



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

WILLIAMS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Shubha Suresh Naik, OSLA

Counsel for Respondent:

Angela Arroyo, UNDP

Introduction

1. By application filed on 8 April 2022, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”), contests the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnities, for conflict of interest in procurement processes and misuse of UNDP property.

Facts and procedural history

2. The Applicant commenced employment with UNDP on 14 June 2010, on a fixed-term appointment as a Programme Associate at the GS-7 level in Sierra Leone. In this capacity, the Applicant assisted with programmatic issues and provided administrative and financial support to UNDP Sierra Leone.

3. On 1 March 2013, the Applicant was appointed as an Operations Analyst (NO-B), a position he held until the end of April 2019. His responsibilities as Operations Analyst were to provide support to the Deputy Country Director on administrative and financial issues. He also had an oversight role in terms of human resources and procurement related matters of UNDP Sierra Leone.

4. On 31 July 2015, the Office of Audit and Investigations (“OAI”), UNDP, received allegations pertaining to the Applicant’s conduct.

5. Following a preliminary assessment, OAI, UNDP, initiated a formal investigation, and notified the Applicant accordingly on 11 August 2016.

6. On 22 October 2016, OAI, UNDP, interviewed the Applicant.

7. By letter of 30 November 2018, OAI, UNDP, notified the Applicant of additional allegations and OAI conducted a second interview with the Applicant on the same day.

8. On 1 May 2019, the Applicant was appointed as Finance Analyst and Head of Finance Unit on a fixed-term appointment.

9. On 4 October 2019, OAI interviewed the Applicant for the third time, following a review of his bank statements.

10. On 17 December 2019, OAI sent a copy of the draft investigation report to the Applicant for his comments, which he provided on 27 December 2019. OAI issued the investigation report on 24 January 2020.

11. On 24 February 2020, the Applicant proceeded on Detail Assignment to the Global Shared Service Unit (“GSSU”), UNDP, in Kuala Lumpur as Financial Services Clustering Specialist.

12. On 29 January 2021, the Applicant was notified that he had been selected for the position of Management Analyst, at the GSSU, UNDP, in Kuala Lumpur, on a fixed-term basis.

13. On 15 March 2021, the Applicant assumed duties as Management Analyst at GSSU, UNDP in Kuala Lumpur, working remotely from home in Sierra Leone. He moved to Kuala Lumpur on 4 May 2021.

14. By letter dated 2 June 2021, UNDP charged the Applicant with serious misconduct for (i) engaging in a conflict of interest with respect to two UNDP vendors in the context of procurement and (ii) misuse of UNDP property.

15. On 14 July 2021, the Applicant provided his response to the charges.

16. On 9 October 2021, the Applicant’s family members relocated to Malaysia.

17. By letter dated 7 January 2022, the Associate Administrator, UNDP, notified the Applicant of the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnities.

18. On 10 January 2022, the Applicant was separated from UNDP.

19. On 8 April 2022, the Applicant filed the application mentioned in para. 1 above.

20. By email received on 12 April 2022, the Applicant sought time to file a missing annex (annex 5 to the application: draft investigation report), informing the Tribunal that the document had been requested from the Respondent and that since this document was already in the Respondent's possession, filing it subsequently to the application would not cause him prejudice.

21. On 13 April 2022, the Tribunal granted the Applicant's request and served the application on the Respondent, who was instructed to file his reply by 13 May 2023.

22. On 14 April 2022, the Applicant filed annex 5 to the application.

23. On 12 May 2022, the Respondent filed his reply.

24. By Order No. 25 (GVA/2023) of 24 March 2023, the Tribunal convoked the parties to a case management discussion ("CMD").

25. On 27 April 2023, the CMD took place, as scheduled, virtually through Microsoft Teams, with Counsel for each party present. At the CMD, both parties agreed that the case could be determined on the written pleadings without holding a hearing on the merits. Nevertheless, the Applicant expressed his wish to address, in writing, the substantive issue concerning the harm caused by the alleged inordinate delay to investigate and conduct the disciplinary process in his case.

