



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

SEALES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat

Miryoung An, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former staff member of the Department for General Assembly and Conference Management in the United Nations Secretariat in New York, contests the disciplinary measure of “separation from service with compensation in lieu of notice and without termination indemnity” imposed upon him by the Under-Secretary-General for the Department of Management Strategy, Policy and Compliance (“USG/DMSPC”).
2. The Respondent contends that the application is without merit.
3. For the reasons outlined below, the application is rejected.

Facts

4. In the parties’ jointly-signed statement in compliance with Order No. 066 (NY/2023) dated 1 August 2023, they provided a chronology of agreed facts. In relevant parts, this list of agreed facts reads as follows:

Staff Day 2018

... In 2018, a Staff Day Committee (“the Committee”) was formed for Staff Day 2018, an annual event consisting of entertainment and sports activities for the benefit of [United Nations (“UN”)] staff members. The Committee consisted of, among others: (i) [“KD”, name redacted for privacy reasons], as Chairperson in charge of managing and reporting to [the United Nations Staff Union “UNSU”] expenditures of the Committee, including its sub-committees; (ii) [“MR”, name redacted for privacy reasons] as Chair of the sub-committee in charge of the raffle draw; (iii) the Applicant as Chair of the sub-committee in charge of organizing sports events; and (iv) [“CS”, name redacted for privacy reasons] as Liaison to coordinate all sub-committees and solicit donations from external sources. [“IM”, name redacted for privacy reasons], though not an official member of the Committee, assisted the Applicant.

... On 4 April 2018, CS sent an e-mail to the Applicant, requesting him to review a document saved as “Draft letter for missions.docx,” and to specifically “modify (it) for [a Member State].” The Applicant modified or tailored the letter for the [Permanent Mission (“PM”)] of [the Member State].

... On 19 April 2018, *via* Resolution No. 45/47 (“the Resolution”), the Staff Council of UNSU (“Staff Council”) approved the funding for Staff Day 2018 in the amount of US\$ 40,000.00. In the Resolution, the Committee was requested to report to the Staff Council its monthly activities, including finance-related activities for Staff Day 2018. The Staff Council decided that monies intended for Staff Day 2018 would be managed within UNSU’s account. The Staff Council also designated UNSU Treasurer [“IF”, name redacted for privacy

reasons], and UNSU Assistant Treasurer [“RL”, name redacted for privacy reasons], as UNSU officers responsible for disbursement for Staff Day 2018.

... On 20 April 2018, the Applicant and CS met with the Permanent Mission (“PM”) of [the Member State] to solicit donations for Staff Day 2018.

... On 20 April 2018, CS copied the Applicant on her e-mail to the PM of [the Member State], in which CS thanked the PM of [the Member State’s] ambassador, for meeting with her and the Applicant that day and sending the logo of [the Member State].

... On 24 April 2018, CS forwarded to the Applicant an e-mail from the PM of [the Member State’s] accounting department asking CS if there were financial consequences for UNSU’s use of the [Member State’s] logo.

... On 7 June 2018, in line with the Staff Council’s Resolution, IF informed the Committee, including the Applicant, by e-mail, of the following rules for the management of finances for Staff Day 2018:

... There will be no Staff Day dedicated account for 2018. Staff Day Account shall be closed and funds residual transferred back to the UNSU reserves account.

... Disbursement and payment will be made by the Treasurer (in his absence, the Assistant Treasurer) following established dual signatory of the UN Staff Union reserves account.

... No payment (advance payment) will be made in form of cash to anyone.

... Any request for advance shall be documented by proper verifiable invoicing and pre-approved before any refund disbursed-Anyone who make (*sic*) direct pre-financing without consulting me and in my absence, the Assistant Treasurer, will be at its own risk of not being refunded.

... Procurement process must be followed at all times.

... Referees, event organizers payment shall be made based on a proper contractual agreement and payments shall be made by checks with established dual signatories.

[...]

... On 21 June 2018, via e-mail, the Applicant sent the revised draft letter to CS, and instructed her: “Please read and re-type. Using the proper and necessary Greetings and Salutations.”

... On 29 June 2018, IF met with [“BK”, name redacted for privacy reasons] then UNSU’s President, and the Committee, to discuss the rules and he explained the procurement rules that any purchase over US\$ 1,000.00 required obtaining three quotes of vendors.

