



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

THEUNENS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

George G. Irving

Counsel for the Respondent:

Jacob van de Velden, DAS/ALD/OHR, UN Secretariat
Maria Romanova, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Political Affairs Officer at the P-5 level with the United Nations Interim Force in Lebanon (“UNIFIL”). On 17 February 2023, he filed an application contesting the decision to impose on him the disciplinary measure of demotion of one grade with a three-year deferment of eligibility for consideration for promotion, pursuant to staff rule 10.2(a)(vii).

2. On 21 March 2023, the Respondent filed his reply seeking the dismissal of the application on the basis that it had no merit and that the contested decision was lawful. The Respondent further contended that the Applicant did not adduce evidence to support his claim for compensation.

3. The Tribunal held an oral hearing in the UNDT Courtroom in Nairobi from 11 to 15 September 2023.

4. On 6 October 2023, the parties submitted their closing submissions.

Facts

5. In June 2001, the Applicant, originally from Belgium, joined the United Nations as an Information Analyst at the P-2 level with the International Tribunal for the former Yugoslavia (“ICTY”).

6. On 27 April 2009, the Applicant became Chief of the Joint Military Analysis Centre (“JMAC”), at the P-5 level with UNIFIL. As Chief of the JMAC, the Applicant reported directly to the Force Commander and Head of Mission (“HoM/FC”) and managed 10 staff members working under his supervision.

7. In 2019, three members of the JMAC staff filed complaints against the Applicant alleging that, *inter alia*, he created an abusive, harassing and discriminatory work environment and abused his authority as Chief of the Unit.

8. On 31 July and 16 August 2019, the HoM/FC appointed a panel to investigate the allegations against the Applicant. As a result of the panel's investigation report, on 6 April 2020 the HoM/FC referred the case to the Office of Human Resources ("OHR") for appropriate action. Around the same time, the HoM/FC placed the Applicant on Administrative Leave With Pay ("ALWP"), which was extended several times.

9. On 15 July 2021, the Director of the Administrative Law Division, OHR, wrote to the Applicant and informed him that "[i]f established, [his] conduct would constitute a violation of Staff Regulation 1.2(a) and Staff Rules 1.2(c) and 1.2(f)." The Applicant was also requested to respond to the allegations against him within one month upon receipt of said allegations.

10. The Applicant was granted an extension of time to provide comments and did so on 16 September 2021.

11. On 13 January 2023, the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") wrote to the Applicant informing him that she had concluded that the allegations against him had been established and that his conduct "constituted harassment and abuse of authority as defined in ST/SGB/2008/5 ... and amounted to serious misconduct". In the same letter, the disciplinary sanction mentioned above was imposed. The Applicant challenged this decision in the instant application.

The Applicant's submissions

12. The Applicant asserts that the complaints against him were filed after the underperformance of Mr. Sabir, a P-4 Information Analyst under his supervision, who allegedly had a "tendency to interpret any performance feedback as merely the reflection of an interpersonal problem in which he was the victim". The Applicant says the blame for the inharmonious work environment within JMAC lies with his supervisees. He also claims that none of the appropriate UNIFIL officials assisted in managing the issue with Mr. Sabir.

13. The Applicant also alleges that, following the Ombudsperson's recommendations, he avoided interaction with Mr. El. Sibai and Ms. El Joubaili, two JMAC Language/Research Assistants, and that his designation of another JMAC staff member as their First Reporting Officer ("FRO") was a way to avoid facing their hostility.

14. The Applicant contests the conclusion of the investigation panel and submits that the panel "ignored the underlying problem of insubordination and found that the resulting difficult working environment was solely the fault of the Applicant". He argues that disagreements related to performance evaluation do not constitute harassment and that his conduct is related to performance management.

15. The Applicant further argues that the entire investigation was biased, incomplete, and based on just hearsay evidence and the testimony of the three complainants.

The Respondent's case

16. The Respondent claims that the facts are established by a preponderance of evidence, and that based on the credible evidence provided and corroborated by Mr. Sabir, Ms. El-Joubaili and Mr. El-Sibai as well as other JMAC staff members (Mr. Kerkanen, a Political Affairs Officer who later took over the Applicant's position, and Ms. Tsvinaria), the Applicant created an inharmonious work environment within JMAC. By the Applicant's own admission, there was an unpleasant working environment within JMAC.

17. Following a personal problem that he admitted having with Mr. Sabir, the Applicant abused his authority by inadequately using the performance evaluation process against this JMAC staff member. The Applicant engaged in harassment and abuse of authority in violation of staff regulations 1.2(a), staff rule 1.2(f) and secs. 1.2, 1.4 and 3.2 of ST/SGB/2008/5 (Prohibition of discrimination harassment including sexual harassment and abuse of authority).

18. Mr. Kerkkänen, Ms. El-Joubeili and Ms. Romanazzi (a JMAC Information Analyst at the time) were present when the Applicant raised his voice against Sgt. Riyam and this fact is established as an example of the inharmonious work environment created by the Applicant.

Consideration

Judicial review

19. It is well-settled case law, that

[j]udicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. In this context, the UNDT is “to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence.

20. Additionally, “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 *Mizyed* 2015-UNAT-550, para. 18, citing *Applicant* 2013-UNAT-302, para. 29, which in turn quotes *Molari* 2011-UNAT-164. See also, *Karkara* 2021-UNAT-1172, para.51; *Wakid*, 2022-UNAT-1194, para. 58).

21. Shortly before the hearing in this case, the Appeals Tribunal issued a lengthy opinion in another disciplinary case, *AAC* 2023-UNAT-1370, stating at para. 45 that art. 25 of the Rules of Procedure of the UNDT requires that:

[t]he judgment of the UNDT ... must provide a full, systematic analysis of the evidence that was presented to it during the hearing and should set out explicit reasons for accepting or rejecting the testimony of each witness who testified. Extraneous evidence that was not the subject of the testimony of a witness before the UNDT should only be admitted, and considered by it, if it is by agreement between the parties. It is impermissible for the UNDT in its judgment to have regard to any evidence that was not properly adduced in the hearing.

22. The Appeals Tribunal went on to state at para. 47 that:

[w]here key facts are disputed ... the UNDT in its judgment must make explicit findings pertaining to the credibility and reliability of the evidence and provide a clear indication of which disputed version it prefers and explain why. This will require the UNDT to set out its impression about the veracity of every witness who testified before it in the hearing. In doing that, the UNDT will need to discuss a variety of subsidiary factors.

Scope of the case

23. In this case, the alleged misconduct is harassment and abuse of authority generally spanning a period of 10 years from 2010 to 2020, while the Applicant was Chief of JMAC at UNIFIL. In this respect, the findings in the sanction letter read as follows:

1. [F]rom approximately 2010-2020, during your service as Chief, JMAC, you created an inharmonious work environment within JMAC, by *inter alia* raising your voice to Sgt. Riyam, targeting Mr. Sabir, introducing Ms. El-Joubaili and Mr. El-Sibai by their respective religions/sects and/or communities and intentionally not communicating with them;
2. [F]rom 2011-2020, following an interpersonal problem with Mr. Sabir, you improperly used your authority by targeting Mr. Sabir through an overly critical approach to feedback on work outputs and an inadequate use of the performance evaluation process;
3. [F]rom 2010-2014, you introduced [two JMAC Research Assistants] by their respective religions/sects and/or communities;
4. [S]ince 2016, because of an interpersonal conflict, you excluded Ms. El-Joubaili and Mr. El-Sibai within the work environment by intentionally not communicating with them and seeking to use Mr. Kerckanen "as a filter".

24. The Applicant argues that these were disagreements over work performance that cannot be considered harassment. He ascribes the entire case against him as stemming from his difficulties with managing Mr. Sabir, while the other complainants are Mr. Sabir's subordinates and unduly influenced by him.

25. The Respondent called four witnesses to support the allegations of misconduct: Ari Kerkkanen, Mohamad El-Sibai, Christine El-Joubeili, Abderrahim Sabir. The Applicant called two witnesses in rebuttal, Emiliano Vigorita, Laura Romanazzi, and testified himself. The testimony of these witnesses will be examined *seriatim*.¹

The Witnesses and Evidence

Ari Kerkkanen

26. Mr. Ari Kerkkanen testified that he joined JMAC on 4 March 2017 as an Information Analyst. He has since succeeded the Applicant as Chief of JMAC. When he arrived, he realized that there was a lot of tension in the office, which tension seemed to have a long history. He observed that the Applicant exhibited a very critical approach towards everyone causing the work environment to become toxic.

27. Mr. Kerkkanen observed that the Applicant was dictatorial, mean, degrading, humiliating, and belittling in his criticism of staff. In Mr. Kerkkanen's view, the toxic work environment at JMAC was "absolutely" caused by the Applicant. He said that this was the common understanding of everyone else in JMAC and was discussed a lot amongst the staff and analysts.

¹ This Tribunal is cognizant of the decision in *AAC* 2023-UNAT-1370, and has applied it in reaching this judgment. The *AAC* judicial panel acknowledged that "[w]e have digressed at length in this Judgment to make these remarks (*obiter dicta*) about the UNDT's practice of fact-finding" (*AAC* at para. 62). However, it does not indicate what parts are *obiter dicta* and what are *ratio decidendi*. This Tribunal has not expressly discussed in this judgment all of the various factors that were used in analysing the credibility of each witness since it views that discussion in *AAC* to be *obiter dicta*. However, to be clear for purposes of appellate review, the Tribunal **did** consider all of those factors (in *AAC* para. 47) and other related factors, such as: viii) whether the witness has a motive not to tell the truth; ix) whether the witness has an interest in the outcome of the case; x) whether the witness' testimony was consistent; xi) whether the witness' testimony was differed from statements made by the witness on any previous occasion; xii) the intelligence and apparent understanding of the witness; xiii) whether the witness appeared to understand the questions clearly and answer them directly; xiv) whether the witness had any relationship with the administration or the applicant. *See generally*, pattern jury instructions on witness consideration/credibility from the U.S. 3rd, 5th, 6th, 7th, and 11th Circuits and the states of Maryland, Virginia, Nevada, Washington, and North Carolina. *See also*, references to methodologies, procedures, and findings of national and other jurisdictions in (*AAC* at paras. 42 and 63, and p. 15, footnote 11).

28. Mr. Kerkkänen then addressed the specifics of the Applicant's treatment of various JMAC staff, including the complainants.

29. Mr. Kerkkänen said that, within a few weeks after his arrival, he witnessed the Applicant's "outbursts" at Sgt. Riyam, shouting and dismissing Sgt. Riyam. Mr. Kerkkänen said this happened repeatedly over months and "it was painful to watch". As a result, he observed that Sgt. Riyam "was in a state of constant fear" when in the JMAC office. He said that the psychological impact on Sgt. Riyam "was really something extraordinary." Mr. Kerkkänen tried to support Sgt. Riyam and help him until Sgt. Riyam's assignment to JMAC ended.

30. Mr. Kerkkänen raised this treatment of Sgt. Riyam with the Applicant, who responded that Sgt. Riyam had inadequate communication/English language skills. Mr. Kerkkänen felt that Sgt. Riyam was able to communicate in English, even if not perfectly. He also said that any imperfection did not give the Applicant reason to behave in the way that he did towards Sgt. Riyam.

31. Mr. Kerkkänen's testimony then addressed the Applicant's treatment of national staff members. He observed that the national staff kept their distance from the Applicant, communicating mostly through emails, which he perceived to be the result of many years of tension. There was a "very obvious" and complete disconnect between the Applicant and these national staff members.

32. Originally, Mr. Sabir was the FRO for these national staff members but at some point, the Applicant made Mr. Kerkkänen their FRO. Mr. Kerkkänen felt that there was no reason to change the FRO, that the role was imposed on him, and that he was being used as "a filter" between the Applicant and the national staff.

33. The Applicant basically told Mr. Kerkkänen that if he would not take the role then someone else in the team must take that responsibility. Mr. Kerkkänen did not want to put this pressure on anyone else so, against his will, he accepted the task of FRO for the national staff members.

34. Gradually, the Applicant started to build psychological pressure on Mr. Kerkkänen “exactly in the same way [he] understood [the Applicant] had done through the previous FRO, Mr. Sabir”. The Applicant was consistently and continuously critical of the national staff’s performance although they were meeting their performance expectations.

35. This caused the national staff to be afraid, depressed, and need external support. One reflection of this was that there was a tendency by both the Applicant and the national staff to be disconnected because of this very toxic situation/environment. According to Mr. Kerkkänen, this was “no way for a normal office to work”, and it was reflected in the way the staff were working. After so many years of this behaviour it was difficult for them to find motivation to work.

36. Next, Mr. Kerkkänen testified about the Applicant’s treatment of Mr. Sabir, another Information Analyst in JMAC at the time. As described above, the Applicant took away Mr. Sabir’s supervisory role, although Mr. Kerkkänen saw no problems with the existing supervisory relationship. In his view “it was one more way to target Mr. Sabir.” Mr. Kerkkänen’s perception was that the Applicant’s “goal in the end was to get Mr. Sabir dismissed from the team”.

37. The Applicant proposed training for Mr. Sabir that Mr. Kerkkänen felt was “out of place” because it was just basic report writing training and had nothing much to do with the analytical reports that JMAC produced. “So my feeling was that trying to get him to take this training option was just one thing to tick the box” in order to claim insufficient performance by Mr. Sabir. Mr. Kerkkänen felt that this training would not remedy the issues created by the toxic work environment at JMAC.

38. When the Appellant created a performance improvement plan for Mr. Sabir, Mr. Kerkkänen “had a feeling that the Applicant was building one more case for targeting Mr. Sabir on, as the Applicant said, insufficient or under performance.” Mr. Kerkkänen was aware that there had been two prior cases in which Mr. Sabir

appealed his performance evaluation and that the rebuttal panels found Mr. Sabir was meeting performance requirements.

39. Mr. Kerckanen next testified to the Applicant's review and feedback on reports drafted by staff. He said that, when he got back the Applicant's comments on the first report he had submitted, "[he] was honestly shocked by all the comments which made [him] feel that [he] had no clue about the way to draft the issues at hand." Mr. Kerckanen tried to work on the same report, to improve and revise it, but the Applicant's critical comments were "repeated with regards to each and every draft".

40. There was one report that Mr. Kerckanen worked eight months on to get through the Applicant's review. "It was to some extent humiliating. I felt strongly that there is something wrong and not because of the way I've drafted these things. The problem is somewhere else. I mean getting repeatedly critical feedback and not getting drafts through".

41. Mr. Kerckanen said that he does not find it difficult to deal with criticism. He testified that this "is partly because of [his] academic background. [He has] a Ph.D. and criticism is always part and parcel of writing and research. Constructive criticism is what produces in the end better results. [But] it's the way that criticism is given. [The Applicant] was excessively, excessively particular with the style of drafts and of the language". And on the substance, Mr. Kerckanen felt that the Applicant's views were not substantiated by data information and that the Applicant was trying to get his own views through in the assessment of the final product.

42. According to Mr. Kerckanen, "each and every analyst faced exactly the same situation, exactly the same, and this was something that we were discussing a lot among the analysts. I would say, I mean to me, the extent he did so was really abusing his position as Chief of JMAC towards the team. It went beyond the normal constructive structural criticism that the peer review process usually involves".

43. At some point, Mr. Kerkkanen observed a change in the Applicant's behaviour. "I feel that he was trying to tailor his behavior. I don't know whether there were warnings from the mission leadership - there could have been. So he was trying to perhaps tailor his behavior, but in the end unsuccessful because again and again these situations in relation to work performance, attitude and related questions were raised by him. So it did not change, this toxic atmosphere in the office".

44. Mr. Kerkkanen testified that "there was a degree of difference in the way [the Applicant] behaved towards the national and international staff. It was a state of everyday affairs in JMAC". There were a few incidents in which the national staff were talking in their office, and the Applicant got angry, raising his voice at them to keep quiet. This was different than if the international staff were talking in loud voices in the office.

45. After the Applicant designated Mr. Kerkkanen to supervise the national staff, it became clear that the Applicant's communication with national staff members was through emails to Mr. Kerkkanen and he was then expected to raise these issues with them. He testified that

there was almost no direct communication existing, not really between [the Applicant] and the national staff. The pressure from the Applicant on them, through me, was just piling up, it was increasing. It certainly didn't help to create a better working environment. I had many discussions with the national staff where we went through the procedures to find the best possible way to meet some of those requirements which were, in my view, unreasonable.

