style of management.

60. In regard to the 16 March 2017 incident where the Applicant allegedly asked SA to purchase food in an inappropriate manner, the Applicant submitted the testimony of YH, P-4 Level staff member with UNODC, who was present at the said meeting. YH's account is that the Applicant did not act inappropriately, stating that he "[...] recall her being very kind and respectful going out of her way to express her appreciation for the substantive assistance the staff member was providing". The Tribunal finds YH's testimony to be convincing and given that SA's version of events is not confirmed by the witness, the Tribunal considers that there is no preponderance of evidence on this charge.

61. In respect of the charge of the Applicant excessively monitoring SA's movements and restricting her breaks, the Tribunal finds that the charge is supported only, as for each event, by SA's complaint and testimony. Although the Tribunal finds SA's testimony convincing, the actual conduct amounts to micromanagement rather than misconduct.

62. In respect of the charge that the Applicant misused her power as a manager through applying a "a carrot-and-stick strategy" towards SA concerning employment, the Tribunal finds the record shows, on the contrary, that the Applicant found SA to be very helpful and would have liked to recruit her. However, the final recruitment decision did not rest with the Applicant.

63. The Tribunal notes that SA stated that she felt a deep adverse impact from the Applicant's conduct and resultant toxic work environment, stating that it sometimes felt like "slavery" or a "prison", and SA suffered panic attacks. The Tribunal finds that although some of this impact could have been due to increased sensitivity on SA's part, the fact that the Applicant's conduct was abusive, demeaning, intimidating, belittling, and humiliating is confirmed by several other staff members.

64. Based on the above, the Tribunal concludes that the charges related to the Applicant shouting at SA and communicating in an aggressive manner are supported by a preponderance of evidence.

Targeting JO: Programme Assistant, between December 2016 and December 2017

65. The Sanction Letter states:

46. You shouted at and belittled JO and caused her to cry, on one or more occasions. JO stated that the first time you “yelled” at her was in December 2016, when she had recently joined UNODC LO, and that you reprimanded her, ignored her, and spoke to her in a very disrespectful way, for example, responding to her by simply stating “what?”

47. In February 2017, you yelled at JO for not being supportive to MP.

48. JO stated that you made inappropriate comments “all the time”. For example, you told JO that you were “going to go Harvey Weinstein” on the staff members and then mocked JO openly in the office, because she had appeared to be scared by your comment. JO stated that you seemed amused by this, and announced to everyone in the office: “look at [JO’s] face, she got scared”. JO stated that you “seemed to celebrate the fact that [JO] was scared by what [you] said, comparing [yourself] to Harvey Weinstein”.

49. In or around June 2017, JO requested your approval for two weeks’ leave for medical reasons. JO stated that you agreed to her request and told her to take her time. However, you subsequently questioned why it was necessary for JO to take leave and complained to JO about the amount of medical leave she had taken.

50. On 20 November 2017, whilst on medical leave, JO decided to attend UNODC LO to see if you needed any help. However, when she arrived at UNODC LO, she suffered an anxiety attack and fainted. YC attended to JO and took her to the Medical Services Division (“MSD”), where JO was treated. When YC returned to UNODC LO to collect JO’s belongings, you shouted at YC for having assisted JO, and tried to prevent YC from returning to MSD. YC stated that you “interrogated” her, that you were “hostile” and that you were angry at YC for assisting JO, and showed complete disregard for JO’s well-being. JO stated that you “lashed out” at YC because she went to MSD without your permission, and that the incident was “extremely distressing”. JO stated that when YC returned to MSD with JO’s belongings, YC was crying, and told JO that you had yelled at her for helping JO. Within a few hours of the incident, you had emailed JO to enquire about her outstanding tasks, despite the fact that she was on medical leave. At no point after the incident did you inquire about JO’s health or well-being.

51. You told YC that JO should not be allowed to enter your office, even though JO reported directly to you, and ordered YC to supervise JO, because you did not want to talk to or work with JO. YC stated that you “wrote-off JO as a staff member. SA stated: “On several occasions, JO tried to speak up. After this, [the Applicant] and [MP] treated her worse. A whole week would pass without them acknowledging her presence. They would assign her to do menial tasks. There would be a constant fear that if you were to put a toe out of line, you would be treated in the same way they treated JO.