... On 12 July 2018, BK informed all [Permanent Missions] to the United Nations, including the PM of [the Member State], about the program for Staff Day 2018 and that a raffle would take place. In the letter to the PM of [the Member State], BK thanked the PM of [the Member State] for its donation for Staff Day 2017 and solicited a similar donation for Staff Day 2018.

... Around September 2018, after being informed by CS that the PM of [the Member State] would like to make a donation for sports activities for Staff Day 2018, the Applicant provided CS with the estimated expenses for sports activities for Staff Day 2018 based on the expenses incurred for Staff Day 2017. CS then forwarded the estimates to the PM of [the Member State].

... On 4 September 2018, at 11:18 a.m., using her personal e-mail account, CS informed [“AF1” – name redacted for privacy reasons] of the PM of [the Member State] that the breakdown of the costs of sports would be US\$ 15,000.00.

[...]

... In the same e-mail, CS also requested AF1 to transfer the PM of [the Member State’s] donation to UNSU to [the United Nations Athletic Council – “UNAC’s”] bank account numbered [number redacted for privacy reasons]. Later that day, at 6:53 p.m., CS forwarded this e-mail to the Applicant and asked the Applicant if she should send the [Member State’s] logo to a person named [“M”, name redacted for privacy reasons], another staff member who was helping to design or place logos for Staff Day 2018.

... On 4 September 2018, at 5:24 p.m., via e-mail, MR informed the Committee members that she had followed up with the PM of [the Member State] regarding raffle prizes and was informed that there had been “follow-up calls for raffle gifts or cosponsoring a sports event.” MR requested information from the Committee members, including the Applicant, on any follow-up that had been made to the PM of [the Member State].

... On 6 September 2018, the PM of [the Member State] wired US\$ 15,000.00 to UNAC’s bank account.

... On 7 September 2018, UNSU held Staff Day 2018.

... As of 7 September 2018, the PM of [the Member State’s] donation was not reported to UNSU, or mentioned to IF and RL.

... A few days after Staff Day 2018, IF and RL heard from MR that the PM of [the Member State] had made a donation for Staff Day 2018. On 10 September 2018, MR heard that the PM of [the Member State] had given a donation for Staff Day 2018.

... On 10 September 2018, the transfer of US\$ 15,000.00 to UNAC’s bank account was completed. On or around 10 September 2018, the Applicant knew that the PM of [the Member State’s] donation to UNSU was to be transferred to UNAC’s bank account. [“MA”, name redacted for privacy reasons], then President of UNAC, stated that he was not informed of the transfer.

... On 10 September 2018, via e-mail, MR informed the other Committee members, including the Applicant, that she had received information that the PM of [the Member State] had made a donation to UNSU for Staff Day 2018. MR then requested the Committee members, including the Applicant, to provide the details regarding the PM of [the Member State]’s donation.

... Between 11 and 12 September 2018, KD forwarded to the Applicant and CS for comments, the draft e-mail response to MR. KD had no independent information about the PM of [the Member State]’s donation.

... On 11 September 2018, the Applicant replied to KD’s e-mail and suggested the addition of a line stating that he had not been in contact with any mission and had only presented invoices to the Committee Chairperson.

... On 12 September 2018, via e-mail copying IF and RL, KD replied to MR that a donation of US\$ 12,000.00 was received “in support of sports and placed in the Staff Union account.” The Applicant received KD’s e-mail to MR. On the same day, IF informed KD that there was no deposit of the US\$12,000.00 in the Staff Union reserves account at the United Nations Federal Credit Union (“UNFCU”).

... Between 10 and 12 September 2018, two deposits were made separately into the Staff Union bank account—one in the amount of US\$ 7,000.00 and the other in the amount of US\$ 5,000.00.

... On or around 13 and 20 September 2018, upon CS’s request, the Applicant requested IM to prepare invoices for payments made to referees. The Applicant made the request even though he knew that the referees were “freelancing,” provided services “off the books” and hence could not have produced invoices for their services.