46. According to Mr. Kerkkanen, trying to create a safer place in terms of work environment for everyone "was very, very difficult".

47. Mr. Kerkkanen stated that "I would like to highlight the atmosphere of fear in the office that was caused by the Applicant's behavior and that was felt by everyone across the board and not only Mr. Sabir or national staff, it was felt by me and by my colleagues".

48. Asked about the working environment since the Applicant is gone, he said “of course, one can say that it’s biased [since Mr. Kerkkanen is now the Chief], but the colleagues and the team [have] a number of times said that there is a huge change in comparison to previous times”.

49. On cross-examination, Mr. Kerkkanen clarified that, while he personally felt tension in the office when he started, his conclusion that the tension was long standing was based on conversations with staff members including Mr. Sabir, Mrs. El-Joubeili, Mr. El-Sibai, and the international staff member Team Assistant. Almost all of the other team members were newcomers.

50. Mr. Kerkkanen stated that, prior to joining JMAC, he had experience in a similar setting as Head of the Strategic Planning Reporting department of the European Union police operation in Afghanistan, which was basically the equivalent post to Chief of JMAC. He joined JMAC as an Information Analyst at the P-4 level, and now is Chief of JMAC as a P-5. The recruitment to replace the Applicant was published in the Spring of 2023 and was not from a roster, although Mr. Kerkkanen was on the P-5 roster for Senior Information Analyst.

51. He reiterated that his reluctance to assume supervisory responsibilities for the two national staff Research Assistants was not because of the responsibility per se, since he had similar supervisory experience for years before in different environments. His hesitancy was because he did not see the reason for the change in supervisors and felt that it was part of the Applicant’s effort to target Mr. Sabir, who previously held that role.

52. Mr. Kerkkanen had observed normal discussions between Mr. Sabir and the Research Assistants from his arrival until assuming the supervisory role. He described them as “[n]othing extraordinary”, just work-related conversations every day and informal conversations similar to those in every work environment.

53. Mr. Kerkkänen reported his concerns about the working environment to the Deputy Head of Mission, Mr. Imran Riza. Mr. Riza said that he was fully aware of the situation, “referring to this ongoing situation for years”, and he promised to support the team in whatever way they needed support.

54. The Applicant gave Mr. Kerkkänen three performance ratings over the time he was there. The first two were “exceeding expectations” and the last one was “meeting expectations.” Mr. Kerkkänen was surprised about the downgrade because “I certainly did not change the way I was talking and [drafting] reports and doing my responsibilities in the team”.

55. Mr. Kerkkänen experienced direct harassment from the Applicant in the continuous criticism of his drafts that “went beyond what is constructive criticism ... and something that was not supposed to happen in any working environment”. According to him, sometimes the Applicant could be dictatorial in the way he used his authority, the way he talked to people, the requirements he had for people, maintaining that only his opinion counts or is correct, and the way he was exercising his authority.

56. Mr. Kerkkänen said that the Applicant’s treatment of Sgt. Riyam was improper because his criticism of Sgt. Riyam’s language skills was unfounded and the Applicant used a loud, insulting, very aggressive voice. Others in the office also heard the Applicant’s loud voice.

57. Mr. Kerkkänen had discussed his concerns with the Applicant:

I don’t recall the exact words I was using, but I recall I told him this is not acceptable, he can’t justify his behavior towards his subordinates. Not only his written criticism on the drafts [but also] the way he was talking and addressing people, the demeanour, the way he was creating fear in the team. I remember that we had quite a long discussion in my office about this.

58. The Tribunal assesses Mr. Kerckanen to be a very credible witness. His candour and demeanour were those of an intelligent witness who was trying to tell the truth about what he observed. Mr. Kerckanen exhibited no bias against the Applicant. Indeed, according to the Applicant, he and Mr. Kerckanen had worked together previously at ICTY, had been on missions and searched archives together, had often commuted to work at JMAC together, and he asked Mr. Kerckanen to assume supervision over the complainants. Mr. Kerckanen's testimony was not contradicted by other testimony nor was any of it improbable. His testimony was cogent and of high calibre, integrity, and independence.

59. In his final submission, the Applicant argues only two things to question Mr. Kerckanen's testimony: that he allegedly "had his own behavioural issues, in particular towards the military Deputy Chiefs of JMAC, ... [and] following the sanction of demotion against the Applicant, has taken over the latter's position as Chief JMAC" (Applicant's Closing Statement, para. 4).

60. There is no evidence of misbehaviour by Mr. Kerckanen and certainly nothing indicating that his conduct calls into question his veracity. The Tribunal also finds that Mr. Kerckanen's credibility is not impacted by the fact that he was ultimately selected to replace the Applicant. To the extent that the Applicant implies that Mr. Kerckanen had a motive not to tell the truth, that is contradicted by his own testimony that he was surprised by Mr. Kerckanen's lack of obvious career ambition (in not wanting to assume supervision of the national staff). In assessing Mr. Kerckanen's testimony, the Tribunal has no doubts about its veracity.

Mohamad El-Sibai

61. The next witness was Mohamad El-Sibai, one of the complainants. He began working at JMAC on 21 May 2008, a year before the Applicant arrived as Chief, and he is currently the most senior staff member in the Unit. He is a Research Assistant and is a national staff member.

62. According to Mr. El-Sibai, the work environment at JMAC was healthy before the Applicant arrived, and at that time there was more interaction between the section Chief and the staff, particularly the national staff. When the Applicant joined as JMAC Chief, he avoided talking to the national staff and rarely came to their office to discuss issues as the previous section Chiefs had done. Mr. El-Sibai said that “during ten years of work with Mr. Theunens, the total I can recall ... the visits to ask for something were like around 20 minutes in ten years. I don’t know why the reason he avoided talking to us ... I am still wondering until now”.

63. Under the Applicant, the atmosphere was “hell” in the view of Mr. El-Sibai. For some unknown reason there was always this division—two camps, the Arab speakers and the international colleagues. The Applicant preferred to deal with the international colleagues more “than dealing with us.” And “there was something toxic in the atmosphere. It was not supposed to be [in] a UN atmosphere. It was toxic; this is what I meant by hell”.

64. The Applicant’s behavior was very intimidating, “as if he was still in the army or as if we were [in] Guantanamo or prison ... It was not normal ... Very intolerant, intolerable situation, always under pressure, always tension, always our international staff members were always afraid of making him angry”.

65. According to Mr. El-Sibai,

during the admin meeting that took place every Monday, ... he was imposing his authority on everyone during the meeting by knocking this person, intimidating that person, asking that person not to talk ... This is very intolerable and that was not very healthy. I was wondering, actually I am still wondering, why [the Applicant] was still working with UN and hadn’t been removed from that because he was not fit to that post, especially doesn’t have any skills to deal with the team.

66. The Applicant was not treating the national staff as human beings:

Human beings are social creatures ... His office is only like one or two meters away from our office, and [he] never talks to us, never addresses us, never asks us anything. If he wants anything from us, he used to email our supervisor. Our supervisor used to forward that request to us and we're supposed to reply to our supervisor, who also in turn, would forward our reply. That was not normal.

67. According to Mr. El-Sabai, if there was an office gathering, and the Applicant ended up sitting next to a national staff member, he would talk with everyone but them. "We felt isolated ... He was chatting with international staff, joking with them even".

68. Mr. El-Sibai said that the Applicant would chastise national staff if they were talking and their voices got loud but would not say anything if the international staff talked loudly or laughed loudly. "There was a difference in his treatment to us and to other staff members, mainly the international staff members".

69. Mr. El-Sibai also felt that the Applicant influenced the international staff to treat the national staff differently. "When new staff or analysts arrived, they used to come talk to us about the country and what was happening in the country. But after a short time, the new person never showed up again ... as if someone told them not to deal with us or to keep it formal. We were being isolated".

70. When there were guests at JMAC, the Applicant would introduce the guests to each staff member, but "whenever he came to us, instead of introducing us as Mohamad and Christine, like national staff members, Research Assistants, he used to introduce us as 'Mohamad the Muslim and Christine the Christian'".

71. Mr. El-Sibai said:

his deputies used to do the same things later on, until we told them to stop because we are supposed to be introduced as staff members by our names and titles, not by our respective religions or sects. This is very offending actually ... This is not, we're [not] supposed to be dealing or categorizing people by their religion or by their race or by their color,

or by their age. This is totally against UN core values, and he was breaking those values. It only happened with us.

72. The practice of introducing them by reference to their religion only stopped after they protested.

73. According to Mr. El-Sibai, Ms. Laura Romanazzi, the national staff's supervisor at that time, once came to them and said:

Mr. Theunens wanted us, like Christine and myself, to report everything we talk about with Mr. Sabir during the week and include all that in the weekly report that we submit on Friday. Which I found very strange. It was kind of spying or ... being told to become informers on behalf of [the Applicant] because he had problems with Mr. Sabir at that time and I think he was going after him.

74. Mr. El-Sibai described what happened next:

We refused that because I found it was ... not respectful and it was not ethical because we're not going to spy on our colleague and then report it to our chief. ... I did tell my supervisor that it was not acceptable ... She just said nothing, but she came back several times later. But we kept on refusing. Then [the Applicant] himself came and tried to intimidate us. He closed the door and he started threatening us in case we do not comply with the request, he would take action and started yelling at me and at my colleague. My colleague was very panicked and told him to lower his voice. He was surprised that someone was telling him to lower his voice, and he kept on speaking in a very loud, intimidating voice that he would take action. Then he suddenly left. He stormed our office then he left quickly, 'tapping' very loudly as if he was expressing his anger. Then he went to his office.

and Ms. El-Joubaili did not experience any immediate consequences "because I think he knew that ... he was requesting something illegal, and since we refused, he probably reconsidered his threat, he was not doing the right decision. That's why I think he did not take any [direct] action".

75. However, after that incident, Mr. El-Sibai's performance evaluation "was reduced by one step, instead of exceeding performance ... it was meeting performance". He said that "I wasn't that surprised because I think he was trying to take ... revenge for my colleague and me not accepting what he wanted us to do ... I made a remark [on e-PAS] that it was a kind of retaliation ... against us because we refused to break the law and the core values and the regulations".

76. Mr. El-Sibai also saw the Applicant treat other staff members inappropriately. Doris Schwalm, was a P-3 Analyst from Germany who was very competent, very spontaneous, and very sincere. However, the Applicant was always rebuking her and scolding her. "As soon as she opened her mouth to say something, Mr. Theunens shut her up, tried to tell her to stop talking and tried to scold her ... to the extent that she always was afraid to speak during admin meetings". He would also call her to his office and yell at her. Mr. El-Sibai said that eventually Ms. Schwalm left JMAC.

77. Mr. El-Sibai also observed that Mr. Sabir "suffered a lot" from the Applicant and that Sgt. Riyam, "a military admin assistant, ... had his life ruined because of Mr. Theunens". He said that Sgt. Riyam's English was "not very good, he was average in English", but "I used to hear [the Applicant] yelling and scolding Mr. Riyam. Even during the admin meetings, [the Applicant] used to scold him".

78. Sgt. Riyam would come to their office and cry in front of them. "He was suffering, he was crying, he used to say that he was humiliated by the treatment of [the Applicant] against him, and we didn't know why he was treated that way ... He ill-treated this person".

79. In cross-examination, Mr. El-Sibai said he that could not remember the exact date when the Applicant introduced him and Ms. El-Jubeili by their religion. He agreed that when one of the Applicant's deputies repeated that form of introduction, "we asked the French deputy not to repeat it and it was never repeated".

80. Mr. El-Sibai did not discuss this defining-people-by-their-religions issue with the Applicant because “we hardly had good relations with him. There was no direct contact with him because, as I said, we were feeling isolated”.

81. Mr. El-Sibai said he waited until 2019 to complain about the Applicant because the Head of Conduct and Discipline Section at UNIFIL was a friend of the Applicant. When other colleagues had tried to file complaints, the Head of the Conduct and Discipline Section discouraged them, “which led other colleagues to disregard the filing of complaints because they knew that, at the end of the day, they would not reach any positive results until the departure of this man”. However, when a new Head of the Conduct and Discipline Section arrived, “we met with our staff counsellor” to complain.

82. Mr. El-Sibai confirmed that “you should be unbiased, neutral, and should not differentiate between anyone” at UNIFIL. “This is what UN regulations stipulate”.

83. He acknowledged that in one of his performance reports, he wrote that “I would like to thank my supervisors ... a very valued experience as a JMAC staff member”. According to him “I was trying to be polite ... it was a courtesy”.

84. He said that the Applicant did not tell him that he should not speak in Arabic in the office. “He said that to my colleague, to Abderrahim [Sabir]. Sabir told me that”.

85. According to Mr. El-Sibai, the Applicant misused his authority to prevent the reclassification of “our posts”. “The reclassification of post is supposed to be done, initiated by the staff member, submitted to the section Chief who is supposed to follow it up with HR. For several years we kept on requesting re-classification. He always used to give us various reasons that it was not happening. But suddenly when we raised this to the DMS [Director of Mission Support] ... things went differently”.

86. Mr. El-Sibai denied that “a lot of [his] frustration was really about not being promoted.” He said that “the Applicant did not want national staff to improve or to get higher positions in JMAC”. For example, the post of Doris Schwalm was abolished, and after she departed, her post was nationalized. This was not announced for three years, and no reason was given for not having announced it:

He kept it in his drawer for three years. He kept on ignoring our request for several years. Then suddenly he requested that this national post be re-internationalized again. He was abusing the law just to get rid of Doris and abusing us as well in this regard by refusing or ignoring our request to inquire about what happened to our request to reclassify our post. We went to DMS, in 2018 I think, before we filed out complaint.

87. With respect to the complaint, Mr. El-Sibai said that he and Ms. El-Joubeili went to their Staff Counsellor first, then to the new Conduct and Discipline Officer “who did the procedures.” They did not discuss it with Mr. Sabir before filing it.

88. Their complaint also raised difficulties they had with their direct supervisor, Ms. Laura Romanazzi:

Our colleague Abderrahim was wondering why Laura was accepting being pressured by Mr. Theunens, [and] she told Abderrahim that she didn’t want to lose her job because in Italy there are no jobs except hairdressers. And she did not want to lose her job and work as a hairdresser in Italy. This is what I said. I did not call her a hairdresser ... I did not disrespect her.

89. Mr. El-Sibai reiterated that, regarding the initial Head of the Conduct and Discipline Section, it was “well known in UNIFIL that he was very discouraging. Everyone who filed a complaint, he was discouraging them from continuing these complaints.” So Mr. El-Sibai never went to file a complaint until he left. Then he went to the new Head, “who was from Senegal, Mrs. Adama, I believe ... Once she arrived, I went there with my colleague and discussed this complaint with her”.

90. He said that previously they tried to resolve their difficulties informally with an Ombudsman in 2013 or 2014, “but she said to us that [it is] better for us to go and look for another job. Instead of helping us or mediating with them, she told us to go and look for another job. That was surprising for us to hear”.

91. Then in 2015 they raised concerns about the Applicant’s behaviour with the Staff Counsellor. “We used to go there several times to talk about this case with the staff counsellor. I think she made some mediation between us and Mr. Theunens at that time without any results”.

92. When asked by Applicant’s Counsel if he had ever recorded a team meeting, Mr. El-Sibai said that he had not. However, “I made a recording of a meeting with Mr. Theunens because he also was in his turn recording the same meeting. I saw his telephone was on the edge of his desk next to where I was sitting, and when he realized I saw him, he hid it”.

93. It is clear to the Tribunal that Mr. El-Sibai dislikes the Applicant. However, the evidence indicates that this dislike arose from the conduct for which the Applicant was sanctioned. The Tribunal got a clear sense from the testimony of Mr. El-Sibai that he was relieved to finally have an opportunity to describe the tremendous pressure that the Applicant placed on him over the years. However, Mr. El-Sibai did not demonize the Applicant or endorse allegations from others if he did not personally know about them. His testimony seemed probable, based on all the evidence, and it was consistent with the testimony of several other credible witnesses, as well as some of the admissions made by the Applicant. As a result, the Tribunal concludes that Mr. El-Sibai was a reliable witness.

Christine El-Joubeli

94. The next witness was Christine El-Joubeli another of the complainants. She joined UNIFIL in 2007 as a language assistant and in December 2010 moved to JMAC as an Analyst. She filed her complaint in July 2019 and was interviewed on 17 August 2019.