52. At the end of November 2017, nearing the end of JO’ s temporary assignment at UNODC LO, you told JO that her “suffering w[ould] end soon”. JO stated: “At that moment, it hit me that the way she treated me, the pain and humiliation she inflicted was deliberate. [...] this was the breaking point”. SA stated: To see [the Applicant] and [MP] treat JO so badly felt like I was watching somebody kick a dog. It felt like if anyone tried to speak up against either of them, the person would get shot down.

66. The Tribunal notes that JO worked as an Administrative Assistant on temporary assignment with UNODC LO from December 2016 until December 2017. The Applicant is charged with misconduct consisting of shouting at, belittling and intimidating JO. In her testimony to the panel, JO stated that the Applicant made her feel “useless”, that she felt as if she could not do anything right, and that she finally “broke down”. JO felt that her mere presence was irritating to the Applicant. JO stated that she was very traumatized by the experience of working with the Applicant.

67. The Tribunal finds that the fact the Applicant shouts demeaning words or makes humiliating comments is confirmed by other testimonies. In particular, at the hearing, YC’s oral testimony supports the facts in relation to the Applicant’s conduct towards JO. At the hearing, YC described the way the Applicant treated JO as “terrible”. She confirmed that the Applicant often shouted at her and they were scared. SA testimony also corroborated how the three of them (YC, SA and JO) were scared of the Applicant.

68. The Applicant refutes these charges, stating that JO job performance was poor and that several other staff members, especially MP and SA, complained against JO. The Tribunal considers that while this may be true, it does not justify the Applicant's harsh behaviour, which is confirmed by other testimonies.

69. The charge that the Applicant told YC and SA that JO should not be allowed to enter the Applicant's office, even though JO reported directly to the Applicant, and ordered YC to supervise JO, because the Applicant did not want to talk to or work with JO is supported by both the statements of YC and JO.

70. The Applicant attempts to undermine JO's evidence by arguing that the staff members (in particular JO, YC and SA) coordinated their testimonies. The Tribunal finds no evidence of any ulterior motives in the testimonies. The statements reflect each staff member's own experience and even if there is an overlap between events that were shared experiences, this is no basis to doubt the evidence on record.

71. Based on the above, the Tribunal concludes that the charges related to the Applicant shouting at SA and communicating in an aggressive manner are supported by a preponderance of evidence.

72. In regard to the incident on 20 November 2017 in which JO had an anxiety attack and was taken to the medical service, the testimony of YC corroborates that the Applicant failed to show empathy, and lashed out at YC for having brought JO to the medical service. In her prior statements, YC described the incident and indicated that the Applicant showed "no empathy", "interrogated" YC, "forbade" her to help JO and was "very hostile" towards YC for bringing JO to medical services and for asking to bring JO's belongings to her.

73. The Applicant refutes the claims surrounding the incident on 20 November 2017 and denies that her own behaviour was lacking empathy. She states that according to her time-line that day, she could not have been aware that JO had a panic attack when she emailed her some work-related requests.

74. The Tribunal considers possible that there could be a misunderstanding about the Applicant's behaviour in this very incident, but her usual behaviour toward her subordinate staff makes YC, SA and JO's account of the incident plausible. It matters how a pattern of conduct and communication is received, clearly YC, SA and JO were left very distressed by the Applicant's handling or response to this incident. It is important to note that even if a misunderstanding had occurred in this particular incident, the Applicant had failed to develop a healthy work environment where subordinate staff felt respected and safe, especially when difficulties such as a medical emergency arose in the office environment. On the contrary, the Applicant's staff were left feeling distressed, unsure of the Applicant's reactions and anticipating the Applicant's lashing out. This incident is an unfortunate example of the cost borne by staff members working under an abusive manager.