... On 13 September 2018, the Applicant asked IM to obtain an invoice or receipt for the referees procured by IM. The Applicant also told IM that he could “get it from [“BC”, name redacted for privacy reasons] since he is president of [the New York State Association of Certified Football Officials—“NYSACFO”] and should have a nice letter head (sic).” In response, IM said he would reach out to BC. IM also told the Applicant that he would not be able to get the invoices from the referees because they provided freelance referee services. In reply, the Applicant told IM that he “need[ed] something to show” UNSU that the referees had indeed been paid.

... On 20 September 2018, the Applicant also provided the name of the league for [“BL”, name redacted for privacy reasons] and [“EB”, name redacted for privacy reasons] to IM.

... Between September 2018 and October 2018, IF and RL requested the Committee to provide the bank deposit slips and the donation letter from the PM of [the Member State]. No such documents were provided to IF and RL.

[...]

... On 12 October 2018, the PM of [the Member State] informed RL that US\$ 15,000.00 had been “effected as a donation [for] UN Staff Day 2018 activities.” The PM of [the Member State] attached a copy of a payment confirmation slip showing that: (i) US\$ 15,000.00 was transferred to UNAC’s bank account on 6 September 2018; (ii) the beneficiary e-mail address was [CS’s private email] and (iii) in the section on beneficiary information the following was indicated: “Donation to the Staff Day Raffle for the Celebration of the United Nations Staff day taking place Sept 7th, 2018.”

... On 17 October 2018, IF and RL reported to the Staff Council Arbitration Committee (“Arbitration Committee”) that the PM of [the Member State’s] donation of US\$ 15,000.00 was transferred to UNAC’s bank account instead of UNSU’s bank account, and that only US\$ 12,000.00 of the donation was reported and actually deposited into UNSU’s bank account.

... In the course of the proceedings before the Arbitration Committee, in order to account for the US\$ 3,000.00 of the US\$ 15,000.00 PM of [the Member State]’s donation, the Applicant submitted to CS the following three invoices for the payments to the referees:

... *Invoice, dated 7 September 2018, purportedly issued by the **Public School Athletic League Football Officials Association, Inc. (“PSALFOA”)** in the total amount of US\$ 560.00 in payment for the services of four referees, namely, BC, [“SH”, name redacted for privacy reasons], [“JG”, name redacted for privacy reasons] and [“MM”, name redacted for privacy reasons].*

... BC, then President of PSALFOA, stated that he participated in Staff Day 2018 as a referee and received cash payments. BC stated that while the invoice correctly reflected the payments made, he had never seen the invoice before, and had never given any permission to anyone to use the PSALFOA’s emblem or to create a letterhead. According to BC, PSALFOA does not issue invoices and his service as a referee on Staff Day 2018 was his “freelance” work, which was not connected to PSALFOA.

... IM stated that he procured the four referees and paid them with cash, directly out-of-pocket, for which the Applicant reimbursed him a while after Staff Day 2018. IM stated that the Applicant asked him to provide a receipt for the referees, and that he requested BC to provide an e-mail confirmation that he had received money.

... By e-mail, dated 17 September 2018, BC sent IM an “invoice for official payment On the Date of 9/7/2018” stating, “Volleyball 2 Referees 4 Hours \$400.00, Flag Football 2 Referees \$160.00.” BC did not list the names of the referees who served on Staff Day 2018 with him. IM found the e-mail invoice “plain and basic.”

... Relying on BC’s e-mail, IM created the invoice using the emblem of PSALFOA, which he got from the business card BC had given him. IM put his own phone number in the invoice.

... IM did not provide the contact information of three of the four referees claiming that he had lost it because his phone had been reset. Therefore, the attendance of three of the four referees was not verified.

[...]

... *Invoice, dated 7 September 2018, purportedly issued by the **New York Soccer Referee Association (“NYSRA”)** in the total amount of US\$ 600. 00 in payment for the services of referees. [“KR”, name redacted for privacy reasons], Secretary of NYSRA, stated that NYSRA does not issue invoices and no member of NYSRA has the right to use NYSRA’s emblem that appeared on the*

invoice. KR stated that the invoice was “fake.” Further, IM denied having created this invoice.

... The invoice did not indicate any referee’s name. The Applicant stated that the invoice was created by IM to formalize the payments made to three soccer referees.