26. By Order No. 38 (GVA/2023) of 28 April 2023, the Tribunal ordered the Applicant to file his closing submission by 11 May 2023, and the Respondent to file his by 25 May 2023.

27. On 11 May 2023, the Applicant filed his closing submission.

28. On 24 May 2023, the Respondent filed his closing submission.

Consideration

Scope of judicial review in disciplinary matters

29. The case at hand relates to a disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnities, for conflict of interest in procurement processes and misuse of UNDP property.

30. In disciplinary cases, the Tribunal's role is of judicial review, which requires the Tribunal to consider the evidence adduced and the procedures utilized during the course of an investigation by the Administration (see, e.g., *Applicant* 2013-UNAT-302, para. 29).

31. In this context, the consistent jurisprudence of the Appeals Tribunal (see, e.g., *Haniya* 2010-UNAT-024, para. 31; *Wishah* 2015-UNAT-537, para. 20; *Ladu* 2019-UNAT-956, para. 15; *Nyawa* 2020-UNAT-1024, para. 48) requires the Tribunal to ascertain in this case:

- a. Whether the facts on which the disciplinary measure was based have been established according to the applicable standard;
- b. Whether the established facts legally amount to misconduct under the Staff Regulations and Rules;
- c. Whether the disciplinary measure applied is proportionate to the offence, and
- d. Whether the Applicant's due process rights were respected during the investigation and the disciplinary process.

32. The Tribunal will address below these issues in turn.

Whether the facts on which the disciplinary measure was based have been established according to the applicable standard

33. The disciplinary measure in the present case is separation from service, with compensation in lieu of notice and without termination indemnities. It is well-settled law that when the disciplinary process results in separation from service, like in the case at hand, the alleged misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (see sec. 9.1(a) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process); see also, e.g., *Molari* 2011-UNAT-164, para. 30; *Ibrahim* 2017-UNAT-776, para. 34).

34. Moreover, in determining whether the standard of proof has been met, the Tribunal “is not allowed to investigate facts on which the disciplinary sanction has not been based and may not substitute its own judgment for that of the Secretary-General”. Thus, it will “only examine whether there is sufficient evidence for the facts on which the disciplinary sanction was based” (see *Nadasan* 2019-UNAT- 918, para. 40).

35. In the present case, the facts on which the disciplinary measure was based are twofold:

- a. Count One: The Applicant engaged in a conflict of interest in procurement processes; and
- b. Count Two: The Applicant misused UNDP property.

Count One: conflict of interest in procurement processes

36. The Tribunal notes that the Applicant does not dispute this fact in his application. Most importantly, the Administration presented ample evidence, which is not challenged by the Applicant, that he engaged in a conflict of interest through his personal relationship with two UNDP vendors, namely, Prime Options and St. Paul’s Business Enterprises (“St. Paul’s”), in procurement processes.

37. First, there is clear and convincing evidence that the Applicant has a personal connection with Prime Options and St. Paul's. Indeed, he conceded that he had friendly relationships with representatives of these vendors. When confronted with evidence that his UNDP computer had been used to prepare and email invoices by Prime Options and St. Paul's, he admitted that he allowed representatives of those vendors to use his UNDP computer. The Applicant's personal connection to those vendors was also observed by his then colleagues at UNDP Sierra Leone.

38. The evidence on record further shows that the Applicant conducted a personal business relationship with one manager of Prime Options and had a personal relationship with the vendor focal point at St. Paul's.

39. Second, notwithstanding that the Applicant had a personal connection with Prime Options and St. Paul's, there is no evidence on record, nor has the Applicant even claimed, that he ever informed his supervisor or anyone else in UNDP Sierra Leone of this or that he ever took any steps to recuse himself from procurement processes involving those vendors.