95. Ms. El-Joubaili lived through a war and lost her father when she was six years old, but she says

I am, as a result, a resilient person. I am stressing but it's not at all about the trauma of my childhood. It's mainly the toxic and unhealthy environment in which we had to work. We had to cope as much as possible and remain sane at the same time, with all the negativity and the toxicity of the situations.

96. According to Ms. El-Joubaili, going to the office “felt like going to a battlefield every single day.” It was “unbearable” and “surely” caused by the Applicant’s behavior. The treatment that she experienced from prior supervisors when she worked as a Language Assistant was “first of all communication; second, respect; third, cooperation and coordination. We were part of a team ... When I came to JMAC, it was all the contrary”.

97. Ms. El-Joubaili said that “a good leader would have tried to establish respect ... communication and cooperation, which was not the case at all. There was complete discrimination between ... the Lebanese or Arab-speaking colleagues and the international colleagues from other nationalities”.

98. According to her,

[t]here was continuous discrimination over the language issue [whether they could speak Arabic when they were amongst themselves], disrespect to our presence, being schooled and reprimanded as soon as he can hear our voice. This never happened to anybody else, except when he used to hear us in Arabic. Always reminding us that we should speak English ... Other colleagues from other departments who are Lebanese used to come and visit us but then stopped when they saw his reactions.

99. Yet, she said the Applicant would speak in German to a German colleague in the office, in front of others who didn't speak German. “He does not apply what he wants to preach for the others. He just gives orders for others to follow, but he does not apply them to himself”. There were also two colleagues who spoke together in Spanish, but

“we never heard him coming to their office. It was singling us out, only us, the Arab-speaking staff”.

100. According to Ms. El-Joubeili, “discrimination—I can give you hundreds of examples”.

101. In the brainstorming meetings that JMAC used to organize, Ms. El-Joubeili said that “we were always told from the beginning to leave the session once we were done with talking [about] the administrative issues. We were never included in the work of JMAC, never had the chance to participate in any of the meetings”. When the Applicant was absent, JMAC Deputies used to invite the national staff to meetings. However, when the Applicant learned they were being invited, he scolded the Deputies for this so the national staff were never invited again.

102. Ms. El-Joubeili recalled one time their supervisor invited them to participate in a UNIFIL inter-department meeting. However, the Applicant “sent him an email asking the supervisor if he had emailed the other section Chiefs asking whether the presence of two Lebanese nationals in the meeting would bother them. There were other Lebanese national staff participating in the meeting and there was no reason for asking such a question”.

103. According to Ms. El-Joubeili,

the Applicant “was always accusing us of being partial because we are Lebanese. How can you judge people from their nationality, whether they are partial or impartial, whether they are competent or incompetent? Nationality has nothing to do with the personality of an individual. We had been there for years. He had never taken the time—there was zero trust, zero consideration for our competency or even our presence in itself.” Ms. El-Joubeili also said that the Applicant would not accept from them a point of view that differed from his own.

104. She described an occasion when their supervisor, Laura Romanazzi, asked her and Mr. El-Sibai to insert in their weekly reports what they were talking about with their colleague Mr. Sabir. They refused because the report is about political and security incidents happening in the country and their discussions with a colleague had nothing to do with the content of that document. They felt that it was like spying on their colleague and their ethics would not allow them to do what was being asked.

105. The supervisor asked them at least twice to do this, and the third time the Applicant accompanied her. According to Ms. El-Joubaili, he was angry, and “kind of threatened us, telling us that we were to include in our report what he had been requesting us to do via our supervisor”. They repeated their refusal to abide by this request, which had nothing to do with the nature of their job. “So he lowered our evaluation in our e-[PAS] as a retaliatory act against our disobedience of what he wanted us to do—in two words, ‘spying on’ our colleague so he could use this against him. This is one example. There are lots, lots, lots more”.

106. Ms. El-Joubaili described another instance of abuse of authority involving “an Indonesian military gentleman, Riyam”, who was working at JMAC. “This gentleman had issues expressing himself fluently in English, so the Applicant was always reprimanding him, scolding him, whether alone or in front of people. We were always hearing him shouting at him”. She said that the Applicant shouted at Sgt. Riyam “recurrently” both in his office and in front of the entire staff.

107. Ms. El-Joubaili said that they raised their concern about the Applicant’s behaviour with him. “We had this meeting and we told him everything that is going wrong from day one. He just listened but he didn’t do anything about it”.

108. Prior to that, they had gone through a long process starting with the Ombudsman and,

this lady I remember told us, well what I would advise you is to change your job ... We went to the DMS more than once and then also we talked about this situation with the ethics team that came from New York ... We gave her a written complaint and she promised that she would discuss it with the force commander at that time. But then we didn't have any follow up on the case. Nothing has been done and up until we could file a case with the Conduct and Discipline, with the help of Miss Adama, who really was the right person at the right post, who took this matter into consideration and followed up on it until the end. So what we tried, all the means that were given to us either via UNIFIL or talking personally to [the Applicant], trying to convey all our sufferings and what we've been through from his side, nothing had been done."

109. According to Ms. El-Joubeili, the Applicant changed his behaviour after they filed their official complaint against him. "He tried to play the nice person, ... but it was only momentarily". She said that the Applicant began sending emails directly to them, but only when our supervisor was absent. After a while "he stopped again. He went back to the old mechanism ... He considered us ... lower grade citizens not at the same level of his intelligence or competency".

110. Ms. El-Joubeili testified that,

[the Applicant] always presented us as 'Christine the Christian and Mohamad the Muslim', as if we did not have any entity or not exist beyond our religions, which is a personal issue that has nothing to do with introducing a person or the competence of a person ... He went on this for several years until we complained once because he actually transferred that [practice] indirectly to the Deputies who used also to, I mean not all of them of course, but one specific deputy also presented as 'Christine the Christian and Mohamad the Muslim'. When we told him that we object to this introduction, [the Deputy] stopped actually. He probably told Mr. Theunens at that time. So he took it into consideration later on. This was recurrent from the day one that I joined JMAC.

111. She said that this practice made her feel disrespected and “that we were not existing for him as a person, competent, professional UNIFIL staff. He only saw our appearance, religion, not our competency. ... It was really degrading”. She says that she never witnessed this situation [of the Applicant referring to people by their religion] with anyone other than her and Mr. El-Sibai.

112. Ms. El-Joubeili testified that,

it was a nightmare, to summarize those awful years spent in JMAC. It was a nightmare. I had to cope by following psycho-therapy, which helped me stay strong and not fall into the trap of the harassment, the abuse of authority, the intimidation, discrimination, all those awful bullying ... It was really toxic and unhealthy. It wasn't at all the environment I was expecting in an international organization as the United Nations ... Nine years we paid from our health-mental health, physical health. Nine years were too long, way too long really.

113. She said:

I am strong and I was able to overcome lots of traumas. It is so enraging, so revolting to have to go through all this for that long without being heard, except when we encountered such a professional person, like for example, Miss Adama who believed in our case and who took us into consideration and heard our sufferings. I know these are the worst years of my life. Nine years in JMAC with Mr. T[h]eunens are the worst years of my life, and I can assure you that I haven't had a serene life.”

114. According to her, since the Applicant left, it was “a big relief because we are working in a normal environment where you are respected; ... you are part of the team. Relaxed, happy to come to work. There is no comparison”.

115. On cross-examination, Ms. El-Joubeili was asked why she applied to stay in JMAC under the Applicant when her post was reclassified if the working atmosphere was so terrible. She answered “well, you know, sir, we need our job. If I had the opportunity to leave earlier for any other job, I would have done it ... I had no other choice”. She reiterated that when they went to the Ombudsman, they were advised to find another job. “I never stopped working for another job”.

116. Asked if she had “an entitlement to participate in every meeting that took place in the office”, Ms. El-Joubeili responded:

well, at least at the meeting where there is a brainstorming about what is happening in the country ... I am a Lebanese person. Who knows better my country. At least ... it would be enriching for other participants to hear what I have to say about my own country, especially that we are working under this mandate concerning Lebanon, our country and in the presence of other Lebanese colleagues. And I was working as a research assistant.

117. She also said that “hearing [in the meetings] what is happening in the area would help me in my research and, in the request[s] of the analyst or whoever would request from JMAC, it would give me a better idea about their needs”.

118. Ms. El-Joubeili was asked again about the request to report on their conversations with Mr. Sabir, and she said that Ms. Romanazzi, who was then their supervisor, said that “this is the Chief’s request.” Ms Romanazzi also did not have a reasonable answer when they asked her why they had to include things in their reports that have nothing to do with the report and why the request was specifically addressed to their conversations with Mr. Sabir and not with other colleagues.

119. When Applicant’s counsel tried to characterize the subsequently down-graded performance evaluation as merely the Applicant agreeing with Ms. Romanazzi’s report, Ms. El-Joubeili testified that “Ms. Romanazzi’s [performance evaluation] report was mirroring the point of view of Mr. Theunens, who had the last word in all this. Mr. Theunens had impact on Ms. Romanazzi at the time she was our supervisor”.

120. Ms. El-Joubeili affirmed that the Applicant’s direction was “[you are] not supposed to speak in Arabic in here. Here we speak English.” According to her, “it was not about talking loud, but it was specifically about talking in Arabic”.

121. When asked about the Applicant shouting at Sgt. Riyam regarding his English, Ms. El-Joubeili said that she witnessed this treatment of Sgt. Riyam during a meeting where all JMAC staff were present. She thought that Sgt. Riyam spoke “not an excellent English, but in English that one can understand”.

122. As to her claim that the Applicant’s actions were racially motivated, she pointed to the issue of their reclassification efforts and the vacancy when Ms. Schwalm’s post was nationalized:

So [the Applicant] accepted the nationalization of the post, but when we, when Mohamad, wanted to apply for the NPO post, [the Applicant] did his utmost to change... He fought against this NPO post and asked for re-internationalizing the post. He did not allow us to apply for the NPO because for him we cannot be impartial as we are Lebanese. Because we are Lebanese, we are not impartial. He doesn’t look beyond our nationality to evaluate the partiality or our impartiality ... I remember very well asking him to send me any policies that would say that the Lebanese national is not supposed to be on an NPO post.

123. However, Ms. El-Joubeili made clear that the complaint was not all about promotion:

Not at all, sir ... It started way before the NPO issue. Second, with all that we have been saying that we witnessed, we gave proof on when we have seen. If all this in not enough, when it began way before the NPO issue ... Promotion is kind of abuse of authority use by Mr. Theunens to keep us shut ... You know very well that it is not the promotion. Promotion was used, ... you are bringing it up just to try to squeeze me. It has nothing to do with the complaint of harassment, or abuse of authority, of intimidation. Discrimination has nothing to do with the promotion.

124. Here again, the Tribunal determines that Ms. El-Joubeili clearly does not like the Applicant, but that this dislike is based on his conduct at issue in this case. As with Mr. El-Sibai, Ms. El-Joubeili’s testimony appeared to the Tribunal as cathartic for her, finally having an opportunity to describe the abuse that she suffered from the Applicant over several years. She seemed to be candid in her testimony and her performance as a

witness was both cogent and consistent with other evidence. Thus, her testimony seemed probable, based on all of the evidence. The Tribunal finds her to be credible.

Aberrahim Sabir

125. The third witness was Mr. Aberrahim Sabir, Information Analyst (P-4) at JMAC and a complainant in the case. He started with the office in 2010, when the Applicant was Chief of JMAC. In 2012 he left for a P-5 assignment as Advisor to the Secretary-General's Special Envoy in Yemen, returning to JMAC in 2015. He is originally from Morocco and speaks French, Arabic and English.

126. While in JMAC for the first time, Mr. Sabir's performance evaluations were "Meets Expectations". In Yemen, they were "Exceeds Expectations". When he returned to JMAC, the Applicant rated him as "Partially Meets Expectations", and according to Mr. Sabir, "I had to go to two or three rebuttals, ... and after the rebuttal process I got "Meets Expectations".

127. According to Mr. Sabir, in 2011 he saw Laura Romanazzi leave the Applicant's office, and she was crying. After seeing this, Mr. Sabir and another colleague went to talk to the Applicant and told him that "this is not a way of acting with staff in the office". The Applicant did not say anything in response but, according to Mr. Sabir, from then on "whatever I do, whatever I say, whatever I write, was always problematic". And his performance reviews from the Applicant became worse.

128. Mr. Sabir testified that "the leadership here asked [a Staff Counsellor] to mediate between us and while we were in the mediation [the Applicant] said that us from the Middle East can't think rationally". According to Mr. Sabir, the working environment at JMAC was toxic starting at least in 2012, and this environment contributed to his decision to accept the temporary position in Yemen.

129. When he returned to JMAC in 2015, Mr. Sabir said,

I came to his office to say ‘hello’ and ‘I’m returning back.’ And [the Applicant] looked at me and said, ‘why are you returning back?’ That was literally what happened. That’s when everything started to fall down. I was a persona non grata. [The Applicant said several more times] ‘Why are you here? You know the Special Envoy; why don’t you ask him to take you somewhere else?’

130. Mr. Sabir said that the Applicant would return papers for revision repeatedly. “He returned it several times and as with other papers was ... continuing to edit, and the edits will go on and on and on. So that’s an experience I’ve never witnessed anywhere”. On 6 October 2016, the Applicant had returned a paper again for more revisions and in discussing it, he told Mr. Sabir and his co-author “you know more facts than I do, otherwise I can do the analysis myself and get rid of all of you (analysts)”.

131. Mr. Sabir said he considered himself to be an experienced analyst and report-drafter at that time. In 2004, he had written a report on the situation in Darfur for Kofi Annan; then he wrote reports when working at Human Rights Watch and at Amnesty International; and then he wrote reports during his work in the United Nations. Yet, the Applicant singled him out to take basic report writing skills training (instead of sending other, newer staff).

132. According to Mr. Sabir, the Applicant took away Mr. Sabir’s supervisory role and gave it to Ari Kerkanen, without any reason for doing so. There had been no issues between Mr. Sabir and the two supervisee staff members. Also, Mr. Kerkanen said that he did not want to take the job.

133. Mr. Sabir felt that the Applicant was treating him differently than others on the team. In one example, when Mr. Sabir was printing something, the Applicant told him that he should not be printing. Later, when Mr. Kerkanen was printing a document, the Applicant came out of his office but when he saw Mr. Kerkanen at the printer, he returned to his office without saying anything.

134. Mr. Sabir said that the team was sympathetic to what he and his colleagues, Mr. El-Sibai and Ms. El-Joubeili, were going through. The three of them were having the same problems with the Applicant, more than anybody else was experiencing. “That did raise some flags, even amongst the colleagues [about] why is this happening just to you?”

135. When he learned that the Applicant had asked Ms El-Joubeili and Mr. El-Sibai to report on their discussions with him, Mr. Sabir

felt terrible. I was doing my job. I tried all my best to do my job, but whatever I do it’s never going to be accepted. He [the Applicant] asked me several times to go find a job ... I don’t know why. I just keep scratching my head – Did he just single me out each time? I really have no clue why he did what he did.

136. Mr. Sabir was asked to respond to the Applicant’s claim that the allegations are just an attempt to deflect attention from Mr. Sabir’s poor work performance and that he, in turn, had influenced Ms El-Joubeili and Ms. El-Sibai. Mr Sabir said:

Absolutely not! Mr. El-Sibai and Christine [El-Joubeili] have a mind of their own ... We talk about work or what they have to do or if they have overload and as their supervisor I am there to help if possible ... But to the point of saying that I am basically feeding them what they should say is a lie, is absolutely a lie.

137. Mr. Sabir went on special leave without pay in 2019. He said this was due to his facing a stressful situation at work. “I just couldn’t keep taking it day after day. It was extremely an awful time”.

138. In an email on 21 May 2019, explaining his reasons for requesting special leave without pay, Mr. Sabir wrote:

The pressure by CJMAC and ongoing stress has become unbearable in my family and I. CJMAC continues to send back several times any paper I draft. Nothing I do is accepted by him and given that he is operating in a vacuum with no direct SRO supervision to him or to us as JMAC staff members, he is operating with total impunity.