Treatment of interns

75. The Sanction Letter states:

You shouted at and belittled interns, and caused them to cry, or otherwise become upset, and instructed them to perform personal favours/errands for you, as follows:

- AT stated that “[you] abused especially interns: the lower the level, the more abuse. [you] would intimidate people. “Specifically, AT recalled a UNODC LO event in Lower Manhattan, where, instead of organizing a vehicle, you sent two interns to walk to Washington Square from UNODC LO, a distance of approximately 2.5 miles, carrying “huge banners”.
- AT stated that a Danish intern, who had served in the military in Afghanistan, told AT that he felt more stress at UNODC LO than on assignment in Kabul;
- MM stated that on 23 June 2009, you sent an intern to collect your luggage; that on 25 June 2009, you instructed an intern to collect your laundry and that you rewarded the intern with a bottle of vodka; and that, on 29 June 2009, you made an intern go to your apartment to deliver documents and bring back a document and a computer;
- TL stated that he regularly saw interns doing your personal errands and that you made them perform the most mundane tasks.

- SC stated that you sent an intern, “A...”, to run an errand for you at night time, and A... complained that he had to use his own metro card to collect/deliver things for you;
- In August 2014, you ordered “E...”, an intern, to count out loud the number of pages of US staff in the book of Permanent Missions to the UN together with you, so that the whole office could hear, because the intern had been unable to reach a person at the US Mission with whom you wanted to speak;
- On 26 February 2015, you ordered “I...”, an intern, to re-watch on Web TV, twice, a six-hour thematic debate of the President of the General Assembly (GA) in order to capture references to UNODC, even though she had attended the debate and had not been instructed to take notes. When JR tried to assist the intern, by providing his notes, you told the intern to throw out her work and start again, and not to rely on JR’s notes;
- Between January 2016 and May 2017, you shouted at MC and caused her to cry on one or more occasions. MC stated that you made her collect food for you, collect personal guests, and deliver files to your home in Harlem. MC stated that you used a very aggressive tone. MC stated that she feared you, that you yelled orders and became furious when you were not happy with trivial things, and that while, one day, you could be nice, on another day you would completely “lose it”.

76. The charges in relation to interns arise from several testimonies of people who worked at some moments in UNODC LO (AT, MM, TL, MC) who mentioned, without any precise details that the Applicant used to instruct interns to perform personal favours/errands for her. However, the Tribunal finds that most of these examples come mainly from hearsay.

77. In addition, the Applicant is right to note that “[a]ccording to footnote 25 of page 5 of the 13 November 2018 Allegations Memorandum, “(...[t]he specific allegations with regard to the Applicant’s treatment of [...] [MC] [do] not form part of the allegations of misconduct”. Nevertheless, the Applicant is charged with having mistreated MC in paras 57, 65, 67, and 74 of the Sanction Letter. Likewise, para 5 of the Sanction Letter claims that “[it] was decided not to rely on the facts set out in the Allegations Memorandum that [the Applicant] assigned certain tasks which UNODC LO staff members considered menial,” yet these allegations are nevertheless cited and relied upon in paras. 51 and 57 of the Sanction

Letter. Therefore, the Tribunal considers that the charge related to targeting MC cannot be relied upon.

78. As for one specific event in relation to the allegation that on 23 June 2009, the Applicant sent an intern to collect her luggage, she responded that UNODC's Executive Director was at UNHQ on that date, and that it is possible that an intern helped transfer luggage with publications and/or a computer in relation to that visit. The Tribunal accepts that, in such a context, this was not a personal errand.

79. As for another specific incident of 13 February 2017, when the Applicant allegedly made an intern go to her apartment to deliver documents and bring back a document and a computer, the Tribunal accepts the argument that the Applicant may have exceptionally asked that someone bring documents to her while she was at home feeling sick and needed documentation delivered to her home.

80. In addition, in support of the Applicant, CK, the Programme Management Officer at the P4 level, who was later replaced by MP on 1 June 2015, and who was never interviewed by the panel, made a written statement on 23 January 2019 (page 1067 of the Applicant's trial bundle), in which she confirmed that "although [the Applicant] demanded the highest level of excellence in their work, at no time did I witness, or have said interns report to me, that [the Applicant] had verbally abused or mistreated them in any way".