, namely, [“MD”, name redacted for privacy reasons], [“CD”, name redacted for privacy reasons], and [“WP”, name redacted for privacy reasons]. IM could not recall seeing the invoice previously. IM denied creating any invoices for the Applicant other than the PSALFOA invoice.

... MD, CD and WP confirmed that they provided soccer referee services on Staff Day 2018 and received cash payments. WP and CD could not recall the exact amount they received. MD stated he received US\$ 200.00 in cash as payment.

... [“VS”, name redacted for privacy reasons], President of the UN Soccer Club, stated that he paid US\$ 600.00 to the three soccer referees he had procured for Staff Day 2018 using funds from the UN Soccer Club account and the Applicant gave him US\$ 600.00 in March 2019.

... *Invoice, dated 7 September 2018, purportedly issued by **Independent Contracting Services (“ICS”)** in the total amount of US\$ 240.00 in payment for the services of two basketball referees, namely, EB and BL.* IM denied creating this invoice. The Applicant created this invoice.

... Both EB and BL confirmed that they were present on Staff Day 2018 and were paid US\$ 120.00 each in cash by the Applicant for referee service. EB and BL were issued visitor’s passes that day.

... On 29 March 2019, the Applicant, together with CS and MA, submitted to IF four invoices for the expenses amounting to US\$ 3,000.00 and covered by the PM of [the Member State’s] donation. The four invoices included the three invoices for payment to the referees.

Staff Day 2017

... On 8 September 2017, UNSU held Staff Day 2017.

... On 14 November 2017, at 10:33 a.m., via e-mail, the Applicant sent a draft “Staff Day Sports Contract” to CS, and asked her: “Is this good enough?”

... On the same day, at 10:57 a.m., in response, CS requested the Applicant to produce three contracts to document payments in the total amount of US\$ 980.00 to freelance referees engaged for Staff Day 2017.

... On the same day, approximately 30 minutes later, at 11:26 a.m., the Applicant created and sent to CS three scanned contracts, dated 8 September 2017 and titled “Staff Day Sports Contract,” with the following details:

... A Staff Day Sports Contract in the amount of US\$ 480.00, and purportedly signed by BL.

... A Staff Day Sports Contract in the amount of US\$ 200.00, purportedly signed by IM and [“RS” – name redacted for privacy reasons].

... A Staff Day Sports Contract in the amount of US\$ 360.00, purportedly signed by [“AF2” – name redacted for privacy reasons], a NYSRA referee, and VS. The Applicant stated that he could not contact AF2 to ask him to sign the contract, and admitted that he forged AF2’s signature. AF2 stated that he had introduced three soccer referees to VS, but he had not been paid himself. AF2 and VS both confirmed that, while the three referees had been paid a total of US\$ 360.00, they had never seen the contract before and that it was not their handwriting or signature on the page.

Irregularities in and unaccounted withdrawals from UNAC’s bank account

... Between February 2017 and December 2018, a total of US\$ 24,490.00 was deposited into UNAC’s bank account. Deposits over US\$ 1,000.00 consisted of the following:

... On 18 August 2017, UNFCU deposited a donation for Staff Day 2017 in the amount of US\$ 3,800.00;

... On 16 August 2018, UNFCU deposited a donation for Staff Day 2018 in the amount of US\$ 3,000.00; and

... On 10 September 2018, as mentioned above, the PM of [the Member State] deposited a donation for Staff Day 2018 in the amount of US\$ 15,000.00.

... Between around August 2017 and September 2018, a total of US\$ 21,872.80 was withdrawn from UNAC’s bank account using checks which the Applicant and CS signed. The Applicant signed blank checks for CS, including the following checks, allowing CS to withdraw funds from UNAC’s bank account at her convenience:

... Around August 2017, US\$ 3,800.00 was withdrawn using check no. 272, dated 28 August 2017. The purpose of the withdrawal was not stated on the check. CS cashed out check no. 272.

... On 28 March 2018, US\$ 72.80 was withdrawn for “UNAC breakfast” using check no. 273, dated 27 March 2018. MA cashed out the check to reimburse himself for a payment that he made for a breakfast related to a UNAC activity.

... On 23 August 2018, US\$ 600.00 was withdrawn for “Staff Day 2018” using check no. 274, dated 22 August 2018. CS cashed out check no. 274.