139. Mr. Sabir witnessed the Applicant introduce Mr. El-Sibai and Ms. El-Joubeili by their religion rather than their function in the team. “He will say ‘Mohamad El-Sibai is a Shia and Christine is a Christian’ when he introduces them to anybody. I saw it at least once”.

140. And Mr. Sabir said that the Applicant excluded Mr. El-Sibai and Ms. El-Joubeili from team meetings. “To him we deal with sensitive information, which is not really true, but he just didn’t want them in the meeting ... He decided not to allow them to be part of the team”.

141. Mr. Sabir frequently experienced the Applicant referring to people by reference to their perceived stereotyped national traits, such as a “Latin temper”.

142. Mr. Sabir said that Sgt. Riyam came to him crying and saying that the Applicant wrote something to his colonel that created a lot of problems for him. Mr. Sabir witnessed the Applicant “absolutely going after him, bullying him that he doesn’t speak English. I would say it was shouting and it happened one time while the entire team was in the meeting room ... It’s all about singling out, discrimination”.

143. In cross-examination, Mr. Sabir said that he did not file a complaint earlier because Ms. Adama’s predecessor as Conduct and Discipline Director did not want to take any report or anything that would raise the discrimination that was taking place. So they had to wait for Ms. Adama, who was the one that talked to them and to the Applicant, raising the problem.

144. The reason Mr. Sabir took special leave without pay was “the stress on me, the stress on my family, the stress on my kids, I’ve just had enough”. It was not because of family reasons, although HR told him that was one reason that you had to use in order to go on leave. And “Mr. Joblin [(Chairperson of the Rebuttal Panels)] was aware of what we were going through and he actually was extremely helpful to us ... I was leaving because of the Applicant, absolutely.... I had knocked at all the doors within UNIFIL, and nobody wanted to hear it, including the leadership”.

145. According to Mr. Sabir, in addition to editing his work product, the Applicant's harassment included mandating, for the first time, that the new Deputy and Ms. Romanazzi give Mr. Sabir the questions that he was to raise with contacts he was meeting. "That's not something that we do ... He doesn't do that with anybody else except me".

146. When asked what steps he took himself to improve the working atmosphere at JMAC and with the Applicant, Mr. Sabir said that "[w]ithin the entire department, nobody was successful to do anything. Whatever [the Applicant] says goes. No one was able to tell him 'it's not this way or that way'. We can't do anything. I don't think that any of the colleagues here can do anything with Mr. Theunens".

147. His objection to the Applicant asking him to attend a writing skills training was not that he felt there was no room for him to improve, but "that there are newcomers who were not asked to do the training. While I was there since 2010, [yet] I was asked to do the training".

148. When he was the supervisor of the two Research Assistants, and they were unhappy with their working situation, Mr. Sabir tried to make sure that they were doing their job in a good way and "if they need any help I always came to their support. The relationship between us is [a] very good relationship and they are still staff here".

149. Mr. Sabir said that he was told by colleagues that the Applicant asked them to report on his discussions with them. "He was targeting me personally and not others. But at the end of his term, he started targeting others like my colleague Ari. He made him return back a paper six or seven times, as he did with me. So this is where we are seeing a thread that continues".

150. Mr. Sabir said that in discussions he had with the Staff Counsellor and the Applicant, the Applicant said: "they're just not rational". The Staff Counsellor's response was that this is the United Nations, and the United Nations has different cultures and different people and different histories, and so on.

151. When Mr. Sabir was on temporary assignment to Yemen, he kept the lien on his original post at JMAC so he would not lose his job. Eventually, he did not stay in Yemen because “the war started and the mission ended”.

152. On redirect examination, Mr. Sabir refuted the Applicant’s statement during the investigation that the Applicant often had discussions about analysis with the team “because nobody has the monopoly of wisdom, but of course, the basic condition is that a person is open to this dialogue”. According to Mr. Sabir, that was not the Applicant’s approach to discussions and disagreements at JMAC:

It’s his way or the highway. He never accepted anybody’s input. I still have a lot of pages in my office of how he was editing whatever we do. I mean, I wish it was the case, but it’s not ... You can ask all the team here, all the colleagues that are in this corridor, they will say the same thing.

153. Mr. Sabir presented to the Tribunal as a straight-forward and candid witness. He, too, is not a fan of the Applicant. It is undisputed that at least twice Mr. Sabir rebutted low evaluations by the Applicant, and the rebuttal panel raised the evaluations.

154. Mr. Sabir’s testimony contradicted that of Ms. Romanazzi with respect to whether she left the Applicant’s office crying. She said she does not recall crying but conceded that she and the Applicant had been engaged in a heated conversation. According to her, “I was probably disappointed but not crying”. Ms. Romanazzi also said that, based on her lack of relationship with Mr. Sabir, “I don’t see him stepping up to defend me” [with the Applicant] as Mr. Sabir claimed.

155. However, these discrepancies do not reflect on the credibility of either witness. Indeed, her testimony that she had a heated conversation with the Applicant confirms the essential aspects of Mr. Sabir’s testimony. Moreover, whether it was because Mr. Sabir intervened with the Applicant when he saw Ms. Romanazzi crying, or something else, the exact cause of the dispute between Mr. Sabir and the Applicant is not an issue in this case. It is quite clear that the two had a bad relationship. Overall, the Tribunal found Mr. Sabir to be relatively credible as a witness.

Emiliano Vigorita

156. The next witnesses were called by the Applicant, with the first being Emiliano Vigorita. He is currently a Brigadier General and Commander of the Italian Army Foreign Language School. At UNIFIL, he had been a Colonel and Chief of the Special Staff of the Force Commander. He was present at the morning meetings where the Applicant, as Chief of JMAC, would update the Force Commander, and at other meetings where the Applicant briefed the Force Commander.

157. General Vigorita said that the Applicant discussed with him his working relationship with Mr. Sabir. “He raised the issue of a performance issue at a certain point ... and from that moment I had some interaction with the issue and I also met with Mr. Sabir”. He said Mr. Sabir “was aware that there was a concern [about] his performance on the side of Mr. Theunens ... I think his line was there is no performance issue, there is not a performance issue. It is something else. So I think he believed that his performance was okay”. According to General Vigorita, a transfer or change of reporting lines for Mr. Sabir “was scoped”, but no action was taken.

158. When the Applicant reduced Mr. Sabir’s performance rating, General Vigorita said that the Applicant “reported to have made some effort to find a way to improve [Sabir’s] performance, but in the end I think that there was no solution and he rated him lower than he had been in other circumstances ... Then I remember some issues were raised, and they went through a panel”.

159. General Vigorita said that he did not have the level of detailed knowledge necessary to analytically form an opinion as to whether the lowered rating was justified, but

[he recalled] there were several issues that were addressed in different venues as far as the rebuttal panel was concerned, I recalled they were not agreeing with the initial rating and they changed it ... It was a debate on the rating [that] the rater and the first commander had expressed and the rebuttal panel concluded that it was fair to change it.

160. Asked about the reasons Mr. Sabir gave for taking a leave of absence, he said “if I recall it properly, there was the rebuttal and after the rebuttal he asked for leave. And I think he asked for personal reasons or something like that”.

161. General Vigorita did not personally witness discriminatory behaviour by the Applicant:

I remember them going through this case and what came after, and I was made aware that especially in the past, there had been some issues and rumors and gossip on this issue. Most of the things I heard were referring to things well before I arrived to the mission and I never had direct information of complaint except, of course, for Mr. Sabir when he came to my office. [Mr. Sabir] referred to things that in his opinion were larger than just his issue and were applying to all the office.

162. General Vigorita said that sectarian differences in Lebanon are an issue. “When something happens, the view of different sects is very different. So to a certain extent, you always have to consider different points of view when you analyse something in that country”.

163. General Vigorita did not remember anything about Mr. Kerckanen overseeing the work of Mr. El-Sibai and Ms. El-Joubaili. “To be honest, I don’t think I can say much”.

164. He said that he did not believe the Applicant created a hostile, abusive or harassing working environment in JMAC, “otherwise, I would have asked for some action or facilitated some discussion on that”. However, he clarified that:

I didn’t have many situations where I was visiting JMAC itself, the offices and meeting the other people. Most of my contacts were directly with Mr. Theunens ... When I’ve gone to his office and met his people, I’ve never noticed in the short time I was there anything that was alarming or worrying that I recall.

165. On redirect examination, General Vigorita said that Mr. Sabir told him he felt targeted by the Applicant. “His opinion was [that] the attitude of Mr. Theunens was not correct towards him ... I felt that he was believing what he was saying”.

166. General Vigorita could not remember if Mr. Sabir was weeping in the meeting with Mr. Joblin about the special leave without pay. He recalled that Mr. Sabir

was tense, was a sad situation. We were trying to understand what was the problem, and I remember we were all trying to pass the message to him that we were there to help as we could. So I remember it was very sad. If Mr. Joblin said [that Mr. Sabir was a broken man], I'm sure it was. I cannot say I remember it right now that a lot of time has passed ... I mean from what I recall of the meeting, it could easily be possible.

167. He also said that at a “certain point the Force Commander wanted to remain along with [Mr. Sabir], I think...probably wanted to make him more comfortable in address[ing] the issue in a smaller group”.

168. General Vigorita appeared to be an honest individual who was telling the truth, although he had virtually no personal knowledge of any facts related to the internal operations and work environment at JMAC. As he testified, “I didn't have many situations where I was visiting JMAC itself, the offices and meeting the other people. Most of my contacts were directly with Mr. Theunens”.

169. On the one matter where he was personally involved, that is the complaint of Mr. Sabir, General Vigorita testified that Mr. Sabir clearly believed that he was being targeted by the Applicant and that the issue in Mr. Sabir's view was the Applicant's conduct and not his own work performance. General Vigorita also said, while he could not remember if Mr. Sabir was weeping in the meeting with Mr. Joblin about his request to take special leave without pay, he did recall that Mr. Sabir “was tense” and that it was a very sad situation. He also said that it was quite possible that Mr. Sabir appeared to be “a broken man”. This testimony was also consistent with what others who were present told the Applicant.

170. Ultimately, the Tribunal finds that General Vigorita's testimony was credible, but that his opinions regarding the work environment in JMAC were based on very limited information, as he admitted. Thus, the Tribunal does not accept the validity of those opinions.

Laura Romanazzi

171. The Applicant's next witness was Ms. Laura Romanazzi, who is currently a Senior Information Analyst in the United Nations Mission in South Sudan ("UNMISS") and the Chief of the JMAC there. She was in UNIFIL from January 2009 to January 2017 as an Information Analyst at JMAC. She started at the P-3 level and then temporarily moved to P-4 on a special post allowance.

172. She described the Applicant as a "very demanding Chief, with strong personality and strong character ... assertive, determined".

173. She could not recall if she ever heard the Applicant shouting at Sgt. Riyam.

174. She said that Mr. Sabir was "generally speaking, not polite and it was very difficult to work with him. Unfortunately, the easiest way was probably to keep a distance and to not engage. At some point that became the normal with him". In dealing with her, he had "an arrogant attitude of superiority and a person that doesn't really care about those that are surrounding".

175. When the Applicant moved her to the P-4 post, Ms. Romanazzi became FRO for Ms. El-Joubeili and Mr. El-Sibai. She was concerned that Mr. Sabir was spending too much time chatting with her supervisees. She raised this concern with Mr. El-Sibai and Ms. El-Joubeili, and they said that their discussions were work related. Ms. Romanazzi stated "I couldn't challenge the fact that it was work related".

176. According to her,

then my argument with them was that, even if it was work related, it was going beyond what I considered professional in the sense that regular meetings almost on a daily basis for several hours were, I think, beyond the regular exchange of ideas among colleagues. And even if they needed to spend so much time in their discussion, I would have been pleased to hear from them [about] the main issues they discussed so that the whole team or the whole office could benefit from these exchanges and comments that they said were work related." After she spoke with them, their behavior only changed a little. "I don't recall a

particularly big change or that the situation was fully solved or addressed.

177. Ms. Romanazzi felt that Mr. Sabir was affecting Ms. El-Joubeili and Mr. El-Sibai because he often went to their office and started the discussions. Her perception was that they had been easier to work with before Mr. Sabir spent so much time with them:

And, I don't know, I had the impression that he was somehow influencing their attitude because this came also with ... more complaints about their work, the fact that they were working always in the office, that they were not satisfied with what they were doing. And these were feelings and frustration that I had not heard, I had not perceived in the previous years, although we had been doing the same work for several years together.

178. As their FRO, she critiqued or commented on the documents they prepared. Their reaction to this criticism changed over time. "They were more receptive and willing to learn or to change the way they were working to adjust to the requirements of the team at the beginning. But when I started complaining about the time that they were spending with Sabir... I started seeing some kind of push back and less willingness to adjust, to improve or change".

179. Ms. Romanazzi testified that one time she spent one or two hours with Mr. El-Sibai trying to explain to him

what was right, what was wrong, what needed to be changed". It was a normal and pleasant discussion, and she left with the impression that he would edit the report, sending it back for final revision. But when she received it back, "it was exactly the first draft that I'd seen with no changes. His reply was quite, I would say, arrogant, something I didn't expect from Mohamad: 'yeah, I disagree'." She said this change in attitude was only after they developed this strong relationship with Mr. El-Sabir.

180. Ms. Romanazzi said that she didn't observe any particular problems between the Applicant and local Lebanese staff or see him mistreating local staff. "I think there were sometimes where Reynaud [Theunens] was also not particularly happy with their performance and that he addressed it, but ... some of this communication happened also in their office and I was not necessarily there".

181. She felt that Mr. Sabir was provocative with the Applicant "in his statements, in his attitude. There was no attempt to try to reconcile or to answer questions or engage in a communication in a way that could be positive or productive".

182. Regarding her own relationship with the Applicant, Ms. Romanazzi said "I think Reynaud [Theunens] was a very demanding Chief, but I think we found our understanding. We were definitely able to talk and to work together". Asked about others saying that she was observed leaving the Applicant's office crying, she said "I don't recall".

183. She also said that she felt that every work environment placed a responsibility on everyone to make an effort to try to communicate, particularly

in the UN, where we come with different experiences, different background, it's extremely important to come to the table with a willingness to communicate and not necessarily agree, ... but be able to share in a frank and calm manner. What, I think, was not there at some point in the office ... Communication became very difficult in the office.

184. Asked if this was a work ethic that the Applicant promoted, Ms. Romanazzi paused and then said: "I think at some point it became very difficult—communication became very difficult in the office and I think difficult communication with Sabir, both ways, made it a bit difficult also for the others to have a comfortable communication and a comfortable environment".

185. When asked to respond to a complaint that she empowered the Applicant in his abuse of authority, she said:

I wouldn't know how I could empower that ... Pity I hear it now because I am just wondering whether these are things that should have been addressed at the time when people had this feeling in the office. They could have addressed it directly with me and maybe it would have helped understand each other or address the situation a little better.

186. In cross-examination, Ms. Romanazzi said that she left JMAC in January 2017 and so cannot testify to anything that happened after that.

187. She said that while she was at JMAC, "the environment in the office was not particularly positive ... I had one heated discussion with my Chief where there was a disagreement. I also think that disagreement allowed us to have a frank discussion. I recall probably that discussion as the starting point for a better working relationship between the two of us".

188. Ms. Romanazzi was asked if that heated discussion was the result of resentment by the Applicant because she was able to work with others in a good atmosphere. She responded,

not really. I mean, I don't think these are my words. The discussion was over a paper, but it took place in the context of that. In a situation where I ... thought that one of the reasons that may have contributed to that heated discussion was the fact that I was working with one colleague in a positive way, if you want. That was not necessarily the perception of my Chief but he could have thought that. But that is my assumption, that [he thought] it was not good for me to spend time, to try to invest time, in this work relation.

189. Ms. Romanazzi was then shown her interview with the investigator, and she admitted that those were her words in fact. She conceded having said that the heated discussion also involved "a little bit of resentment because I was able to work in a kind of good atmosphere with the, I mean, with other colleagues".

190. Then, Ms. Romanazzi was asked if she also had said in the interview that her heated discussion “was an unpleasant situation and probably, I mean, the reaction may have been a little bit of overreaction”. She answered “Umm, I think, I mean for the kind of comments that we had or discussion that we had over the paper, I think it was, umm I mean, I thought it was above what, I mean, the comments that were around the paper. But yeah, that’s it”.