81. Only one intern, MC, who was at UNODC LO from 16 January to 19 May 2017, filed a formal complaint letter dated 14 November 2017. Even YC, in her testimony, refers only to MC when she mentions that the Applicant harassed interns. The only example of harassment of MC given by YC is the following:

[The Applicant] asked our then-intern MC (with myself as overseeing the work) to create large binders of 40-over printed documents on trafficking as background resources for two Ambassadors. She also required a full Index of every single document, as well as a similarly organized thumb drive with names for each file in order. MC spent 3 full days (25-27 Jan) on this project, alongside many additional hours of work by myself, because [the Applicant] kept adding new documents (often giving vague details as to the nature of the document, forcing me to spend much time finding the document), changing the order of the documents,

and changing the requirements for the folders, subjecting MC and myself to repeated scoldings and lectures throughout. MC ended up repeatedly in tears.

82. However, as mentioned above, since the specific allegations with regard to the Applicant's treatment of MC do not form part of the allegations of misconduct, the charge related to targeting MC cannot be relied on.

83. As noted above, the Tribunal finds the charges that the Applicant instructed [staff members or interns] to perform personal favours and unnecessary, unfair and/or inappropriate tasks are not supported by a preponderance of evidence.

84. The Tribunal finds the charge that the Applicant inappropriately monitored and placed restrictions on breaks and leave also not to be supported by a preponderance of evidence.

85. The Tribunal concludes that even if it is probably exaggerated to say that the Applicant systematically harassed interns, there is some evidence that she "shouted at and belittled" at least some of them.

Whether the established facts amount to misconduct

86. Staff Regulation 1.2(a) provides that "staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them".

87. Staff regulation 1.2(f) provides that "[...] staff members shall conduct themselves at all times in a manner befitting their status as international civil servants [...]".

88. Staff rule 1.2 (f) provides: "[a]ny 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."

89. ST/SGB/2008/5 defines harassment as “any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.”

90. ST/SGB/2008/5 defines abuse of authority as “the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.”

91. Section 2.1 of ST/SGB/2008/5 states that “...every staff member has the right to be treated with dignity and respect, and to work in an environment free from discrimination, harassment and abuse. Consequently, any form of discrimination, harassment, including sexual harassment, and abuse of authority is prohibited.”

92. Section 3.2 of ST/SGB/2008/5 on the duties of staff members and specific duties of managers, supervisors and heads of department states that “[m]anagers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct. They must act as role models by upholding the highest standards of conduct. Managers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to fulfil their obligations under the present bulletin may be considered a breach of duty, which, if established,

shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate.”

93. As discussed above, the Tribunal found that there was a preponderance of the evidence that the Applicant, a senior official of the Organization and head of the UNODC LO in New York, engaged in a pattern of conduct through which she created an intimidating, hostile and/or offensive work environment for her subordinate staff members.

94. In coming to its determination, the Tribunal takes into account the large number of staff members who came forward to share their experience of working with the Applicant. The testimonies were congruent and pointed to a certain pattern of behaviour by the Applicant, that she abused her authority and created a working environment that was intimidating, “unhealthy”, “poisonous”, and “humiliating”. Although the Tribunal has reviewed individual key incidents subject to the charges, there was a clear pattern of conduct, over a prolonged period of time, which was itself very abusive and detrimental to subordinate staff. Isolated incidents of disharmony or conflict between colleagues can be seen as part of natural human group behaviour and can be addressed with civility, respect and a growth mindset. However, this case points to a prevalent abusive pattern of behaviour over a considerable duration by a staff member which caused substantial distress to her subordinates. There is, therefore, significant evidence of the Applicant’s misconduct and failings as a senior manager, who inherently has a position of power and a duty of care towards her colleagues, especially those subordinate to her.

95. The Applicant asserts her behaviour was appropriate and did not constitute misconduct under the above framework. At the hearing, the Applicant acknowledged she had a commanding communication and management style within a very busy and dynamic work environment. She noted that her leadership had yielded substantive success for her office’s mandate. The Applicant stated that she had very high standards but would not hold staff to expectations as high as the expectations she set for herself. The Applicant maintained that her conduct would never constitute harassment or bullying. In her defence, the Applicant submits that

rather than her having committed misconduct, she is instead a victim of mobbing and bias by disgruntled colleagues who harboured ulterior motives against her.