... On 10 September 2018, US\$ 14,000.00 was withdrawn for “sports” using check no. 275, dated 10 September 2018. CS cashed out check no. 275.

... On 12 September 2018, US\$ 3,400.00 was withdrawn for “sports” using check no. 280, dated 10 September 2018. CS could not recall who cashed out check no. 280.

... CS stated that the Applicant was informed every time a check withdrawal was made. The Applicant did not monitor and keep himself abreast of the above UNAC’s bank transactions.

... The check withdrawals totaling US\$ 21,872.80 were comprised of the following: (i) US\$ 12,000.00 was deposited into UNSU’s bank account; (ii) US\$ 3,000.00 was purportedly accounted for by the four invoices, which included the

three invoices for payments to the referees; (iii) US\$ 72.80 was cashed out by MA; and (iv) US\$ 6,800.00 which remains unaccounted for either by the Applicant or by CS.

IAG 2014 and 2018

... In or around 2014, the Applicant was part of the organizing committee for IAG (“IAG committee”) which was to be held in New York, United States of America. The Applicant’s role in the committee included being the person in charge of sports activities and acting as its treasurer.

... Around March 2014, the Applicant, together with KD and CS, visited the PM of [the Member State] to solicit donations.

... On 24 March 2014, in response to the solicitation, the PM of [the Member State] gave a donation for IAG and transferred US\$ 50,000.00 to the IAG committee’s bank account named “UN Inter Agency Games NY” in UNFCU.

... On 20 April 2018, the Applicant and CS met with the ambassador of the PM of [the Member State] to solicit donations for IAG which was to be held in Italy that year.

... On 27 April 2018, the PM of [the Member State] made a donation of US\$ 10,000.00, which was transferred to the IAG committee’s bank account.

... On 7 August 2019, the then Chef de Cabinet, Ms. Maria Luiza Ribeiro Viotti, stated that there was no record of the Secretary-General providing permission to solicit and receive financial donations from governmental and non-governmental sources for IAG.

Considerations

Standard and scope of judicial review

5. Under the jurisprudence of the Appeals Tribunal, in conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine (a) whether the facts on which the disciplinary measure is based have been established; (b) whether the established facts amount to misconduct; (c) whether the sanction is proportionate to the offence; and (d) whether the staff member’s due process rights were respected. 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, *Karkara* 2021-UNAT-1172, para. 51; *Modey-Ebi* 2021-UNAT-1177, para. 34; *Khamis* 2021-UNAT-1178, para. 80; *Wakid* 2022-UNAT-1194, para. 58; *Nsabimana* 2022-UNAT-1254, para. 62; and *Bamba* 2022-UNAT-1259, para. 37). The Appeals Tribunal has further explained that clear and convincing proof “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it

means that the truth of the facts asserted is highly probable” (*Molari* 2011-UNAT-164, para. 30). In this regard, “the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred” (see *Turkey* 2019-UNAT-955, para. 32).

6. The Appeals Tribunal has also underlined, however, that it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him or otherwise substitute its own decision for that of the Secretary-General. In this regard, the Dispute Tribunal is not conducting a merit-based review, but a judicial review, meaning that a judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision (see, for instance, *Sanwidi* 2010-UNAT-084).

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

7. As demonstrated by the agreed facts, the parties concur on the occurrence of events in almost all relevant aspects. As the Appeals Tribunal stated in *Ogorodnikov* 2015-UNAT-549, “[s]ince the parties have agreed to and identified the facts in their Joint Statement, ... it is not open to [the Dispute Tribunal] to conduct its own evaluation and then to substitute its view for that of the parties”. As such, the Tribunal is therefore not competent to further examine the facts already agreed by the parties in the present case, and where differences occur, these are addressed where relevant in the following sections.

Whether the established facts amount to misconduct

8. In the contested decision, the USG/DMSPC concluded that the Applicant, through his conduct, violated staff regulations 1.2(b), 1.2(f) and 1.2(j); and that his actions amounted to serious misconduct. The relevant provisions of staff regulation 1.2 (Basic rights and obligations of staff) are as follows:

- (b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status;

...

(f) While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status;

...

(j) No staff member shall accept any honour, decoration, favour, gift or remuneration from any Government;

...