40. Instead, there is clear and convincing evidence that the Applicant was involved in multiple procurement processes of UNDP Sierra Leone involving those vendors from 2012 to 2018. Specifically, the documentary evidence on record shows that the Applicant was involved in 38 procurement processes in which Prime Options was awarded one contract, and 22 procurement processes in which St. Paul's was awarded one contract. The evidence on record further shows that the Applicant was the approver or the selector of Prime Options and St Pauls in seven separate procurement processes/awards of contracts, and that on at least one occasion he tried to interfere in the procurement process to favour Prime Options.

41. In those procurement processes, the Applicant was obliged to disclose his personal connection to Prime Options and St. Paul's and recuse himself, but he failed to do so.

42. Accordingly, the Tribunal finds that the Administration has established that there is clear and convincing evidence that the Applicant engaged in a conflict of interest in procurement processes.

Count Two: misuse of UNDP property

43. The Tribunal notes that the Applicant does not dispute this fact in his application either. Most importantly, there is clear and convincing evidence that the Applicant misused UNDP property.

44. Specifically, as mentioned in para. 37 above, the Applicant conceded that he allowed representatives of Prime Options and St. Paul's to use his official UNDP computer, resulting in it being used to edit and send invoices on behalf of those vendors. Specifically, the metadata of those invoice documents shows that in 2012, the Applicant's account on his official UNDP computer had spent 59 minutes modifying Prime Option's invoices, and about two hours editing three St. Paul's invoices. Notably, those invoices are related to services that Prime Options and St. Paul's provided to UNDP.

45. Moreover, it is not disputed that the use of a UNDP computer to carry out business on behalf of a UNDP vendor amounts to a misuse of UNDP property. Indeed, to ensure the integrity of procurement processes, UNDP vendors' business should be entirely independent and separate from that of UNDP.

46. Therefore, the Tribunal finds that the Administration has established to the requisite standard that the Applicant misused UNDP property.

47. Considering the above, the Tribunal finds that the facts on which the disciplinary measure was based have been established through clear and convincing evidence.

Whether the established facts legally amount to misconduct under the Staff Regulations and Rules

48. Regarding whether the established facts legally amount to misconduct, the Tribunal recalls that staff rule 10.1(a) provides that:

Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

49. The Tribunal will now examine whether the Applicant breached relevant staff regulations and rules as well as related administrative issuances.

Conflict of interest in procurement processes

50. Count One concerns the Applicant's engagement in conflict of interest through his personal relationship with two UNDP vendors, namely, Prime Options and St. Paul's, in procurement processes.

51. Staff Regulations and Rules set forth rules governing conflict of interest. In particular, staff regulation 1.2(m) provides that:

A conflict of interest occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization.

52. Staff rule 1.2(q) provides that:

A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant shall disclose any such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse

himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation.

53. The Standards of Conduct for the International Civil Service also state in their relevant part that:

23. Conflicts of interest may occur when an international civil servant's personal interests interfere with the performance of his/her official duties or call into question the qualities of integrity, independence and impartiality required the status of an international civil servant. Conflicts of interest include circumstances in which international civil servants, directly or indirectly, may benefit improperly, or allow a third party to benefit improperly, from their association with their organization. Conflicts of interest can arise from an international civil servant's personal or familial dealings with third parties, individuals, beneficiaries, or other institutions. If a conflict of interest or possible conflict of interest does arise, the conflict shall be disclosed, addressed and resolved in the best interest of the organization. Questions entailing a conflict of interest can be very sensitive and need to be treated with care.

54. There are more particularised regulations and rules affecting these matters. Specifically, the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct of March 2018 ("the 2018 UNDP Legal Framework") provides in its relevant part that:

25. Misconduct may include, but is not limited to, the following categories whether wilful, reckless or grossly negligent:

...

(i) Failure to disclose an interest or relationship with a third party who might benefit from a decision in which the staff member takes part; favouritism in the award of a contract to a third party[.]