96. The Applicant requested that the Tribunal reviewed several testimonies and statements in support of the Applicant, which the Applicant presented as rebuttal to the allegations concerning her managerial style.

97. The Tribunal reviewed the record and found no basis for the allegation of “mobbing” against the Applicant. Quite on the contrary, the record shows significant efforts by the affected staff members to themselves manage the Applicant’s management style, by trying to appease her, attending to their own emotional distress, and seeking counsel from others about the situation. For instance, YC stated that she sought advice from JL, Director, Division for Policy Analysis and Public Affairs, UNODC Vienna and also consulted the Office of the Ombudsman and the Staff Counsellor. LB stated to the panel that early on, in 2006, she contacted OIOS for advice and also later approached the Executive Office, and, after an incident observed by the then Executive Director, raised the matter with him, only to be rebuffed or ignored each time. YC specifically mentioned that even though she was aware of negative repercussions for her career, she felt obliged to file a complaint, both to protect other staff and to ensure that the Applicant’s behaviour would not carry on in the future. Rather than a case of “mobbing”, the Tribunal finds this case to be simply the result of junior staff members who collectively reached a saturation point under their senior manager’s conduct and then took steps to report the conduct for the Administration’s review.

98. Similarly, the Tribunal finds no basis for the allegation that the case was driven by disgruntled colleagues who harbored ulterior motives against her. In this regard, the Applicant submitted that all the complaints were the result of a conspiracy organized by GM, a D1 staff member working as JL’s Deputy, who disliked the Applicant and JR, a P4-level Crime Prevention and Criminal Justice Officer, serving in UNODC Vienna, who previously worked in the UNODC NY Office on a P5-level temporary appointment from July 2014 through October 2015. The Tribunal finds that even assuming these people were biased against the

Applicant, it is implausible that they would have convinced almost all the staff who were subordinate to the Applicant, to complain against her.

99. The Applicant also has stated that she was not aware that her conduct adversely affected her subordinate staff members as none of them provided such feedback directly to her. The evidence on the record shows that the Applicant's pattern of conduct cannot be regarded as reasonable for a manager at any stretch. Managers are conferred a duty of care towards their subordinates, in part due to the acknowledged disparity in the positions of power between them. The lack of direct confrontation from their junior staff does not absolve a manager of their duty of care. In addition, in this case it is clear that the Applicant did not create a safe and open work environment for her junior staff to have been able to give the Applicant such feedback.

100. The Tribunal has reviewed a number of statements in support of the Applicant from senior leaders. While it is clear that they hold the Applicant in high regard, this case is not about the Applicant's substantive achievements and quality of her relationships with senior management. It is about the Applicant's systematic mistreatment of junior staff members. The senior officials who provide supportive testimonies could not have observed the operations and conduct in the office toward her subordinate staff. Their testimonies emphasize instead the passion and the dedication the Applicant showed towards UNODC and the United Nations -which are not disputed in this case.

101. The Tribunal also reviewed the testimonies of PB and MP, who were both the Applicant's P-4 level "Deputies". Both PB and MP stated that while the Applicant's managerial style could be demanding, they denied having seen the Applicant act abusively towards her staff. However, it is clear from the record that the Applicant did not behave the same way with her direct collaborators (her P-4 level Deputies) as she did with her more junior staff. In addition, the Tribunal can only give limited weight to the two testimonies as there appears to be a breach of integrity and confidentiality that tainted those testimonies. Namely, that MP confirmed under oath that the Applicant had improperly shared other witnesses' confidential statements with him. PB testified under oath that the Applicant had not shared

confidential documentation with him, but then could not explain why his statement included distinct extracts from SK’s confidential panel interview. The Applicant herself then admitted to sharing the statements of other staff members which were clearly confidential documents.