9. In the application, the Applicant submits that the "evidence of serious misconduct warranting separation is unconvincing". He notes that he was involved in organizing sporting events for the United Nations community "throughout his long career" with the Organization, beginning in 1986, "including previous Staff Day activities". In all that time, he had never been asked to produce contracts or receipts for the referees hired for the events, and no complaints or questions were ever raised about the related expenditures. The Applicant adds that "all the money in question from the donations was used solely for its intended purpose and was fully accounted for". While he concedes that "some of the receipts later presented to document these expenditures were not properly prepared", he also notes that "no findings were ever made that money was improperly used for the personal benefit of any of the organizers". In addition, the Applicant states that by using terms like "diverting" and "falsifying", the Respondent is implying that there were acts of fraud whereas none occurred, and no funds were misappropriated to the Applicant's benefit.

10. Further, the Applicant states in his closing submission that while he does not dispute the underlying facts of the case, he "does dispute the unjustified inferences that have been drawn regarding his responsibility for the actions of [CS]". He maintains that the "charge of forgery is greatly exaggerated" and that the "only unstated factor is guilt by association given the case against [CS]".

11. The Respondent maintains in his reply that between 2014 and 2019, “the Applicant engaged in multiple instances of misconduct”. He submits that in 2018, the Applicant participated in soliciting a donation from the Permanent Mission of a Member State to support Staff Day 2018 activities, and then “diverted” the funds to UNAC’s bank account of which he was a joint signatory. When requested to account for the “diverted” funds, the Applicant asked another staff member, IM, “to produce false/unauthorized invoices”. The Respondent also asserts that the Applicant “knowingly submitted to UNSU false contracts with forged signature” to account for funds intended for Staff Day 2017. Moreover, without the permission of the Secretary-General, in 2014 and 2018, the Applicant solicited and accepted from the Permanent Mission of a Member State donations for the Inter-Agency Games. According to the Respondent, the Applicant also either “wilfully abandoned his duty of care or was extremely reckless” in signing blank checks that facilitated withdrawals from UNAC’s bank account, some of which remained unaccounted for.

12. Having reviewed the jointly-prepared statement of agreed facts as well as the parties’ submissions, the Tribunal is satisfied that the Applicant’s conduct amounts to serious misconduct. The Tribunal also observes that some of factual contentions contained in the application are not supported by the evidence on record, including the statement of agreed facts. For example, the Applicant’s claims regarding payments for sports activities or the production of receipts are contradicted by some of the referees. By repeatedly falsifying documents on consecutive Staff Day events, the Applicant failed to uphold the highest standards of integrity as required under staff regulation 1.2(b). Through the same actions, the Applicant also violated staff regulation 1.2(f) by failing to conduct himself in a manner befitting his status as an international civil servant. Moreover, he participated in soliciting and receiving unauthorized donations from a Member State, in violation of staff regulation 1.2(j).

13. The Tribunal is not persuaded by the Applicant’s argument that “throughout his long career” with the United Nations, “he had never been asked to produce contracts or receipts”. Engaging in the same conduct repeatedly over many years does not automatically make the conduct appropriate. The Tribunal also notes that just because the Applicant is not accused of having used the funds for his personal benefit, it does not mean his actions did not amount to misconduct. His failure to adhere to the clear guidelines presented by the UNSU Treasurer, and

his subsequent attempt to fabricate documentation cannot be excused as mere “accounting lapses”.

14. Similarly, the Tribunal is unpersuaded by the Applicant’s claim that his participation in the Staff Day activities was “essentially private conduct not involving [United Nations] resources” or that this was “essentially a voluntary, social event”. The requirements for integrity, probity, honesty and truthfulness under the staff regulations and staff rules are not merely “generic obligations” but are specifically intended to apply “in all matters affecting [a staff member’s] work and status”. With reference to the agreed facts, the Staff Day is an official, and not a private, United Nations event, which is held at its New York Headquarters every year. Even if the Applicant’s participation in organizing the event was voluntary, his acts in connection with the 2017 and 2018 Staff Days are therefore to be considered part of his official functions.

15. Accordingly, the Tribunal finds that the established facts in this case amount to misconduct on the part of the Applicant. The Tribunal also finds that the facts are established by clear and convincing evidence.