55. Para. 7 of the 2016 UNDP Procurement Ethics, Fraud and Corrupt Practices explicitly prohibited staff having personal or professional interests in an offer from any involvement in the respective procurement process.

56. Under the above-mentioned rules and regulations, the Applicant clearly had an obligation to disclose fully and accurately his personal connection with Prime Options and St. Paul's, which were grounds to support a conflict of interest, and to recuse himself from any involvement in the procurement processes involving those two vendors. However, neither did the Applicant disclose the actual or possible conflicts of interest, nor did he take any steps to recuse himself. Instead, he was actively involved in multiple procurement processes of UNDP Sierra Leone involving the vendors at issue and for a lengthy period.

57. By doing so, the Applicant violated staff regulation 1.2(m), staff rule 1.2(q), para. 7 of the 2016 UNDP Procurement Ethics, Fraud and Corrupt Practices, and para. 23 of the Standards of Conduct for the International Civil Service. As such, his actions in this respect constitute misconduct pursuant to staff rule 10.1(a) and para. 25(i) of the 2018 UNDP Legal Framework.

Misuse of UNDP property

58. The use of property of the Organization is governed by staff regulation 1.2, which provides in its relevant part that:

(q) Staff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets[.]

59. The Standards of Conduct for the International Civil Service also state in their relevant part that:

25. International civil servants are responsible for safeguarding the resources of United Nations organizations which are to be used for the purpose of delivering an organization's mandate and to advance the best interests of the organization. International civil servants shall use the assets, property, information and other resources of their organizations for authorized purposes only and with care. Limited personal use of the resources of an organization, such as electronic and communications resources, may be permitted by the organization in accordance with applicable policies.

60. Moreover, under para. 25(f) of the 2018 UNDP Legal Framework, “[m]isuse or mishandling of official property, assets, equipment or files, including electronic files or data” amounts to misconduct.

61. It follows that the above-mentioned rules and regulations require staff members to use the Organization’s property only for official purposes and for the benefit of the Organization. However, without any authorization, the Applicant allowed two UNDP vendors to use his official UNDP computer to edit and send invoices on their behalf. This not only compromised the integrity of the UNDP procurement processes, but also created a conflict of interest undermining the image and reputation of the Organization.

62. Accordingly, by misusing his UNDP computer, the Applicant clearly breached staff regulation 1.2(q) and para. 25 of the Standards of Conduct for the International Civil Service. As such, his actions in this respect constitute misconduct pursuant to staff rule 10.1(a) and para. 25(f) of the 2018 UNDP Legal Framework.

63. In light of the above, the Tribunal finds that the Applicant’s behaviours amount to misconduct under the relevant staff regulations and rules.

Whether the disciplinary measure applied is proportionate to the offence

64. Staff rule 10.3(b) provides that “[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct”. The Tribunal must therefore verify whether the staff member’s right to a proportionate sanction is respected and whether the disciplinary sanction applied is proportionate to the nature and gravity of the misconduct.

65. In this respect, the Tribunal is mindful that “the matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate to the circumstances of the case and for the actions and conduct of the staff member involved.” As such, it “will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the

respective norms, excessive, abusive, discriminatory or absurd in its severity” (see, e.g., *Iram* 2023-UNAT-1340, para. 86; *Appellant* 2022-UNAT-1216, para. 45).

66. Moreover, “due deference must be shown to the Secretary-General’s decision on sanction because Article 101.3 of the United Nations Charter requires the Secretary-General to hold staff members to the highest standards of integrity and he is accountable to the Member States of the United Nations in this regard” (see, e.g., *Beda* 2022-UNAT-1260, para. 57).

67. In the present case, the Applicant submits that, considering the circumstances of the case, the disciplinary measure of separation from service without termination indemnities was excessive, unduly harsh, and arbitrary. Specifically, he argues that the Administration committed errors of fact whilst it was considering the case and the sanction, and unfairly imputed gravity to him, and that the Administration failed to consider the undue delay in the completion of the disciplinary process and its effect as a mitigating factor to reduce the sanction imposed.