102. In conclusion, while the Applicant performed well in the substance of her work, it is clear that the success came at a cost, causing much distress to her subordinate staff. The Tribunal finds that the Applicant failed to uphold a conduct befitting her status as senior international civil servant. The Applicant, as a senior manager, was conferred a duty of care to promote a “harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct” as per ST/SGB/2008/5, which she failed to do. The Applicant’s actions, as established by the facts indicated above, constitute harassment and abuse of authority under ST/SGB/2008/5 and amounted to misconduct.

Whether the Applicant’s due process rights were respected

103. The Tribunal will review the Applicant’s claim that the investigation was biased and flawed, and it violated her 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, the Appeals Tribunal stated:

33... 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.

...

39. 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.

104. Bearing in mind the above jurisprudence, the Tribunal will review the Applicant's allegation that her due process rights were not respected during the investigation process. The Applicant states that the investigation was defective and that the panel was biased towards her. The Applicant claims that the panel did no more than take the testimonies of the various former staff members who had been identified as complainants, in which they merely reasserted their coordinated opinions of Applicant.

105. Firstly, the Applicant complains that all but one of the witnesses she put forward were never interviewed, and the one witness who was interviewed, MP, was not asked about any of the allegations, not even the instances that complainants claimed MP witnessed.

106. The Tribunals have held that investigators have discretion on whom to interview and do not have an obligation to pursue matters or hear witnesses that are irrelevant to establishing the facts of a matter (see *Abdellaoui*, UNDT/2018/114). The Tribunal notes that many of the witnesses proposed by the Applicant were senior officials of the Organization who could not have spoken to the allegations other than giving general character references of the Applicant. The Respondent correctly points out that they did not work in the UNODC LO, nor were they reporting to the Applicant nor was she reporting to them. In her e-mail to the panel, she listed these individuals as being "familiar with her character and reputation". However, these witnesses would not have actually witnessed the daily behaviour of the Applicant toward her staff. The Tribunal, therefore, determines that the panel exercised its reasonable discretion in deciding not to interview all the witnesses proposed by the Applicant.

107. The Applicant specifically complained that the panel refused to interview exculpatory witnesses like PB and AC, the Executive-Director of UNODC during the first seven months she supervised SK. However, PB provided a written a statement to the Panel and both PB and AC provided oral testimony to the Tribunal.

108. Secondly, the Applicant also criticizes the panel for not having asked precise questions to the witnesses and to the Applicant about the alleged facts. For example, the Applicant mentioned at the hearing that the panel never even mentioned the alleged facts concerning LB when they interviewed her.

109. From the review of the panel's interview transcripts, the Tribunal finds that the panel indeed failed to ask precise and pertinent questions regarding the alleged facts. The panel's line of questioning was vague, not focused on the facts alleged, and often irrelevant. It is true that the panel did not mention at all LB when they interviewed the Applicant, which is a deficiency indicating negligence by the Panel. At the hearing, FL, a panel member, admitted that no effort was undertaken to verify the truth of any of the factual allegations made or to contact available key witnesses. The Applicant herself was never presented with any of the specifics of the alleged wrongdoing to enable her to respond, nor told who was making the complaints, other than YC. It is also clear that there were several failures in the investigation process, especially that several factual allegations made by the complainants, other than YC, were not submitted to the Applicant.

110. It is regrettable that the panel failed to conduct a thorough fact-finding investigation and its failures in this regard do constitute a procedural flaw. However, the Tribunal notes that the Applicant was eventually informed of all the charges and was provided more than four months to respond to the allegations of misconduct. Upon review of the Applicant's response, the Administration dropped some of the allegations made against her. Further, at the hearing, the Tribunal conducted a *de novo* review of the alleged facts and made findings on the credibility of witnesses and whether certain allegations were substantiated or not.

111. The Applicant attempts to rely on the precedents in *AAhooja*, UNDT/2019/033 and *Cohen* UNDT/2010/118 to argue that the procedural flaws in her case were substantial enough to render a disciplinary measure unlawful. However, the Tribunal finds these cases are not comparable with the present case for the following reasons.

112. The procedural failure in the *AAhooja* case was much more serious than in the present case. In that case, the Dispute Tribunal found procedural irregularities consisting of failure to obtain statements, presentation of unsubstantiated hearsay evidence, the failure to correct obvious and misleading errors in the investigation report and to make full disclosures to both the decision maker and the Tribunal and the investigator taking a secret recording of one of the witnesses. In *AAhooja*, the Tribunal concluded that the breaches of the due process rights, together with the apparent lack of integrity through both non-disclosure and the inclusion of, or failure to remove, known erroneous material in the investigative report, are matters which, taken on their own, would be such as to justify the rescission of the decision in that case. This situation is distinguishable from the present case, where it is true that the investigation panel was negligent in the way it conducted the investigation, but there is no evidence of lack of integrity or of willingness to include or failure to remove known erroneous material in the investigative report.

113. The procedural failure in the *Cohen* case concerned the issue of an accusation against the Applicant being made by an anonymous witness. The Dispute Tribunal in that case concluded that the statement of an anonymous witness was unreliable and inadmissible. And it also found that “there is no evidence on the record that the Applicant solicited or received bribes”. This situation is clearly distinguishable from the present case, where each of the complainants is identified.

114. Despite the flaws during the panel’s investigation process described above, the Applicant’s due process right was 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. Her comments were properly considered by the Administration prior to the imposition of the disciplinary measure. Moreover, as already discussed in detail, there is clear and convincing evidence that the Applicant engaged in a pattern of conduct through which she created an intimidating, hostile and/or offensive work environment for her subordinate staff members.

115. Since the main requirements of due process were met as the Applicant had been notified of the formal allegations of misconduct, and had been given the opportunity to respond to those allegations, the procedural flaw during the panel investigation did not taint the fact-finding process *ab initio*.

116. Therefore, in light of the jurisprudence of the Appeals Tribunal, the Tribunal finds that there were no substantial procedural irregularities that rendered the disciplinary measure unlawful.

Whether the disciplinary measure applied was proportionate to the offence

117. The principle of proportionality in a disciplinary matter is set forth in 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”.

118. The Administration has the discretion to impose the disciplinary measure that it considers adequate to the circumstances of a case and to the actions and behaviour 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; and also *Sall* 2018-UNAT-889, *Nyawa* 2020-UNAT-1024).

119. The Appeals Tribunal has 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). The Appeals Tribunal has further stated, “[b]ut 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).

120. In the Sanction Letter, the Administration imposed on the Applicant the disciplinary measures of demotion of one grade with deferment, for three years, of eligibility for consideration for promotion.

121. In the Sanction Letter, the USG/DMSPC gave consideration to the nature of the Applicant's actions and the past practice of the Organization in matters of comparable misconduct, noting that past practice indicates that separation from service or deferment of eligibility for consideration for promotion together with either demotion or a fine and loss of steps in grade have been imposed in circumstances similar to the present case.

122. The USG/DMSPC considered the long duration of the misconduct and the fact that it was directed against multiple staff members and interns to constitute aggravating factors in this case. The USG/DMSPC also considered the Applicant's long service to the Organization to constitute a mitigating factor in this case.

123. Upon review of the compendium of the practice of the Secretary-General in disciplinary matters, the Tribunal finds that the imposed sanction is in line with the past practice of the Organization in matters of comparable misconduct.

124. In particular, the Tribunal notes that, in previous instances, staff members who committed (non-sexual) harassment and abuse of authority were sanctioned with one or more of the following disciplinary measures: (i) written censure, (ii) loss of one or more steps in grade; (iii) fine; (iv) deferment, for a specified period, of eligibility for consideration for promotion; and (v) demotion with deferment, for a specified period, of eligibility for consideration for promotion.

125. The Tribunal also notes that when a staff member with managerial responsibilities or in a senior position engaged in repeated actions constituting harassment or abuse of authority, the sanctions were more severe, ranging from loss of steps in grade to demotion.

126. In conclusion, considering the nature and duration of the Applicant's misconduct, as well as the past practice of the Organization in matters of comparable misconduct, the Tribunal finds that the imposed disciplinary and administrative measures were adequate in light of the Administration's scope of discretion in this matter.

Conclusion

127. In view of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Joelle Adda

Dated this 4th day of May 2023

Entered in the Register on this 4th day of May 2023

(Signed)

Isaac Endeley, Registrar, New York