191. Ms. Romanazzi was then asked about her interview statement “that there was a need for a little bit of adjustment with your new boss”. She testified that it was a normal adjustment. “I didn’t mean anything special”. And then she described at length normal adjustments when there is new leadership in a team, how JMAC had switched from a military Chief to a civilian Chief (the Applicant), and how this new civilian Chief lifted some of the prior limits and constraints regarding reaching out to other offices in the Mission.

192. Asked about her statements that the Applicant “was not the calmest boss ... and he had his shortcomings”, Ms. Romanazzi denied that the need for her to adjust to him was related to this. “I don’t recall exactly, but no, mmm, I don’t think so. I think the shortcomings or some reactions came more when there were these more interpersonal problems in the office”. She denied having any interpersonal problems with the Applicant herself, “with the exception of the discussion as I mentioned”.

193. When she was asked if the Applicant yelled at her, Ms. Romanazzi said, “I don’t think it happened ... No, it’s something that I’m pretty sure I would remember. And as I remember that unpleasant discussion that we had, I would remember if this was a regular pattern. This is something that I would have not tolerated”.

194. She also said, “I don’t recall crying at all, even in that [heated, unpleasant] discussion, I don’t think—I was probably disappointed but not crying”. She then went on to add:

I want to be honest with you. I don’t think, based on the work relation that I had or that I didn’t have with Sabir, I don’t see him stepping up to defend me or my case. That’s not the kind of attitude that he would have had in the office when I was there, not for me at least.

195. Ms. Romanazzi confirmed that the Applicant had problems with other staff members and some of them left, including Doris Schwalm and “the French Colonel”:

Problems meaning that ... Reynaud has always been a strong and demanding chief and it was disappointing to receive French officers in the position of Deputy Chief JMAC that were often ... joining our team with no experience or background in analysis, and they were not always able to support the office ... And that at time created some tensions.

196. She also confirmed that the relationship between the Applicant and Mr. Sabir “was completely poisoned”.

197. Ms. Romanazzi said that she asked Mr. El-Sibai and Ms. El-Joubeili to report on their discussions with Mr. Sabir as her own approach to supervising how they were managing their time. “I don’t recall that I received this request from Reynaud”. She also said that when they refused to do it, “if we [she and the Applicant] went together to their office to ask this, I don’t recall”. When asked why time management was not mentioned by her in their e-PAS evaluations, she said “I don’t think it’s something I would mention in an e-[PAS] ... I don’t know if I put it in an email”.

198. Regarding her claim that Mr. Sabir acted offensively towards her, Ms Romanazzi stated that “I don’t have any evidence” to support that allegation.

199. As to the Indonesian officer who had limited English skills [Sgt. Riyam], Ms. Romanazzi said that “sometimes Reynaud was referring to him, talking to him, in a very serious and upset tone. Whether it was shouting at him, I don’t recall. I think it was already the strong tone, the serious attitude that could intimidate or be perceived as offensive sometimes”. She said that this happened “maybe a few times”.

200. Ms. Romanazzi went on to say that:

there would be no reason to shout, to be offensive or to raise the tone. “But we are also human beings and sometimes ... there may be some reactions that we can’t necessarily control. So I don’t want to put any judgment there because again we can all be in a situation of particular stress for whatever reason. So it’s no reason definitely to be offensive, generally speaking but if it came across like that, there could be also several reasons for that.

201. And with respect to Mr. El-Sibai and Ms. El-Joubaili, she said “I don’t think I was a filter”. There were times when the Applicant went directly to their office to talk to them, and other times he was addressing issues to her as their FRO. They were at the weekly meetings but “when we were discussing sensitive issues, they could have been asked to leave and only the international [staff], ... the Information Analyst will stay”. She didn’t recall if that practice was different when the Applicant was absent and the meetings were run by the Deputies.

202. Ms. Romanazzi could not say if she used the phrase “abuse of speaking Arabic in the office”. According to her, the Arabic language was not the issue, but “if they had been discussing in English probably that would have made this discussion more accessible to others, which was not the case ... It was the extensive time that they were spending and the fact that all these conversations were always in Arabic, and that’s fine, among them”.

203. On redirect examination, Ms. Romanazzi was asked about her working relationship with Ms. Schwam. She said that their relationship was good at the beginning but not after some time because “Doris’ behavior was relatively unstable and ... there were some occasions where she would provoke or not be particularly friendly”.

204. Ms. Romanazzi was an interesting witness in that she often claimed a lack of recollection when it came to many details that might put the Applicant in a bad light. She testified that she did not recall: if she heard the Applicant shout at Sgt. Riyam; whether she left the Applicant’s office crying; whether her need to adjust to the Applicant was due to his shortcomings; whether the Applicant instigated the request for Mr. El-Sibai and Ms. El-Jubeili to report on their discussions with Mr. Sabir; whether the Applicant came with her to their office to discuss that request; or whether the national staff were allowed to stay in meetings when the Applicant was absent.

205. Ms. Romanazzi also tried to excuse the Applicant’s treatment of Sgt. Riyam. After acknowledging that the Applicant spoke to Sgt. Riyam in a tone “that could intimidate or be perceived as offensive” and that there was no reason for doing this, Ms. Romanazzi said that she would not judge him because “we are also human beings and sometimes ... there may be some reactions that we can’t necessarily control”.

206. In addition, there were times when Ms. Romanazzi’s testimony to the Tribunal contradicted statements she had made previously to the investigator.

207. It was obvious to the Tribunal that Ms. Romanazzi was biased in favour of the Applicant, and the evidence made clear the progression of this bias. Following a “heated discussion” that involved the Applicant’s resentment of her ability to work with colleagues “in a kind of good atmosphere”, Ms. Romanazzi concluded that investing time in those work relationships was not in her interest. As she testified, “we found our understanding” and this was “the starting point for a better working relationship” between the Applicant and her.

208. Ultimately, the Applicant made Ms. Romanazzi supervisor of the national staff, even though she was a P-3 Analyst and the Applicant had previously wanted to have a P-4 as supervisor “to make a distinction between the P-3s and P-4s”. This reassignment gave Ms. Romanazzi a special post adjustment and coincided with her developing more negative views about the national staff. She attributed these changed views to the bad influence of Mr. Sabir, who is a complainant in this case and neither she nor the Applicant like.

209. In sum, the Tribunal does not find Ms. Romanazzi to be a credible or reliable witness.

Reynaud Theunens

210. The final witness was the Applicant, Reynaud Theunens. He testified that he is currently a P-4 Political Affairs Officer in the Office of the Deputy Force Commander in UNIFIL, the technical investigation cell, but on extended sick leave. He had been Chief of JMAC and Senior Information Analyst in UNIFIL.

211. He gave some background information regarding his views of JMAC, its role in UNIFIL, and the situation in Lebanon. He said that Lebanon was a “consociational sectarian system” where power is shared between communities established on the basis of religious sect.

212. The Applicant said he referred to sectarian descriptions of the national staff in the office for two reasons: “[t]he first reason was that there was a lot of scepticism and even suspicion among mainly the military interlocutors I had at the level of the Mission leadership as to what the role would be of national staff in an office like JMAC. The second concern I had or was that ... there were lots of rumours and gossip that the composition of the national staff was not an accurate reflection of the sectarian makeup of Lebanon, i.e., some people were claiming they were far too many Christians among the national staff in UNIFIL”.

213. He said that the two complainants [Mr. El-Sibai and Ms. El-Joubeili] did not object at the time to his reference to them by their religion. “I became aware [of their concerns] in the course of 2018, through ... what I would consider threatening emails Mr. Sabir sent to me [copying] the Deputy Head of Mission, the Chief of the Conduct and Discipline Team, the DMS, and the Chief of the Special Staff, in which among many other things, he accused me of calling the national staff by their religion”.

214. The Applicant denied yelling or shouting at staff when he addressed them. “I can explain the event with First Sgt. Riyam where I spoke in a louder voice, but I did not shout”.

215. He explained that “the English of the First Sgt. was very poor, and also he had no real computer skills”. In the incident in question, Sgt. Riyam informed the Applicant of an email that United Nations Headquarters had sent some days or a week earlier and he

had failed to forward or notify me in any way of that email. And I raised my voice saying, ‘why did you not forward that email?’ He looked at me and, I admit in a bit of an ... intimidated or ... very surprised or a way that like, what are you asking me? I mean, that was my conclusion from his body language or his facial expression.

216. The Applicant contacted the Indonesian contingent to say “look, we have a problem here”. He added:

we organized together an English language test in the presence of members of the Indonesian contingent for First Sgt. Riyam and obviously he failed the test. The solution was proposed to switch him with an Indonesian NCO in the JOC but I didn’t want to move the problem ... So I decided to create an opportunity for Riyam to learn English during his office hours and we found other solutions to ... take care of his, what should have been his JMAC tasks.

217. The Applicant denied being responsible for Riyam's transfer at the end of this tour of duty at UNIFIL.²

218. The Applicant was asked to respond to testimony regarding tension in the office and how he treated his subordinates. He conceded that "at different stages there were different kinds of tensions in the office". Initially he noticed tensions between Ms. Schwalm and other Information Analyst, "which developed into tensions between her and me because I wanted to hold her accountable for her work performance".

219. The Applicant said that "later on tensions developed between Ms. El-Joubeili, Mr. El-Sibai and Mr. Sabir on the one side and Ms. Laura Romanazzi and myself on the other side ... Much later there were tensions between Mr. Kerkanen and myself".

220. When he served in UNIFIL from 2009 to 2019, all of the Applicant's e-PASes except the last one were "exceeds performance expectations." His management competencies were assessed as either "fully competent" or "outstanding".

221. According to the Applicant, issues about his management style only arose at the beginning of 2019 "when it was clear that I was going to inform Mr. Sabir that I ... was about to give him a negative performance evaluation for the 2018-2019 performance cycle".

222. The Applicant understood that Mr. Sabir tried to meet with his Second Reporting Officer, General Delco, the Head of Mission/Force Commander. General Delco delegated the matter to his assistant, Colonel Vigorita who said to the Applicant, "I saw Mr. Sabir, what is the problem? What is happening in your office?"

² Applicant's Counsel then asked the Applicant if Ms. Sinaria was asked about this incident in her interview with the investigators, to which the Applicant stated: "what I did read in the transcript of her interview is ...". This is double hearsay and not considered by the Tribunal. (*See, AAC 2023-UNAT-1370, paragraph 49*). The Tribunal also did not consider any hearsay offered by the Respondent that does not come within a recognized exception.

223. The Applicant then testified about the work product standards that he imposed in JMAC and why. He said that he developed a template for JMAC papers with an introduction, a brief section of facts, followed by the analysis with insight and context, and the assessment. He “also encouraged Information Analyst to adopt a specific writing style” and introduced a process of peer review.

224. The Applicant said that he noticed that Mr. Sabir

tried to avoid that his fellow Information Analyst would provide peer review to his drafts or, in case they did provide it, that he would simply not consider it ... The big issue with Mr. Sabir was that he would [personalize] my feedback and this became worse and worse ... He saw my feedback, he considered as personal attacks on his dignity, on his knowledge, his capacities, his capabilities as an analyst. I tried to explain to him that the feedback is to the work product, not to the drafter.

225. To help Mr. Sabir improve his performance, the Applicant says he

provided systematic written feedback to all of the draft work product he submitted to me. I sat together with him when that was still possible. We had extensive conversations or discussions and exchanges during the midpoint review for the e-[PAS]. I sent him on a training course ... We had one on one coaching meetings where I tried to explain why I proposed or I suggested to change certain some wording.

226. According to the Applicant, at the end of 2016 when a representative of the Ombudsman’s Office was visiting UNIFIL, he asked to have a meeting “to explain my difficulties, the difficulties I had to manage Mr. Sabir, as well as ... the interpersonal and professional relations at that stage with Ms. El-Joubaili and Mr. El-Sibai. So I met with the representative, I think it was Ms. Kamara”.

227. The Applicant also said he sought the support of the Mission Force Commander, through the Chief of Special Staff. And “I went to HR. I went to Conduct and Discipline, and I submitted all these efforts”.

228. When the Applicant downgraded Mr. Sabir's e-PAS rating, the Force Commander signed the e-PAS. Rebuttal panels upgraded both evaluations, to which the Applicant said: "I have my own observations about the work of the rebuttal panels". He took issue with the panels' finding that there was no performance improvement plan, based on his "understanding of the relevant UN regulations ... we were not in that situation". The Applicant also said that he prepared a draft, but the Force Commander "decided that there was no need for performance improvement program and instead gave Mr. Sabir specific taskings, which I am not aware of".

229. The Applicant said that Mr. Sabir accused him of racism against Arabs in November 2016. "It became a shouting competition by Mr. Sabir. Mr Sabir left the office and then in the hall ... I saw Mr. El-Sibai ... laughing at me". After Mr. Sabir left UNIFIL on special leave without pay, the Applicant filed a complaint in which he referred to "eight to ten emails I perceived as threatening [that] Mr. Sabir had sent between mid-2018 and May 2019 to me, 'cc' the Mission leadership, in which he accused me of harassment, racism against him, against the national staff and related kind of misconduct ... Nobody has ever contacted me about my complaint".

230. The Applicant testified that he agreed with the temporary transfer of Mr. Sabir to Yemen and the subsequent extensions of that assignment. When Mr. Sabir came back from Yemen, he told the Applicant that it was because the Special Representative, Mr. Benomar, had left.

231. The Applicant said Mr. Sabir told him that the reason he was taking a leave of absence was "for family reasons because he explained that in his current family situation it was not easy for his wife ... to be alone with the baby in Lebanon".

232. Regarding the allegations that he treated Mr. Sabir differently than he treated another JMAC staff (Ms. Auguste), the Applicant said that they were in different situations:

She was working at the P-3 level; Mr. Sabir was working at the P-4 level. He was not only an Information Analyst working on an area where we needed regular reports ... but he was also the supervisor of the ... research assistants at that time ... She had perfectly translated the section work plan into an individual work plan, whereas Mr. Sabir ... the draft I saw was almost like a cut and paste ... So I asked him to please personalize it. I also wanted Mr. Sabir to pay more attention to certain weaknesses I had seen in the past.

233. The Applicant said that, coinciding with Mr. Sabir's claim of the Applicant's racism against Arabs in 2016, he asked for an additional FRO to review Mr. Sabir's work to remove the claim that he was singling out Mr. Sabir. However, according to the Applicant, DMSPC refused to appoint somebody to review Mr. Sabir's work. Then, in 2018, he raised the management issue again with Colonel Vigorita and was told that they were considering a temporary transfer of Mr. Sabir, but that was ultimately cancelled.

234. The Applicant then took issue with several statements by other JMAC staff members: "They're not signed. And in one of the documents, I think it's ... the statement attributed to Ms. Auguste, you see track changes, not track changes, you see comment boxes with the initials 'AG'. I don't know who 'AG' is. The document attributed to Mr. Frechero ... has a date 2010 at the end". The Applicant then said "for me, when reading the documents there is not much I can say about it. I recognize some of the events they mentioned, but my recollection of how they describe it is significantly different. Notwithstanding, at that moment there were frictions in the team and I have, I mean, if you want, I can explain them".

235. Asked if there was an unusually large turnover of staff at JMAC, the Applicant discussed the cases of several people who left and concluded “I’m sorry to be so long winded, but just to conclude, I am not aware that somebody left because of me or because of the way, how I managed the team. At least they didn’t tell me”.

236. He also criticized the investigation panel saying that they did not ask him about the influence of sectarian differences in Lebanon. “I was very disappointed and also they were fixed or ... I would even dare to use the expression obsessed, by the term ‘religion’ where it was ‘sect’, and anyone who understands a little bit of Lebanon knows what is meant by ‘sect’”.

237. Asked how he assessed the performance of Ms. El-Joubeili and Mr. El-Sibai over the years, the Applicant said that they did a very good job until 2016,

I mean, at times, excellent ... They were complaining a lot about their level ... and some of these complaints were, I think, justified ... I really tried to do something about that. It was not easy ... I tried my best ... to improve their working conditions. I also tried to change their focus from duplicating the work of the present information office to focusing more on social media and especially Mr. El-Sibai before the course of 2016 was impressive in that domain ... but I noticed an evolution.