68. The Tribunal will address below these issues in turn.

The alleged misrepresentation of contracts’ amounts attributable to the Applicant

69. Referring to portions of the Charge Letter, the Applicant claims that the Administration improperly relied on the overall payments that were made to Prime Options and St. Paul’s and thus misrepresented the contracts’ amounts attributable to him and unfairly imputed gravity to his actions. Specifically, he points out that the alleged transactions engaged in by St. Paul’s while he was involved in some aspect of the procurement was USD8,000 compared to the overall figure of USD215,426.39. Similarly, the Applicant argued that when Prime Options was awarded at least 23 contracts by UNDP in 2015 and 2016, his role was not of a procurement nature but rather a finance function (budgetary management, monitoring and the allocation of resources).

70. The Tribunal finds no merit in the Applicant’s submissions in this respect for the following reasons.

71. First, the Applicant clearly misrepresented the Administration's reasoning outlined in its Sanction Letter and the facts on which the disciplinary measure was based. Indeed, the Sanction Letter clearly shows that he was sanctioned, *inter alia*, for his engagement in conflict of interest in the procurement process involving Prime Options and St. Paul's, "[r]egardless of whether [his] actions resulted in the provision of an actual benefit to those vendors". As such, the alleged contracts' amounts had no bearing on the level of sanction imposed on the Applicant. In any event, neither did the Charge Letter nor did the Sanction Letter suggest that the Applicant was involved in all the procurement processes that resulted in the award of contracts to those vendors.

72. Moreover, the evidence on record shows that the Administration considered the Applicant's specific role in each procurement process when determining the appropriate sanction. Indeed, the Administration highlighted the evidence indicating the Applicant's exact role in each of the transactions with Prime Options and St. Paul's, and pointed to the fact that he was the approver or the selector of those vendors on seven separate occasions in 2014 and 2015.

The alleged failure to consider the undue delay as a mitigating factor

73. The Applicant submits that the Administration failed to consider the exceptional delay in the completion of the disciplinary process and its effect as a mitigating factor.

74. The Tribunal finds no merit in the Applicant's submission in this regard. There is no legal basis to require the Organization to consider the delay in the investigation and disciplinary proceedings as a mitigating factor in determining the appropriate level of sanction. Indeed, as demonstrated in para. 64 above, under staff rule 10.3(b) whether the disciplinary sanction imposed is proportionate or not is evaluated vis-à-vis the nature and gravity of the misconduct. The length of the investigation and disciplinary processes, however excessive it might be, has no bearing on the nature and seriousness of the conduct at issue.

75. Therefore, it is not unreasonable for the Administration not to consider the delay in the investigation and disciplinary proceedings as a mitigating factor.

Whether the Administration properly considered the circumstances of the case

76. The Tribunal will now determine whether the Administration’s imposition of the disciplinary measure at issue on the Applicant was after giving due consideration to the entire circumstances of the case, including any aggravating and mitigating factors.

77. In this respect, the Appeals Tribunal in *Rajan* 2017-UNAT-781, at para. 48, emphasised that a decision on the appropriate sanction for misconduct “involves a value-judgment and the consideration of a range of factors” and held that:

The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.

78. Moreover, the Appeals Tribunal clarified that “[w]hat factors are relevant considerations will necessarily depend on the circumstances and nature of the misconduct” (see *Kennedy* 2021-UNAT-1184, para. 69).

79. Having reviewed the Sanction Letter at issue, the Tribunal is satisfied that the Administration has properly considered the circumstances of the case.