Whether the sanction is proportionate to the offence

16. Based on the findings outlined in the contested decision, the USG/DMSPC decided to impose on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice, and without termination indemnity, in accordance with staff rule 10.2(a)(viii).

17. In the annex to the contested decision, under Section D (Appropriate sanction), is appended a table listing the “proportionality factors” that the USG/DMSPC took into consideration in arriving at the sanction imposed on the Applicant. These included whether the Applicant’s actions were accidental, careless, reckless or deliberate; whether he was self-aware of the conduct; whether he made full and timely disclosure of the misconduct; whether he acted alone or with others; whether his conduct involves directing another individual in the misconduct; whether the misconduct was minor, technical, substantive or severe; whether the conduct involved a minor misstep or an honest mistake, or resulted from a lack of experience; whether the conduct involved a single act or numerous acts and/or a pattern of conduct; whether there was harm or damage to the Organization that could be tangible or intangible; whether the

Applicant had a history of disciplinary violations or other misconduct and sanctions; and whether there were mitigating factors present in the Applicant's employment history.

18. After reviewing all these "proportionality factors", the USG/DMSPC concluded that the Applicant's "deliberate and/or reckless conduct [amounted] to serious misconduct which essentially breaks the trust of the Organization". The USG/DMSPC noted that the Applicant engaged another staff member, IM, to create false invoices for the services of referees and "did not fully and timely disclose what he had done". These actions betrayed a "serious lapse of integrity and dishonesty" on the part of the Applicant and affected "the relationship of trust between him and the Organization that is essential for continued employment".

19. As aggravating factors, the USG/DMSPC considered the fact that the Applicant committed misconduct multiple times between 2014 and 2018; and that he exposed the Organization to a potential reputational risk. In terms of mitigating factors, the Applicant's "long service with the Organization" was taken into consideration.

20. In his application, the Applicant questions "the propriety of treating this case as one of serious misconduct" resulting in his separation from service and ending his "long and unblemished career a short time before reaching retirement age and [creating] a permanent mark on his long record of service". He argues that the sanction is disproportionate to the offence and that no explanation has been provided as to why the penalty of separation was chosen "in lieu of administrative action or a more lenient disciplinary action, especially given the Applicant's long service and proximity to retirement". The Applicant also avers that he had only "limited involvement" in the process of soliciting funds from the Member State, that he had "no role in how the money was managed" and that his "oversight was in not executing contracts in advance or securing contemporaneous signed receipts". He submits that his conduct presented "[n]o demonstrable risk to the Organization's reputation" and that there is "no demonstrable benefit to the Organization from this excessive, unjust and demotivating penalty". He considers the sanction to be a "vindictive and unnecessary action" that "fails the test of being balanced and proportional". He also asserts that "the Respondent has failed to properly apply mitigating factors in assessing the penalty", including the Applicant's 38-year career with the Organization and his "proximity to retirement (thus excluding any possibility of reoccurrence)" of the conduct.

21. The Respondent submits in the reply that the disciplinary measure imposed is “proportionate and not arbitrary”. He notes that while the Applicant’s long service was considered a mitigating factor, the Applicant’s proximity to retirement at the time of the contested decision “does not negate or alleviate the gravity of his offence”. The Respondent also argues that whether the Applicant gained financially from his actions is not relevant in light of “his heightened duty of care, as a Staff Day Committee member, to act with integrity in handling financial matters of the Staff Day”. Contrary to the Applicant’s assertion, the Respondent maintains that there was “potential reputational harm or damage to the Organization”, including loss of integrity, given that the Applicant’s conduct involved dealings with a United Nations Member State and individual referees external to the Organization. Finally, the Respondent avers that the Applicant “did not receive the harshest sanction, i.e., dismissal, which could have deprived him of various entitlements, including his after-service health insurance”.

22. The Appeals Tribunal has generally held that the Administration enjoys a “broad discretion in disciplinary matters; a discretion with which [the Appeals Tribunal] will not lightly interfere” (see *Ladu* 2019-UNAT-956, para. 40).

23. This discretion, however, is not unfettered. As the Appeals Tribunal stated in its seminal judgment in *Sanwidi* 2010-UNAT-084, at para. 40, “when judging the validity of the exercise of discretionary authority, ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. This means that the Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”. The Appeals Tribunal, however, underlined that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him” or otherwise “substitute its own decision for that of the Secretary-General” (see *Sanwidi*, para. 40). In this regard, “the Dispute Tribunal is not conducting a ‘merit-based review, but a judicial review’” explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision” (see *Sanwidi*, para. 42).