238. The Applicant said that

when I had a question I would ask it through [Ms. Romanazzi] or her predecessor as First Reporting Officer. And the answers I got were extremely useful, valuable things I hadn’t seen somewhere else, showing a capability to do research. However, that coincided with extensive chatting ... with Mr. Sabir ... The loud laughter and the regularity ... The replies I would get during that time period to my questions. Ms. Romanazzi telling me that ‘Mr. El-Sibai did not want to do what she asked him to do’. I became very concerned about the negative evolution of their work performance.

and he agreed with Ms. Romanazzi downgrading their performance reports.

239. The Applicant denied impeding the reclassification of the two Research Assistant posts (Ms. El-Joubaili and Mr. El-Sibai):

Like Mr. Weiszegger, who was the DMS at the relevant time period, wrote in what I consider a lot of support to me, the delay was due to difficulties, to excessive workload at UN headquarters in the relevant departments who were reclassifying, I think, most of all post in the UN ... That was one of the big problems I faced as both Ms. El-Joubaili and Mr. El-Sibai were convinced that it was my fault and that I deliberately tried to delay the reclassification.

240. He also denied that he transferred any post out of JMAC to prevent their promotion.

241. The Applicant said that there were separate meetings between the Information Analyst and himself, and there were also meetings where Ms. El-Joubaili and Mr. El-Sibai were included. "We discussed substantive issues; we did not share potentially sensitive information that we, including myself, had obtained through our contacts, for the reasons I had explained before. I mean Lebanon is a complicated country. People are very sensitive about information".

242. The Applicant said that Annex R/2 to the Respondent's reply

at page 60 includes two recordings under the evidence submitted by Mr. El-Sibai. One is called MS-7, the other is called MS-8. MS-7 is a recording of a team meeting. I remember that meeting. I can identify the voices if one would play the voice recording. The other recording is a recording of a private meeting Mr. El-Sibai had with me.

243. Thus, he concludes that Mr. El-Sibai's testimony about not secretly recording a team meeting is untrue.

244. The Applicant testified that, because he felt some of Mr. El-Sibai's and Ms. El-Joubaili's frustrations about their rank level were justified, he tried to do something about it including sending them to United Nations training courses. He denied that this was to preserve the budget. "This is not an issue of budget. I could have sent somebody

else. I could have said, you know, we don't send anyone, but we still apply for the budget the next year".

245. He also said that at a meeting, Mr. El-Sibai "start[ed] to lecture me about lack of respect and not treating him like humans. Ms. El-Joubeili even started to cry at that meeting. I was shocked". He met with them but could not achieve a dialogue because they kept blaming him for the lack of reclassification and other things. "To have a dialogue you need to have two parties who are willing to listen to each other and my impression was that that was not the case". He also said that "it actually became worse afterwards when they went to the public about these issues".

246. The Applicant said that he approached Mr. Kerkanen informally about supervising Mr. El-Sibai and Ms. El-Joubeili "because we were commuting often together". He claimed that he did so for several reasons: Mr. Kerkanen was a P-4 and to make a distinction between the P-3s and P-4s in the office; it would be good for the P-4s to fulfil a supervisory role; Mr. Sabir had informally contacted him about maybe applying for special leave without pay; and he was not satisfied by the way Mr. Sabir was supervising the Research Assistants.

247. Asked by his counsel if Mr. Joblin, the Acting Director of Mission Support at UNIFIL (and Chairman of the Rebuttal Panels) ever discussed the meetings that he held with Mr. Sabir, the Applicant said "No, your Honour, and he didn't discuss either the meeting he had, or at least he claims to have had, with Ms. El-Joubeili".

248. With regard to Ms. Schwalm leaving JMAC, the Applicant said that "there was a civilian staffing review where I was put in front of a *fait accompli* that it was set one post will be nationalized, which was Ms. Schwalm's post. It was not me who decided about the post. I was not involved whatsoever because I opposed the nationalization of an Information Analyst P-3 post".³

³ The Applicant also discussed a confidential settlement agreement between himself and Ms. Schwalm negotiated through the Ombudsperson. Given that it is apparently confidential, the agreement and the allegations leading up to it have not been considered by this Tribunal and will not be discussed here.

249. The Applicant then described that after he was demoted in this case he went on leave and “sought medical support because the whole situation had a very serious effect on [him]”. And he felt that it would not be safe for him to return to UNIFIL because “it is clear ... Mr. El-Sibai, Ms. El-Joubaili and even Mr. Sabir ... still have very strong resentment against me ... All that creates stress”. He also said that having the penalty of misconduct on his record affected his professional reputation and his ability to apply for jobs.

250. Asked by his Counsel if he had anything else to say to the Tribunal, the Applicant stated that:

this is obviously a bad situation for all involved and with hindsight ... maybe we could have avoided it if I would be a little bit ... cynical. I could have followed the advice of some of my colleagues who said, you know, let it be, give him a good e-[PAS], he moves to another mission and it's done. The same for the national staff ... Be kind of a, you know, super tolerant Chief.

251. On cross-examination, the Applicant said that he

is very well aware that the working environment in JMAC during those ten years was not ideal ... I have no problem to recognize the role I have played, but it's not the only factor. As a manager, I'm not the only factor. I also want to remind you that my [e-PASes] during that time period were all exceeds performance, except the last one 'meets performance', by Mr. Joblin. He also claimed that “the toxic influence of Mr. Sabir, that Mr. Sabir had over Ms. El-Joubaili and Mr. [El-Sibai] are a very important factor that had a negative influence on the overall work environment.

252. He said that, while Mr. Joblin and Mr. Riza were “very vocal in the interviews” investigating this case, “they never came to see me ... Those senior leaders, I mean there is no indication that they ever did anything”.

253. The Applicant went on to say:

we're talking about 10 years, but it's to a large extent influenced by Mr. Sabir's efforts to deflect attention from his work performance issue and his negative influence on the two Language Assistants ... The fact that I was a demanding manager and that people like Mr. Kerckanen had a problem with that and that he, in my view, lacked the intellectual flexibility to change his more academic approach to information analysis to a JMAC-specific approach, together with his career aspirations, obviously that played also a role.

254. When asked if he admitted during the investigation that he had referred to Ms. El-Joubeili and Mr. El-Sibai by their religion to JMAC, the Applicant said, "it's not correct. I have not referred to them by their religion. I spoke about sect. Show the transcript". Then Counsel showed the transcript wherein the Applicant had said "I have maybe two or three times said to visitors - Look, these are our National Research Assistants. One is Christian; one is Shia". Then, the Applicant conceded that the transcript was accurate but "at all times I have referred to the sect. I don't know what the religion of Mr. El-Sibai or Ms. El-Joubeili is".

255. The Applicant admitted that, in his application, he said "no witnesses could confirm exactly what was said". He also agreed that, in his response to the Respondent's reply, he said "the Applicant never linked a specific person to a specific community/sect". He testified "That is correct, your Honour, because I said 'one is this, one is Shia, one is Christian.' I didn't say 'Muhamad is this or Christian is that'".

256. The Applicant denied that in 2011 Mr. Sabir and a colleague came to him regarding an incident where Ms. Romanazzi left the Applicant's office crying. "No, there was not, your Honour, and again I can explain this if you want". He then went into a rambling explanation about how the crying staff member is all over the report but the fact-finding panel did not ask him or Ms. Romanazzi about it. "I don't understand this approach. I work 10 years with investigators at ICTY ... You know there this would, I'm sorry to say, that it would not be considered professional ... So to answer the question, it didn't happen".

257. When asked whether his bad relationship with Mr. Sabir influenced the evaluation of Sabir's work, the Applicant gave another rambling answer that included a comment about Mr. Kerckanen. "It is true [Mr. Kerckanen and I] had tensions that one moment, but I consistently gave him an exceeds performance".

258. The Applicant also denied that his difficult personal relationship with Mr. Sabir contributed to Mr. Sabir's decision to go on temporary appointment to Yemen. When asked if he was happy to see him return from Yemen, the Applicant first criticized the question: "Your Honour, the question of [Respondent's counsel] Mr. Van de Velden, in my view is not relevant". He then said: "I was a bit concerned because I remember what had happened just before his departure".

259. Asked to comment on an email from Mr. Sabir that recounted a discussion about a paper he prepared, the Applicant said: "he's misrepresenting what was discussed. And Mr. Sabir, and that was a pattern that had developed earlier, was not implementing my instructions".

260. The Applicant agreed that he had sent Mr. Sabir to a basic writing skills training course even though

there were other analysts who had more recently arrived, but ... it's reasonable to expect that they have some knowledge or that they have experience in report writing. I had an ... known issue with Mr. Sabir, how Mr. Sabir was writing reports. I thought, you in good faith that the course would be interesting to him. I was very surprised that Mr. Kerckanen at a team meeting said 'no, no. this course is not at all interesting because I didn't know what the course was about ... You could criticize me for not having checked the contents of the course before sending Mr. Savir, but otherwise the decision was made in good faith.

261. Asked why he took away Mr. Sabir's supervisory role, the Applicant said

it's all about how things are being presented. In my view, this was not about taking away from somebody a certain role. In my view as a manager, it was about giving somebody else at the same rank level an opportunity to develop or to use his management skills. Mr. Kerckanen

was, is a very experienced P-4 Analyst. I do not deny that I was not happy with the way Mr. Sabir fulfilled his role as supervisor because he was basically acting as an echo chamber instead of constructively trying to contribute to improving the situation with Ms. El-Joubaili and Mr. El-Sibai.

262. However, the Applicant admitted that Mr. Kerckanen told him he did not want that “opportunity” and did not see any reason for changing supervisors. Although Mr. Kerckanen testified that he felt pressured to take the role, the Applicant said “that was not the impression I had, at least not from what he shared with me at the time of the events”.

263. The Applicant denied treating Mr. Sabir differently from other analysts. He specifically denied: telling Mr. Sabir not to use the color copying machine in the office; or directing Ms. Romanazzi to instruct Ms. El-Joubaili and Mr. El-Sibai to include in their weekly reports their discussions with Mr. Sabir:

But, of course, I mean, Ms. Romanazzi and myself, we discussed all the chatting and so on, and since it was about work issues, I fully endorse what she testified, what she also put in her statement that, you know would be relevant. It would be good if the entire team could benefit of that, given the wealth of experience Mr. Sabir had.

264. When they refused to comply with this request, the Applicant says that

I remember that I went with Ms. Romanazzi at one moment to the office of Ms. El-Joubaili and Mr. El-Sibai after Ms. Romanazzi had told me in general terms that the two research assistants, they were still language assistants then, refused to implement her work guidance. But there was no indication to me at all that this work guidance was about reporting on private conversations ... So it was about the fact that suddenly, whereas in the past ... prior to 2016, Ms. El-Joubaili and Mr. El-Sibai were proactive, a pleasure to work with, the situation changed. And Mr. El-Sibai and Ms. El-Joubaili would simply say ‘No’ to Ms. Romanazzi, which I found strange in a small team like JMAC. And that’s why I joined her to ask them what the issue was.

265. The Applicant said he did not become angry with them for not following the instructions. “Instead, I asked them. I didn’t stay too long because I found, you know, this is a serious matter. Let them just think about it”.

266. The Applicant testified that he did not understand that Mr. Sabir’s reason for taking special leave without pay was due to the JMAC work environment. The Applicant said that, in a conversation in late 2018 or early 2019, Mr. Sabir said it was for family reasons. “This was a very normal conversation, there was ... listening to each other showing empathy because I was also quite young father ... So I couldn’t link it to JMAC”. The Applicant was aware of the email Mr. Sabir sent on 21 May 2019 to Mr. Reba Riza and Mr. Joblin explaining his reasons but again he said: “I cannot connect to the memo he sent to HR, cc’ing me and Mr. Joblin”.

267. The Applicant said that he was aware of Mr. Joblin’s statement of Mr. Sabir looking like a broken man and weeping openly when they met:

If you allow me, I can also add to that what Mr. Joblin told me after that meeting in the presence of Colonel Vigorita ... Mr. Joblin told me ... the man was crying ... I was a bit shocked that he expressed himself in that way, and he said that the Force Commander in the presence of a number of people ... proposed or told Mr. Sabir, ‘You know, Mr. Sabir, you can stay here; we can take you out of JMAC. You can go to another office.’ And Mr. Sabir said ‘No, no, no, I have to go.’

268. Regarding Ms. El-Joubaili and Mr. El-Sibai, the Applicant was asked if he believed that they could not be objective staff members in their work due to being Lebanese? He responded:

No, I did not, because it’s a double negotiation. I never expressed doubt about their objectivity, but I can give you examples where, maybe due to a lack of experience, they wrote certain things which could be perceived as lacking objectivity. But I saw that more as a learning process, not as something to use against them. And I didn’t make that kind of conclusion out of those few examples.

269. Counsel for the Respondent then confronted the Applicant with his interview transcript where he said, “I may be misinformed by my experience, but I think in a country with internal issues it is difficult for a citizen - not a citizen, but a person from that country to be objective”. The Applicant admitted having made that statement.

270. Then he said,

but I wanted to add something, because your question, your question was Lebanese. I didn't single out Lebanese. I was referring to my experience working 20 years on the former Yugoslavia where there were internal issues and as a Belgian citizen, even if I pledge allegiance to the Constitution as being, respecting Belgian legislation and so on, but I am also Flemish, and again, I don't want to lecture you here, but I spent a lot long many years studying.

271. The Applicant conceded that he used Mr. El-Sibai and Ms. El-Joubeili, who were Language Assistants, as Research Assistants:

from the beginning ... They were doing a little bit of translation, but I didn't think that that was a good use of their skills and basically they were working as Research Assistants ... I am a bit sensitive to the expression ‘Did you use?’ I mean, their role was as Research Assistants for the entire team.” But their formal grade and title remained G4/GS4 Language Assistant.

272. Asked if he believed that Lebanese people are very sensitive about rank and position, the Applicant said:

I realize that I made that statement during my interview and I consider it unprofessional to make such a broad brush statement. Allow me to say, or to rectify, that many of the Lebanese that I met, and I met many of them, were concerned about their position, their status, and you know, there's nothing wrong with that. Each culture has its specificities, and I find it very enriching ... It's a too broad-brush statement that is [or] could be perceived as inaccurate or disrespectful.

273. He then added that “I think this was even reconfirmed by the two complainants, Mr. El-Sibai and Ms. El-Joubaili, during their interviews that quote unquote, they saw promotion as an entitlement or as a right. And I find that I mean that seems to corroborate what I said in a bit of a clumsy way during my interview”.

274. The Applicant acknowledged that Mr. El-Sibai and Ms. El-Joubaili were frustrated that they were performing G-5 work but still holding G-4 positions. “I acknowledged that frustration and I tried within my capabilities to alleviate the impact of that frustration, for example, by sending them at higher level training courses and by fighting for their reclassification and by fighting for their information access”.

275. He also admitted that in his interview he said, “[i]t’s the issue that many military people and especially those, I mean my Deputies from France, they have a view on Lebanon, and they have a view on Christians and they have a view on Muslims, whether we like it or not”. Again, he said “if you allow me to clarify because its again a broad brush statement” before beginning a lengthy soliloquy about stereotyping and concluding “I don’t think I am prejudiced against anyone”.

276. When asked if he avoided direct communication with Ms. El-Joubaili and Mr. El-Sibai, the Applicant said “No, I did not avoid”. However, he went on to say that “I would not go that often anymore to their offices as I did before”, which he ascribed to advice from the Ombudsman’s representative that he reduce his communication with them.

277. The Applicant was then asked if he used the supervisors as a filter for his communication with Ms. El-Joubaili and Mr. El-Sibai. He said,

I used that expression and maybe it’s a bit unfortunate, but I used the supervisors to the best of my ability in accordance with what UN regulations stipulate in relation to the role of a first reporting officer and me being the second reporting officer. I didn’t want to interfere in the existing workload of the research assistants. I had a lot of questions because I am very interested in the situation, but my request should not overrule the request of the Information Analyst which were managed by

the first reporting officer. That's why I went through the first reporting officer.

278. The Applicant disputed a statement from Ms. Auguste regarding a recruitment exercise complaint and "his suspicions, that through elimination of possibilities, the only persons that were able to do so were Christine El-Joubeli and Mohamad El-Sibai—our two national colleagues with whom he has an ongoing dispute". According to him,

what I recall from my conversation about this issue with Ms. Auguste is that I told her that, based on what I've heard from the office of the Force Commander and Ms. Auguste that there had been a complaint. I for sure didn't give names or explain [to] her like some kind of mental speculation process because it wouldn't contribute anything to the relations in the team. On the contrary.