80. Indeed, the Administration considered several mitigating and aggravating factors, including all the factors that the Applicant raised in his reply to the charges. As mitigating factors, the Administration considered the Applicant’s length of service, the trainings he had taken since the investigation commenced, and his acknowledgement that aspects of his conduct were inappropriate. The Administration also took into account that the Applicant neither accepted responsibility for the conduct at issue nor recognized the seriousness of his actions, that he was involved in multiple procurement processes, and that his actions at least created the perception that procurement processes in UNDP Sierra Leone were neither fair nor transparent, ultimately jeopardizing the reputation of UNDP.

81. The Appeals Tribunal has consistently held that the Secretary-General “has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose” (see, e.g., *Nyawa* 2020- UNAT-1024, para. 89; *Ladu* 2019- UNAT-956, para. 40).

82. Therefore, the Tribunal is of the view that in determining the appropriate sanction, the Administration duly considered the nature and gravity of the Applicant’s misconduct as well as all aggravating and mitigating factors.

83. In light of the above, the Tribunal cannot but conclude that the disciplinary measure at issue was neither unlawful nor unreasonable. As such, the Tribunal finds that the disciplinary measure applied in the present case was proportionate to the offence.

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

84. The Tribunal is satisfied that the key elements of the Applicant’s right to due process were respected in the present case. Indeed, the evidence on record shows that the Applicant was fully informed of the charges against him, was given the opportunity to respond to the allegations, and was informed of the right to seek the assistance of Counsel in his defence. The Applicant does not claim that any of these key elements was not respected.

85. Nevertheless, the Applicant submits that his due process rights were violated due to the inordinate delay leading to procedural unfairness. He further argues that he was not the cause of the delay in the investigation and disciplinary proceedings, and that the Administration remains silent on the delay or an explanation thereof. Therefore, the remaining issue before the Tribunal in this respect is whether the alleged delay violated the Applicant’s due process rights.

86. In this regard, the Tribunal recalls that “[d]ecisions on disciplinary matters, particularly relating to allegations of serious misconduct, must be taken within a reasonable time” (see *Mokbel* UNDT/2012/061, para. 31). “It is the responsibility of the Organization to conduct disciplinary matters in a timely manner to avoid a breach of the staff member’s due process rights” (see *Austin* UNDT/2013/080, para. 40).

87. As such, para. 85 of the 2018 UNDP Legal Framework sets out the time frames for concluding the investigation and disciplinary processes:

To the extent possible, depending on the complexity of a case and the availability of investigative resources, the period between the date the allegations of wrongdoing are reported to OAI and the completion of the investigation should not normally exceed 270 working days. The timeframe from receipt of the final investigation report by [the Legal Office, Bureau for Management Services] to the finalization of the case should not normally exceed 180 working days.

88. In the present case, OAI received the report of the allegations of misconduct on 31 July 2015 and issued the investigation report on 24 January 2020. This means that it took OAI almost four and a half years to complete the investigation as opposed to 270 working days (13.5 months) suggested by the 2018 UNDP Legal Framework. Thereafter, it took the Administration almost two years to complete the disciplinary process, exceeding the 180 working days (9 months) recommended by the legal framework.

89. To justify the lengthy process, the Respondent points to the complexity of the case, the involvement in the fact-finding of third-party vendors who have no obligation to cooperate with the investigating authority, and the need to perform forensic analysis of the Applicant’s laptop and emails. The Respondent also argues that new allegations arising during the investigation resulted in the Applicant being interviewed three times, of which he was duly informed when being interviewed for the second and third times in December 2018 and October 2019.

90. Furthermore, according to Respondent, around two months after the issuance of the investigation report in January 2020, the Covid-19 pandemic disrupted workflows and directed the Organization's attention toward supporting staff members rather than moving forward with any termination of appointment.

91. The Tribunal notes that it took the Administration over six years to complete the investigation and disciplinary proceedings, excessively and extraordinarily exceeding the time limits enshrined in the 2018 UNDP Legal Framework. While the Tribunal acknowledges the complexity of the case and the workflow disruptions resulting from the Covid-19 pandemic, it is not satisfied that they adequately justify the length of the process at stake. Additionally, the Administration did not provide the Applicant with any explanation or justification in this respect during the investigation and disciplinary proceedings.