24. Specifically, regarding the imposition of a disciplinary sanction, the Tribunal notes that the Appeals Tribunal has held 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 in the circumstances of the case and for the actions and conduct of the staff member involved” (see, para. 45 of *Appellant* 2022-UNAT-1216). Also, whereas the “principle of proportionality requires that a disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct”, the Administration has “discretion to impose a disciplinary measure that it considers adequate to the circumstances of a case, and the Tribunal should not interfere with administrative discretion unless it is tainted by irrationality or is arbitrary” (see, para. 26 of *Specker* 2022-UNAT-1298).

25. The “ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline”, and when “the sanction of termination is chosen by the Administration”, the “requirement of proportionality asks whether termination is the appropriate and necessary sanction for the proven misconduct or whether some other alternative sanction will be more suitable in the circumstances”. “The question to be answered in the final analysis is whether the staff member’s conduct has led to the employment relationship (based on mutual trust and confidence) being seriously damaged so as to render its continuation intolerable”. (See, paras. 47-48 of *Appellant*).

26. The Tribunal has reviewed the proportionality analysis conducted by the USG/DMSPC and notes that the factors taken into consideration in this case mirror those set forth by the Appeals Tribunal in *Kennedy* 2021-UNAT-1184. In that case, the Appeals Tribunal 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” (*Kennedy* para. 68, citing *Rajan* 2017-UNAT-781, para. 48. See also, para. 72 of *AAD* 2022-UNAT-1267). It then went on to establish an elaborate list of factors for the Dispute Tribunal to consider in reviewing the proportionality of disciplinary sanctions. In this case, the USG/DMSPC carefully considered each of those factors in her analysis and provided “adequate reasons” for her conclusions.

27. Regarding the proportionality of the sanction and with reference to the Appeals Tribunal's cited jurisprudence, the Tribunal finds that the Administration did not exceed its authority when issuing the disciplinary measure against the Applicant. The Tribunal is satisfied that the Applicant's actions were in violation of the applicable staff regulations and rules and amounted to serious misconduct. Those actions seriously damaged the relationship of trust that must exist between a staff member and the Organization in order to maintain an employment relationship. In the absence of such a relationship of trust, the separation of the Applicant was a logical outcome.

28. At the same time, given the Applicant's 38 years of service with the Organization and the proximity of his mandatory retirement date ("thus excluding any possibility of reoccurrence" of the misconduct), the disciplinary measure of separation from service with compensation in lieu of notice, and without termination indemnity, in accordance with staff rule 10.2(a)(viii) may appear harsh. However, the Tribunal finds that the sanction was not irrational, arbitrary, or otherwise excessive compared to the nature and gravity of the offence, the Applicant's role and fiduciary duties, as well as the potential impact on the Organization's reputation and external relations.

29. Accordingly, the Tribunal finds that the sanction was proportionate to the offence.

Whether the staff member's due process rights were respected

30. The Applicant does not allege that he was treated unfairly or that his due process rights were violated at any stage during the disciplinary process. The record before the Tribunal shows that the Applicant's rights were fully respected at all stages of the investigation. The disciplinary process was initiated by a memorandum, dated 15 September 2021, notifying him of the allegations against him. He was informed that the allegations were based on an investigation report, dated 13 March 2020, prepared by the Office of Internal Oversight Services ("OIOS"), and he was provided with a copy of the report and the supporting documentation. The Applicant was given a reasonable amount of time to respond in writing to the allegations and was informed of his right to be represented by counsel of his own choosing. He was initially represented by counsel from the Office of Staff Legal Assistance ("OSLA") and subsequently selected a private lawyer. The Tribunal also granted him an extension of the deadline for the filing of his application.

31. Therefore, the Tribunal finds that the Applicant's due process rights were respected.

Conclusion

32. In view of the foregoing, the application is rejected.

(Signed)

Judge Joelle Adda

Dated this 26th day of December 2023

Entered in the Register on this 26th day of December 2023

(Signed)

Isaac Endeley, Registrar, New York