279. The Applicant denied having "outbursts" towards Sgt. Riyam. Instead, he said that

given the limited language skills of First Sgt. Riyam, I spoke to him very slowly, maybe slightly louder than usual. I gave ... very simple instructions and I may have asked 'did you understand?' But, you know, in a calm manner. And, of course, that is not ... a normal way of communication. But, you know, I didn't see an alternative to ensure that he could still contribute to the team, have a kind of useful time for himself and get my instructions.

280. The Applicant disputed Mr. Kerckanen's testimony that the Applicant's behaviour towards Sgt. Riyam lasted for a difficult two of three months. "I have a recollection of a period of, how would I call it, more reduced communication like a short period of a few weeks".

281. According to the Applicant:

Mr. Kerckanen and myself knew each other from ICTY, we had even been together there on missions and searched archives and so on. And we drove together to the office back and forth.

282. He said that

Mr. Kerkkanen lectured, I mean not lecture, he was very adamant on the event with Mr. Riya[m] towards me. I agreed with, I mean, we had private conversations on that. But it kept on going and I said, ‘Ari, look, I have apologized to Riyam, where I’ve said I’m sorry. Let’s move on.’ But I had a feeling that Mr. Kerkannan kept on repeating the same issues. Was it because of his frustrations with regards to my editing of his work product? And then, I reduced a little bit my nonprofessional, I mean the nonprofessional communication with Mr. Kerkkanen, reduce for a few weeks, but after that, you know, we both forget and that’s how it goes.

283. Asked if Mr. Kerkkanen was correct that, when he arrived at JMAC, there was a lot of tension in the office, the Applicant said:

Yeah, because I think there are two aspects. Of course there is the situation as it developed in relation to what I consider the toxic influence of Mr. Sabir over Mr. El-Sibai and Ms. El-Joubeili which reflected towards Ms. Romanazzi, but she had left by then, and towards me. That is one thing. But of course, we get used to it and we try to limit the impact. But for somebody who came from the outside, like Mr. Kerkkanen, I can understand that it is a bit shocking.

284. The Applicant said that he recognized “in part” that the situation in JMAC had a long history involving not just Mr. Sabir and the Research Assistants, but also issues between the Applicant and different Information Analysts, including military staff of the office, for years:

I mean, the deputies changed every six months there, as I said. There was a wide variety in their skill set, also in their motivations. I had at least of the 20 deputies, 2 people who just came to have a nice mission and a medal, that’s what they told me, before their retirement. They were not the most productive. I tried to hold them accountable. That created friction. So yeah, to that extent, I agree.

285. The Applicant then opined that it was a pity Mr. Kerkkanen was not questioned about how he learned that and if he could give names of people.

286. Mr. Kerckanen attributed these tensions to the Applicant's character and unpredictable behavior. The Applicant responded saying,

I don't deny, as I said before, that I am a demanding manager. But I do not know what Mr. Kerckanen meant by, quote, unquote, unpredictability of my character. It is correct that when there was a situation with which I was not happy that I would express that. But in my recollection, except for the one situation with Mr. Riyam where I raised my voice - I did not shout - but I was very factual. I hold people accountable for what they're supposed to do, but again, I don't think I am unpredictable.

287. The Applicant was asked if he recognized in himself character traits that Mr. Kerckanen described such as "as dictator", "mean in expressing his thoughts, degrading, humiliating, belittling". He said, "No, I do not. They do not correspond with how my supervisors, my first reporting officers and my second reporting officers, ... described the way how I worked, not just the performance but also my role as a manager and my communication and related social skills".

288. The Applicant said that he does regard Mr. Kerckanen as "a very experienced and highly qualified professional". Adding:

if you allow me, I want to make two small additions to that. Mr. Kerckanen holds a PhD, has an extensive academic record, but in my perception had difficulties to adjust his writing style to the specific requirements of JMAC ... Mr. Kerckanen didn't like [the Applicant's template], and he didn't even hide even after one year, two years, three years, that it wasn't what he liked ... I understood from people in New York that they were very happy with it [the Applicant's template] ... And I also got the feeling that Mr. Kerckanen was not always happy with the fact that his work was edited. I can understand that to some level, but what I do not understand is that, at the time of the events, we were sitting together sometimes for one hour discussing it. I would change based on what he explained to me, or he would change something based - on very collegial. And then in his fact-finding panel interview, he comes up with these expressions like 'dictator' and 'mean'. And again, it's not up to me to say what should have been done. But give me examples, and then I can respond to them.

289. Counsel for the Respondent then asked about Mr. Kerckanen's statement that he was "shocked" and "felt like a first grader" when he got the Applicant's first feedback on his work. The Applicant testified in a very lengthy answer that

I think I remember more or less that instance or similar instance, and again bearing in mind that Mr. Kerckanen and myself, we know each other from before, ... what I know from the ... situation at the time of the events. I don't understand ... that testimony. Also because he didn't tell me at the time. Okay, he looked a bit - I mean, we laughed a bit. I said, 'Ari, I'm sorry, I made a lot of edits, but it's your first report here. Let's sit together.' And it was not that anything was wrong.

Mr. Kerckanen was very meticulous, was very motivated, had the highest production. But he didn't always, how would I say, I mean comply with instructions is maybe too strong. But yeah, I remember one instance where the Force Commander asked us for the next day a two-pager on a development. It's within Mr. Kerckanen's area of responsibility, so I say 'Ari, the Force Commander wants this. Give it at that time so I still have 2-3 hours to review it with you, peer review. We have to see how we do that because the deadline is so short.' What happens?

Mr. Kerckanen send a six-page document. I cannot say to the Force Commander 'you wanted only two pages, but we did six.' So I have to edit it. [Mr. Kerckanen] didn't recognize the final product and he, I mean I would also feel unhappy, but I wouldn't continue to feel unhappy or, like Mr. Sabir - I am sorry to mention Sabir here but, take it personally. I didn't make the changes because of Mr. Kerckanen in that particular case, I made the change and the edits because of the request of the Head of Mission/Force Commander.

290. Then the Applicant was asked about a specific instance in which Mr. Kerckanen said he worked on a paper for months and it was not able to be finalized. The Applicant said:

There is a paper ... He did a paper on Druze ... There was not so much happening in his area of interest so there was time for background papers, which could be longer and have more of the ... context. It didn't take months. Maybe, I mean, months. I don't recall if it took two months or three months because, also in between there were other developments; and he and I, we agreed that paper. It was a contextual, a kind of background paper on the role of the Druze or the position of the Druze in Lebanon. It was not urgent to be finished. It was not time

sensitive. So as we discussed in doing the process, I said ‘look, Ari, I can’t review your draft now because I have to do other stuff. Are you okay with that?’ He got other tasks in the meanwhile, so my understanding or my recollection again at the time, from the time of the events was that in mutual agreement we agreed that the finalization of that product took longer.

I must say that I was a bit surprised by the initial paper he sent because it was very reader - unfriendly. And I was surprised because Mr. Kerkannen was at that time already sometime in UNIFIL, and I think he had adjusted, at least in his output, to the kind of templates or the way how we write products even when it comes to a background paper.

291. Moving on to another staff member, the Applicant said Mr. German Frechero, who was also an Information Analyst, “was recruited by me. He had been Chief OGL before and he was very knowledgeable about the area of responsibility”.

292. But when asked to comment on Mr. Frechero’s statement to the investigative panel that JMAC work environment can be described as very unhealthy, the Applicant responded,

What Mr. Frechero allegedly put in an unsigned statement of February 2019? Again, what do you mean by unhealthy? I mean, I would agree the working climate was not as I would like it to be. But again, you, know, somebody should have asked Mr. Frechero, in my view, what do you mean by unhealthy? And then I can respond. I don’t know how he defines unhealthy. In my view, there was room for improvement for the reasons I explained”

293. Told by counsel that Mr Frechero described in multiple pages how he thinks that the work environment was unhealthy, the Applicant said, “I would like to respectfully request, your Honour, that I can at least give my side of the story in accordance with, I mean, to this statement because there are some contextual factors which I think are important in this context to better place this statement”.

294. When specific parts of Mr. Frechero's statement were read, the Applicant said:

I don't know what Mr. Frechero is talking about [and] Mr. Frechero never shared these ideas with me. We had one, what I consider, very unpleasant meeting. But that was, I don't think in February 2019; it was earlier. Where he shouted at me in relation to, with the door open, in relation to my feedback to some of his work product. And again, I can explain that all this if you want ... I can give examples. I mean, Mr. Frechero basically entered my office shouting at me was something, if my recollection is correct, 'you will not touch my work product', with that tone. And, okay, he spoke louder at certain times, when I asked, you know, you're sitting close, there's not need to ... But unlike that. And this had to do with, also, substantive change[s] I had made to some of his draft work products. I mean, it would probably, I don't know whether they stand for that, but I can explain to you the specifics of that. I will try to paraphrase.

Mr. Frechero used for example language which could be seen as biased against a certain party. Probably that was unconsciously. And, again, as Chief JMAC I have to maintain consistency. I am very concerned about or consistency in what the team says and also how we express certain things. We cannot express bias even though we are all biased. But as a professional analyst, you tried to limit or avoid the impact of any bias you may hold on your analysis. And yeah, I had to make significant changes.

One of such products was a report with other mission pillars where I got a very harsh reaction from DPC on the draft. And when I saw the draft, which had been shared with DPC without me seeing it, I had to agree with DPC. I mean, if that would have come out the mission could have suffered reputational damage. And it doesn't mean that Mr. Frecher[o] was not able to write, but you know we all have our writing style, and as the chief who has among his roles is to edit products. Well, I had to edit and he took that personal. But on the other hand he led the project AO mapping project which was very sensitive, but he did a fantastic job there. I told [him] that also and I also mentioned that in his e-P[AS]. So I was surprised to read this February 2019 statement.

295. The Applicant confirmed that Mr. Frechero had shouted but denied having ever referred to Mr. Frechero's "Latin temperament":

Not in such a way. I meant, that was, it may have been during, we had lots of analytical kind of brainstorming sessions and you know, of course, you can mispresent everything, I find. I may have mentioned that, you know, try to be maybe slightly less passionate about it and word it differently. Worded in a more neutral bland manner because some people when they read it, they may see the more passionate wording could be perceived as reflecting bias. And we don't want that because one, I mean, we want the reader to fully be able to absorb the quality of your work and not be distracted by maybe a word that is a bit inappropriate. But that could be perceived as, I mean, reflecting passion but could be perceived as biased or an expression.

296. When he was asked about a statement from Ms. Auguste that he had referred to Mr. Frechero's Latin temperament, the Applicant testified:

Well, again, I don't know in which circumstances these statements which seem to coincide were written ... I don't remember the use of the expressions 'Latin'. I do remember referring to, in a very collegial, open discussion where it's not about the chief and the analysts. It's an open discussion where, I mean an analytical brainstorm where I said, you know, let's be less passionate or something to that effect."

297. The Applicant also denied making some other statements that Mr. Frechero alleged he had made.

298. The Applicant said he disagreed with Ms. Tatiana Auguste's statement about toxic dynamics in JMAC,

I do not [agree]. And why? Because she, even though there were difficult meetings, some of these brainstorms, she didn't share these kind of views with me at the time of the events. So again, I'm puzzled by this only popping up in a statement a long time after the events. It would have been more constructive, especially with her experience from UN headquarters, that she would have raised her concerns directly then with me. Or my supervisors and then my supervisors would raise it with me. That's all I can say.

Well, I'm sorry to repeat myself, but I don't know the circumstances of this statement. I don't know the motivation behind. All I can say is that at the time of the event, she didn't just tell me or I was not made aware by anybody else of that. I also would like to refer to her interview where, which was a couple, no six to seven months earlier, where I think she spoke about tensions in the team. But she also was, I think, positive about my role and how I had received her in the team and facilitated her integration being a single mother at that time, single mother being that she was only there with her child without her husband. So again, as I said for Frechero, I don't know what to say to this. I can read what it there, some I recognize, some of the events. But the interpretations for me are like, there's not much I can say about it, and they do not correspond with how there were interacting with me. They didn't tell me. Okay, Frechero, that was a difficult meeting, or he shouted at the meeting, but not in such big terms.

299. Finally, on re-direct examination, the Applicant claimed that all the documents he provided to the investigation panel were not referenced or included in its report:

I don't understand what happened. Is it an administrative glitch? ... I gave 248 documents to the investigative panel. Not all of them are obviously relevant because many of those are linked to charges that were or claims by the complainants that were dropped. But there are other documents which I consider essential ... to substantiate what I wrote in my response, and also in later submissions.

300. The Applicant was also asked if the issue of unjustified criticism or harassing edits was raised before the investigation. He went on at quite some length, saying:

It was not done in that wording, but I do remember in the latter half of 2019 we had a number of meetings on analytical products where the analyst had drawn quite far reaching conclusions, where the the-deputy Chief of JMAC, who was also in friction with Mr. Kerkkanen, or Mr. Kerkkanen was in a friction with him, had expressed his alert about, for example, the use of military terminology. And I had also certain concerns about the way, how the assessment was going because I found it together with the deputy too alarming.

And this is something I haven't mentioned yet, but one of the problems with hindsight we faced is that all the analysts had experience in report writing, but not necessarily in JMAC analysis. I'm talking about the fall 2019 and we had people with a PhD, we had people with extensive field experience, but not necessarily the same experience as I had of, at that

stage nine or ten years in JMAC, UNIFIL. Which was an unhealthy situation, to use that expression, because that is also why I prefer not to be too often involved in analytical discussions because I would almost, I mean it happened before, that I not overruled, but I would come with an element that the other analyst could not know because I was there at the time of the events and they were not.

And I didn't want to limit their creativity or create these kind of frictions because we still have this, which I would call, the sword of Damocles, the tensions between some internationals, I mean mainly me and Ms. Auguste and Mr. El-Sibai and Ms. El-Joubeli. So there were some tense meetings where I would disagree with the team, the deputy and I would disagree with the time. I remember the deputy leaving angrily. [they were] not pleasant meetings, but I felt that since I was responsible for the output of JMAC that I stood, I held my position.

301. According to the Applicant,

from 2009 to 2019, I received, we didn't often receive feedback [from the mission], but the Head of Mission/Force Commander repeatedly congratulated our work. And, for example, as a detail, I always assured that the initials of the analysts who was the main drafter of the paper would be mentioned in the name of the document. We discussed it; everybody agreed to it. Okay, the heading says from Chief JMAC, but in the name you would, to validate the work of the analyst. The Head of Mission would send some papers to New York, and I hope we also got positive feedback there. I remember one or two cases of negative feedback, but you know that was when I wasn't there and something was sent out and so on and so one. But that was an exception and it was also reflected in my E-P[AS].

302. The Applicant is a glib, intelligent individual (and, by his own report, quite experienced at giving testimony). Obviously, he has an interest in the outcome of this case. He consistently gave answers that were long, rambling, evasive, and evolving (often ending with "and I can explain") He had an explanation for everything, even when he had not been asked to explain.

303. The Applicant conceded that there was a tense environment in JMAC throughout his time as Chief, but claimed this was always someone else's fault. He blamed everybody but himself—his underlings, his supervisors and Senior Leadership, New York, the Ombudsman, and the investigators.

304. At least two examples illustrate the Tribunal’s concerns about the Applicant’s veracity. The first is his testimony on the allegation of his introducing Mr. El-Jibai and Ms. El-Joubeili as “Christine the Christian and Mohamad the Muslim”. At various times the Applicant said that “no witness could confirm exactly what was said”; or “I have maybe two or three times said to visitors - Look, these are our National Research Assistants. One is Christian; one is Shia”; or “I mentioned sect not religion”; “I never identified which was Christian and which was Shia ...”; or that he referred to sectarian descriptions of them to address suspicions about the role that national staff would play in the office and to address gossip that the staff composition did not reflect the sectarian makeup of Lebanon.

305. The second example relates to transferring supervision of the national staff from Mr. Sabir. The Applicant testified that “it’s not about taking away, although [he] was not happy with Sabir as supervisor, it was about giving someone else at the same rank level an opportunity to develop or use their management skills”. However, Mr. Kerkkanen had told him that he did not want to take over the role and did not see a reason for it.

306. The Applicant also said, “I didn’t understand that [Mr. Kerkkanen] didn’t want to be a manager in an area like JMAC”. But in his closing statement, the Applicant criticized Mr. Kerkkanen’s career ambitions.