92. Therefore, the Tribunal finds that the time taken to conclude the investigation and disciplinary proceedings in the present case, notwithstanding the complexity of the case and the impact of the Covid-19 pandemic, amounts to an undue delay. Without a doubt, an undue and unjustifiable delay in the investigation and disciplinary proceedings is a violation of the Applicant's due process rights.

93. However, not every violation of an applicant's rights would render the disciplinary sanction unlawful. In this respect, the Tribunal recalls that only substantial procedural irregularities during the investigation and disciplinary proceedings can render a disciplinary sanction unlawful (see, e.g., *Abu Osba* 2020-UNAT-1061, para. 66; *Muindi* 2017-UNAT-782). The onus is on an applicant to provide proof of the lack of due process and how it negatively impacted the outcome of the investigation and/or the disciplinary process (see *Pappachan* UNDT/2019/118 Corr.1, para 78).

94. In the present case, the Applicant failed to demonstrate how the undue delay negatively impacted the outcome of the investigation and disciplinary proceedings. Moreover, the above-mentioned procedural irregularity is of no consequence given the kind and amount of evidence proving the Applicant's misconduct.

95. As the Appeals Tribunal stated in *Michaud*:

This is also one of those cases where the so-called “no difference” principle may find application. A lack or a deficiency in due process will be no bar to a fair or reasonable administrative decision or disciplinary action should it appear at a later stage that fuller or better due process would have made no difference. The principle applies exceptionally where the ultimate outcome is an irrefutable foregone conclusion, for instance where a gross assault is widely witnessed, a theft is admitted or an employee spurns an opportunity to explain proven misconduct (see *Michaud* 2017-UNAT-761, para. 60).

96. Accordingly, the Tribunal finds that the undue delay in this case does not render the contested decision invalid or unlawful because the misconduct that was factually established is serious enough on its own to support the disciplinary sanction at issue.

97. Considering the above, the Tribunal upholds the disciplinary measure imposed on the Applicant.

Whether the Applicant is entitled to any remedies

98. In his application, the Applicant seeks the rescission of the contested decision and requests the substitution of the disciplinary sanction of separation from service with a loss of steps. He further claims compensation for harm he suffered as a result of the undue delay.

99. The Tribunal recalls that the remedies it may award are outlined in art. 10.5 of its Statute as follows:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

Rescission of the contested decision

100. Having upheld the disciplinary measure, the Tribunal rejects the Applicant's request for its rescission.

Compensation for harm caused by undue delay

101. The Applicant argues that, as a direct consequence of the delay, he suffered significant harm and prejudice. Accordingly, he claims for the award of compensation for professional harm, pecuniary loss, and moral damages.

102. Under art. 10.5(b) of the Tribunal's Statute, the Applicant may be awarded compensation for pecuniary damages, such as income loss, and non-pecuniary damages, such as stress, anxiety, and reputational harm.

103. In this respect, the Tribunal recalls that art. 10.5(b) of its Statute requires that harm be supported by evidence. Specifically, the Appeals Tribunal has consistently held that "it is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien" and requires that "the harm be directly caused by the administrative decision in question" (see *Ashour* 2019-UNAT-899, para. 31; see also *Kebede* 2018- UNAT-874, para. 20).

104. Moreover, the Tribunal notes that for a delay to be compensated, "the staff member's due process rights must have been violated by the delay and the staff member must have been harmed or prejudiced by the violation of his or her due process rights" (see *Jarbou* 2013-UNAT-292, para. 46). As such, a staff member is entitled to compensation for an undue delay only where he or she has suffered damage as a result of it (see, e.g., *Gnassou* 2018-UNAT-865, para. 24).

105. In accordance with the above-mentioned standards, the Tribunal will address the alleged professional harm, pecuniary loss, and moral damages in turn.

Alleged professional harm

106. In relation to alleged professional harm, the Applicant submits that his career was at a standstill since he was not able to get any substantive post during the pendency of the case. In his view, he was denied several career opportunities in regular substantive posts because of the delay.

107. However, contrary to his assertion, the evidence on record shows that the Applicant obtained multiple career opportunities during the pendency of the case. Indeed, he was appointed to a new position in 2019, obtained a detail assignment in 2020 and was promoted and transferred to another position in 2021.

108. Moreover, the Applicant failed to demonstrate how the delay in the investigation and disciplinary proceedings would have resulted in the alleged professional harm. In any event, the alleged loss of career progression opportunities, even if established, is caused by the Applicant's misconduct itself, not by the investigation and disciplinary processes and the delay in completing them.

109. As such, the Tribunal finds no basis to grant the Applicant's claim for the award of compensation for alleged professional harm.

Alleged pecuniary loss

110. The Applicant claims that he suffered pecuniary losses because of the undue delay. He specifically argues that he lost the security deposit paid for his accommodation and he had to sell a newly bought vehicle at a 30% discount.

111. As per the standards established in para. 103 above, the Tribunal can only grant compensation for pecuniary loss if adequate evidence of financial loss is provided, and a link is established between the illegality and said loss. This is not the case here.

112. Indeed, apart from submitting a tenancy agreement showing the three-month notice requirement for cancellation of his accommodation, the Applicant did not clearly evidence his actual financial loss.

113. Also, such financial loss, even if unfortunate, is not attributable to the delay in the investigation and disciplinary proceedings but rather to the Applicant's own misconduct. In this respect, the Tribunal notes that the tenancy agreement is dated 23 August 2021, almost two months after he received the Charge Letter from the Organization.

114. Moreover, under the totality of the circumstances presented in this case, the Tribunal does not consider the undue delay to have financially prejudiced the Applicant. Instead, as it was the case in *Nasrallah*, the excessive delay worked in the Applicant's favour, permitting him to benefit from several years of further service, with full salary, and delaying his termination (see, e.g., *Nasrallah* 2013- UNAT-310, para 27).

115. Accordingly, the Tribunal rejects the Applicant's claim for compensation for alleged pecuniary loss.

Alleged moral damages

116. In relation to the alleged moral damages, the Applicant argues that the delay caused him intense mental anguish and on occasions anxiety with intermittent high blood pressure, and that as the separation came about in the middle of the school year, his children faced difficulty in getting admission into other schools on their return.

117. In support of his claim for moral damages, the Applicant submitted a medical report dated 11 May 2023. It shows that the Applicant's medical condition arose on 11 August 2016, the very same day that he was notified of the first set of allegations, and that a similar medical condition arose in December 2018, right after he was notified of additional allegations.

118. As such, the medical evidence does not support the existence of a causal link between the undue delay in the investigation and disciplinary proceedings and the Applicant's medical condition. Indeed, the medical condition arose at the early stage of the investigation and disciplinary proceedings. His medical condition may have been triggered by the fact that the Organization uncovered his misconduct, but it cannot be attributed to the Organization.

119. Similarly, while the Tribunal regrets that the imposition of the disciplinary measure may have impacted negatively the Applicant's children's school arrangements, this is not attributable to any alleged delay in the investigation and disciplinary processes but to his own misconduct. In this respect, the Tribunal notes that the chronology of the facts in the present case shows that the Applicant's family members relocated to Malaysia around three months after he provided his response to the Charge Letter.

120. Accordingly, however regrettable the delay at issue might be for the Applicant, absent a causal link between it and the alleged damages, the undue delay does not have the effect of entitling him to any compensation for moral damage.

121. Considering the above, the Tribunal rejects the Applicant's claim for the award of compensation for harm caused by undue delay.

Conclusion

122. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 28th day of June 2023

Entered in the Register on this 28th day of June 2023

(Signed)

René M. Vargas M., Registrar, Geneva