307. Finally, the Applicant also justified the transfer by saying that Mr. Kerkkanen was a P-4 and “to make a distinction between the P-3s and P-4s in the office, [he thought] it was good for the P-4s to fulfil a supervisory role.” Yet he later replaced Mr. Kerkkanen with Ms. Romanazzi, who was a P-3 Analyst, which negates this justification.

308. These shifting explanations about essential facts in this case indicate dissembling by the Applicant. As a result, the Tribunal rejects his version of facts.

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

309. The Applicant admitted many of the key facts in this case. He admits that there were tensions between him and numerous staff members in the office during his tenure as Chief. He admits raising his voice at Sgt. Riyam, causing Riyam to appear intimidated and very surprised. He admits referring to the sects of national staff (Mr. El-Sibai and Ms. El-Joubaili). He admits having difficult interpersonal issues (“hostile”, “threatening”, “unpleasant”) with Mr. Sabir. He admits being a very demanding manager (“with hindsight probably too demanding”) and providing “written feedback to all of the draft work [Mr. Sabir] submitted.” He admits downgrading Mr. Sabir’s performance evaluation ratings and that these ratings were later raised by rebuttal panels. He admits there were tensions between him and national staff members Ms. El-Joubaili and Mr. El-Sibai. He admits that because of this tension, he reduced his direct communications with them and instead communicated through their FROs, which he himself described as a “filter”.

310. The dispute in this case arises from the Applicant’s views as to how and why these incidents occurred. Again, the Tribunal finds his explanations to be self-interested and not credible. Instead, the Tribunal accepts the testimony of Mr. Kerckanen and the other witnesses.

311. Based on these findings, the Respondent has met the required standard to establish the facts by a preponderance of the evidence. Indeed, although termination was not imposed in this case, the Tribunal finds that evidence establishing these facts was both clear and convincing.

312. There is no justification for shouting at a subordinate, and certainly not in a manner that causes that person to be intimidated and unable to respond. As Ms. Romanazzi acknowledged “there would be no reason to shout, to be offensive or to raise the tone” and that the Applicant’s tone and attitude “could intimidate or be perceived as offensive sometimes”. Although she said that she would not pass judgment “because we are all human beings”, a supervisor with years of experience in

the United Nations is expected to control his emotions and treat all subordinates (indeed, all human beings) with respect.

313. Moreover, the evidence is that this was not a single occurrence when the Applicant lost his temper. He admitted himself that it happened as many as three times with Sgt. Riyam; Ms. Romanazzi said it happened “maybe a few times”; and Mr. Kerckanen said that the Applicant’s treatment of the Sgt. Riyam occurred repeatedly over the course of months.

314. Notably, the Applicant’s behavior continued even after a lengthy conversation in which Mr. Kerckanen “adamantly” pointed out that it was inappropriate. However, when the mistreatment and Mr. Kerckanen’s attempts at correction continued, the Applicant dismissed it, saying “Ari, look, I have apologized to Riyam, where I’ve said I’m sorry. Let’s move on”.

315. The evidence also shows that the Applicant did not want Mr. Sabir at JMAC, and he made this clear by asking Mr. Sabir “why are you here?”. Other people in the office concluded that the Applicant was on a campaign to get rid of Mr. Sabir. Indeed, the Applicant has attempted to portray Mr. Sabir as the villain in this case, alleging that all the allegations arise from Mr. Sabir’s attempts to distract from his own poor work performance. Even the premise of this argument (Sabir’s poor performance) is flawed since rebuttal panels at least twice raised the Applicant’s evaluations of Mr. Sabir’s performance.

316. Beyond these improper and incorrect performance evaluations, the Applicant targeted Mr. Sabir in other ways. He returned Mr. Sabir’s reports repeatedly with constant, unnecessary criticisms (which is a tactic that he used with other staff members as well). He took away Mr. Sabir’s supervisory role for no valid reason. He recommended that Mr. Sabir take basic report writing training that was unnecessary and demeaning since Mr. Sabir had years of experience writing reports. And he tried to enlist other staff members into informing on Mr. Sabir. These actions ultimately

caused Mr. Sabir to become “a broken man” and to take special leave without pay to get away from the Applicant.

317. The Applicant introduced Mr. El-Sibai and Ms. El-Joubeili to JMAC visitors as “Christine the Christian and Mohamad the Muslim”. This is obviously inappropriate. The Applicant’s claim that he was referring to “sects” and not religion is disingenuous since he admits that the sects are based on religion. It is a distinction without a difference.

318. His other explanations also lack merit. Introducing “Christine the Christian and Mohamad the Muslim” could do nothing to allay skepticism and suspicion about the role of national staff. Nor could it address rumors and gossip about the composition of national staff. Clearly, both of those alleged concerns would need in-depth discussions, not witty rhymes. These explanations seem to be mere *post hoc* justifications for the Applicant’s inappropriate comments.

319. Finally, the Applicant clearly used Mr. Kerckanen as a filter to avoid communication with Mr. El-Sibai and Ms. El-Joubeili because of tensions between them. The Applicant admitted this himself: “I used that expression and maybe it’s a bit unfortunate”. According to him, “I would not go that often anymore to their offices as I did before” and “when I had a question, I would ask it through [their] First Reporting Officer.”

320. Mr. Kerckanen felt that the Applicant used him as a filter, as well. And Mr. El-Sibai testified that “[i]f he wants anything from us, he used to email our supervisor. Our supervisor used to forward that request to us and we’re supposed to reply to our supervisor, who also in turn, would forward our reply. That was not normal”.

321. The Applicant justified this variously as his implementing either advice from the Ombudsman or the United Nations Regulations on First and Second Reporting Officers. Those explanations are not persuasive to the Tribunal. As Mr. El-Sibai said, this procedure “was not normal” and not justified by regulations or advice.⁴

322. Accordingly, the Tribunal expressly finds that from approximately 2010 to 2020, during his service as Chief of JMAC, the Applicant created an inharmonious work environment within JMAC, by *inter alia* raising his voice to Sgt. Riyam, targeting Mr. Sabir, introducing Ms. El-Joubeili and Mr. El-Sibai by their respective religions/sects and/or communities and intentionally not communicating with them.

323. The Tribunal also finds that from 2011 to 2020, the Applicant had an interpersonal problem with one of his subordinates, Mr. Sabir, and following that, the Applicant improperly used his authority by targeting Mr. Sabir through an overly critical approach to feedback on his work outputs and by an inadequate use of the performance evaluation process.

324. The Tribunal also finds that during the period of 2010 to 2014, the Applicant introduced Mr. El-Sibai and Ms. El-Joubeili by referencing their respective religions/sects, specifically “Christine the Christian and Mohamad the Muslim”.

325. The Tribunal also finds that since 2016, because of interpersonal conflicts, the Applicant excluded Mr. El-Sibai and Ms. El-Joubeili within the work environment by intentionally not communicating with them and seeking to use Mr. Kerckanen “as a filter”.

⁴ It might be true that the Ombudsman representative said this, if they were the same person that told Ms. El-Joubeili to address her complaints by getting a new job. However, even if true, it was not reasonable for the Applicant to rely on such inappropriate advice. A manager needs to develop at least a cordial professional relationship with his subordinates and not rely on intermediates to act as a filter.

Whether the established facts legally amount to misconduct

326. As alleged by the Respondent, the above-referenced actions constituted misconduct in violation of staff regulations 1.2(a), staff rule 1.2(f), secs. 1.2, 1.4 and 3.2 of ST/SGB/2008/5, and Chapter X of the Staff Rules.

327. The Applicant argues that, under the United Nations policy against harassment, “disagreement on work performance or other work-related issues is normally not considered harassment” (Applicant’s Closing Statement, paragraph 8). However, this argument is without merit because the Applicant’s actions were not normal disagreements on work performance.

328. First, some of the proven conduct cannot be considered as performance or work-related at all. Introducing the Information Analysts as “Christine the Christian and Mohamad the Muslim” is not related to their performance and has no valid justification in the workplace.

329. Second, the claimed work deficiencies of those subject to the Applicant’s actions are illusory. According to the record, on more than one occasion, performance evaluations authored by the Applicant were changed and upgraded by rebuttal panels. And the Applicant used this excuse for his treatment of numerous staff members. It seems incredible that for years JMAC was filled with incompetent staff needing correction.

330. The only evidence of such work deficiencies was the Applicant’s own testimony and that of Ms. Romanazzi. As described above, the Tribunal does not find that testimony to be credible. Ms. Romanazzi is clearly biased, and the Applicant finds fault with everyone but himself. One example stands out: asked if he regarded Mr. Kerkkanen as a very experienced and highly qualified professional, the Applicant said, “I do. Your Honour, if you allow me, I want to make two small additions to that”. He then launched into a lengthy statement that included criticism of Mr. Kerkkanen and praise for himself (see para. 288 above). It was as if the Applicant was incapable of acknowledging the good qualities of someone other than himself.

331. Third, and most importantly, even assuming that there were valid performance or other work-related issues, the Applicant's conduct was far outside the bounds of normal disagreements or management actions. To select just one example, let's assume that Sgt. Riyam had deficient English language skills (or as recounted by the Applicant, he had failed to forward an email). It would be neither normal nor appropriate to yell at Sgt. Riyam such that Sgt. Riyam was intimidated and to the point of being unable to respond.

332. That the Applicant's conduct was beyond what might be considered normal is confirmed by the evidence that several people told the Applicant that his treatment of staff was inappropriate. It should have been apparent to the Applicant himself, but even if it were not he had sufficient notice that his actions were unwelcome. Despite these warnings, the Applicant continued his behavior, or made slight changes that were short-lived.

333. In sum, it is clear that the Applicant's action, as proven by the evidence, amounted to misconduct.

Whether the disciplinary measure applied was proportional to the offence

334. As noted above, the sanction imposed for this misconduct was demotion by one grade (from P-5 to P-4) and a three-year deferment of the Applicant's eligibility for promotion. The Applicant argues that the sanction is not proportionate because "no explanation was given why a disciplinary measure, as opposed to administrative action, was appropriate ... There is no demonstrable benefit to the Organization from this excessive, unjust and demotivating penalty" (Application, para. 19).

335. Under the established jurisprudence, the Secretary-General's discretion to sanction is limited by the proportionality principle "by requiring an administrative action not to be more excessive than is necessary for obtaining the desired result ... The essential elements of proportionality are balance, necessity and suitability". (*Samandarov* 2018-UNAT-859, para. 23, citing *Sanwidi* 2010-UNAT-084).

336. The sanction letter and its attachments recount that past Organization practice in similar cases (non-sexual harassment and abuse of authority) has resulted in sanctions ranging from written censure to separation, with “cases involving senior staff members engaging in compound misconduct affecting the working conditions of staff members result[ing] in sanctions at the stricter end of the spectrum”. (Annex to the sanction letter, para. 62). The sanction imposed on the Applicant was at the stricter end of the spectrum.

337. The sanction letter states that multiple factors were taken into consideration in determining the appropriate sanction, as set forth in an eight-page Attachment B to it. The Applicant dismisses this document as “*pro forma*”, but the Tribunal observes that the letter is actually a detailed and systematic analysis of the appropriate legal factors as applied to the facts of this case.

338. The Applicant specifically challenges the sanction letter’s analysis of the second factor, i.e., whether the staff member made full, timely disclosure to a supervisor. He claims that the analysis “consists in misrepresenting the record, such as claiming that the Applicant never disclosed his issues with Mr. Sabir to supervisors” (Application, para. 19). However, the Applicant misreads this factor.

339. The issue addressed by that factor in this case is not whether the Applicant complained to supervisors about the alleged behavior or performance of Mr. Sabir. Instead, this factor relates to whether the Applicant disclosed his own misconduct to supervisors; in other words, did he confess his wrongdoing in a timely and full way. The record is very clear that the Applicant did not do so.

340. The sanction letter also expressly weighed the appropriate aggravating and mitigating circumstances present in the case. The Tribunal finds that the sanction imposed was proportionate under all the relevant circumstances. Given the serious and protracted nature of the misconduct, and the Applicant’s failure to correct his misconduct despite repeated input from others, it is very clear that a non-disciplinary “administrative action” would not have achieved the required result.

341. Thus, a more serious sanction was necessary. The sanction of demotion and deferred promotion eligibility was suitable to the facts and was balanced under all the circumstances. Clearly the Applicant was a senior staff member who engaged in compound misconduct affecting the working conditions of numerous staff members.

342. The Tribunal agrees with the Respondent that the sanction “adequately weighed the Organization’s obligation to stand firm with its values as articulated in its Regulations and Rules, while also allowing the Applicant [an] opportunity to improve on his conduct while remaining a staff member of the Organization. The Applicant is not prevented from eventually applying for higher level positions in the future once the deferment period ends”. (Respondent’s reply, para. 42).

Whether the Applicant’s due process rights were respected

343. The Applicant also argues that his due process rights were violated by the Organization in several ways. First, he complains about “the use of unsigned statements—whereby one even includes comments by another person than the apparent drafter, or hearsay that is not based on any sworn or examined testimony should be rejected”. (Applicant’s closing statement, para. 6).

344. The issue of unsigned statements was addressed during the hearing. When asked if the Applicant disputed the authenticity of the statements, his Counsel said “we are not disputing the statements—that this is where they came from. We are just pointing out that they are not sworn statements ... They don’t have the value of witness testimony ... Well, I think [the Applicant] is disputing the opinions, their opinions, basically”.

345. None of these statements were formally offered into evidence at the hearing. In *AAC* at para. 46, the Appeals Tribunal stated:

All documentary evidence relevant to the facts in dispute, including the OIAI investigation report, must be adduced through appropriate witnesses or can be admitted by an agreement between the parties ... confirming that the documents are what they purport to be and explicitly

addressing which contents of the documents may be accepted as true or not.

346. The Applicant's Counsel acknowledged that the statements are what they purport to be, while arguing that any opinions contained in the statements are disputed.

347. To be clear, the Tribunal is not accepting as evidence any opinions contained in unsigned statements. Nor did the Tribunal consider any such opinions in reaching this judgment (see also footnote 2 above). Accordingly, there is no due process violation in this regard.

348. The Applicant also argues that his due process rights were violated by reference to a confidential mediation settlement agreement to which the Applicant was apparently a party. Again, the Tribunal has stated that it has not considered the fact of any such agreement or any allegations that may have led up to the agreement (which are virtually unknown to the Tribunal in any event) in reaching this Judgment (see footnote 3 above).

349. The Applicant also claims that "reference to other alleged JMAC cases" violates his due process rights. It is unclear precisely what other cases the Applicant is referring to here. To the extent that he means Mr. Sabir's performance evaluation rebuttals, his complaint is without merit. The rebuttal cases are clearly relevant to the issue of the Applicant's "inadequate use of the performance evaluation process". The Applicant did not object to testimony regarding these rebuttals and, in fact, testified to them himself.

350. To the extent that this claim relates to some other "alleged JMAC cases", the Tribunal does not recall any such evidence and certainly did not consider any "other alleged JMAC cases" in reaching this Judgment.

351. The final due process violation issue claimed by the Applicant is “the Respondent’s failure to include the extensive record of documentary evidence the Applicant submitted to the Investigative Panel”. (Applicant’s closing statement, para. 7). This issue was also discussed during the hearing, when the Applicant testified as recounted in paragraph 299 above. He said himself that it might have been merely “an administrative glitch” that they were not included in the record.

352. In any event, the Tribunal resolved the matter at the hearing:

There’s this issue about how many of the 240 documents that the Applicant submitted to the panel are not included in the record here. I am assuming that, Counsel, you can just work that out. If Mr. Irving says that these seven or 70 are not included, you can let Mr. Van de Velden know. And he can say ‘yes, we agree they were before the panel or not’, right? So you can do that within the next week, by next Friday, and submit any additional ones that need to be submitted. And then that will be our record.

Applicant’s Counsel agreed to this resolution, so this claim of due process violation also is without merit.

Conclusion

353. For the reasons set forth above, the Tribunal DECIDES to:

- a. Affirm the disciplinary decision imposed on the Applicant in all respects; and
- b. Reject the application in its entirety.

(Signed)

Judge Sean Wallace

Dated this 29th day of December 2023

Case No. UNDT/NBI/2023/016

Judgment No. UNDT/2023/145

Entered in the Register on this 29th day of December 2023

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi