



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/009

Judgment No.: UNDT/2024/027

Date: 1 May 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

SALLOUM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alister Cumming, UNICEF

Chinonyelum Esther Uwazie, UNICEF

Introduction

1. On 24 March 2023, the Applicant, a former staff member of the United Nations Children's Fund (“UNICEF”), filed an application contesting the decision to impose on him a disciplinary measure of dismissal.
2. The Respondent contends that the application is without merit.
3. On 23 January 2024, a hearing was held via MS Teams at which the Applicant gave testimony. The parties subsequently filed their closing statements. On 15 March 2024, the Applicant filed a statement of his final observations responding to the Respondent’s closing statement.
4. For the reasons set out below, the application is denied.

Facts

5. In response to Order No. 076 (NY/2023) dated 23 August 2023, the parties submitted the following joint statement of agreed facts on 16 October 2023 (references to footnotes omitted):

...

1. Background information

... The Applicant joined UNICEF on 1 March 2015 as an Administrative Assistant with Homs Field Office, Syrian Arab Republic, at the G-6 level. On 20 August 2017, the Applicant was promoted to the National Professional Officer category and appointed as an Emergency Officer [...].

... At the end of 2016, the Applicant began a romantic relationship with V01 in Syria. Before this time, the Applicant was in a romantic relationship with [AB (name redacted for privacy)], former Child Protection Officer, Tartous Field Office, Syrian Arab Republic.

... In December 2018, V01 sought asylum in the Netherlands. In June 2019, V01 was granted a residence permit in the Netherlands.

Following this, V01 initiated family reunification proceedings to allow the Applicant to reside in the Netherlands with her.

... In December 2019, the Applicant signed a formal declaration to maintain an exclusive relationship and conduct a joint household with V01.

... In March 2020, the Applicant visited V01 in the Netherlands. He stayed in the Netherlands until July 2020. While in the Netherlands, he stayed partly with V01 and partly with his friends.

... During the Applicant's stay in the Netherlands in 2020, V01 discovered that he and AB were in a romantic relationship. V01 discovered this when she saw sexually explicit material (pictures and videos) of the Applicant and AB on the Applicant's mobile phone. When she saw this, V01 took photographs and a video of the material using her mobile phone. On 17 March 2020, V01 confronted the Applicant about his relationship with AB. On 31 March 2020, V01 confronted AB and sent to AB copies of the images V01 had taken from the Applicant's mobile phone.

...

2. Physical assault of V01

... It is agreed that in March or April 2020, the Applicant had an argument with V01 which escalated into a fight.

... It is agreed that the fight between the Applicant and V01 took place in V01's apartment in the Netherlands.

... It is agreed that after the fight, the Applicant left V01's apartment.

...

3. Threat to disseminate sexually explicit material of V01

a) Threat dated 18 March 2020

... It is agreed that on 18 March 2020, the Applicant sent a WhatsApp text message to V01 in which he threatened to disseminate sexually explicit material showing V01, which was recorded with the Applicant's living room camera in Syria at a time that the Applicant and V01 were in a romantic relationship. Specifically, in the WhatsApp message, the Applicant stated:

“FYI, you idiot, on that same laptop you were spying on, you have amazing footage and videos of the lovely nights spent in my living room, my bedroom and the former Beit Al Hadara [...] All the history is saved, so if you play it smart and make a copy of anything, these

videos and photos of yours will end up in places you've never heard of in a second".

... On 15 May 2020, V01 confronted the Applicant about recordings that V01 alleged had been made without her consent. When V01 confronted the Applicant, the Applicant did not dispute V01's claim that the Applicant recorded her without her consent.

...

b) Threat dated 12 June 2020 by AB

... It is agreed that between 18 March 2020 and 12 June 2020, the Applicant provided sexually explicit material showing V01 to AB. It is agreed that when the Applicant provided the material to AB, he informed AB that "If [V01] threatens [AB] again, [AB] can tell her listen [the Applicant and AB] can do the same, yeah, [the Applicant and AB] have also photos and videos same as you threaten with". Specifically:

... On 31 March 2020, V01 confronted AB about AB's romantic relationship with the Applicant.

... Between 31 March 2020 and 10 May 2020, V01 exchanged several communications through WhatsApp with AB.

... On 12 June 2020, V01 called AB through WhatsApp. During the call, AB informed V01 that she had sexually explicit material of V01 in her possession and offered to send one of the [materials] to V01 as proof. After the call, AB sent one image to V01. Specifically, she sent an image of V01 in an intimate position with the Applicant, which was recorded on 25 March 2018, using the Applicant's living room camera. The Applicant was in a romantic relationship with V01 when the sexually explicit material was recorded.

... The Applicant gave the image that AB sent to V01, and other sexually explicit material that AB did not send to V01, to AB. When the Applicant gave the sexually explicit material to AB, he informed AB that if V01 continued to threaten AB, AB could use the material to make it clear that she and the Applicant could do the same.

... In WhatsApp messages that AB sent to V01 with the image, she stated:

"12/6/2020 17:07 - +963 998 865 488: IMG20200612WA0000.jpg (file attached)

This is a very gentle and light photo for your feelings, [one of] a very large quantity of videos and photos, and believe me you wouldn't want to be more certain

12/6/2020 17:07 - +963 998 865 488: if you get closer

12/6/2020 17:07 - +963 998 865 488: there's plenty of that

12/6/2020 17:07 - +963 998 865 488: That's what I was able to obtain now"

... V01 had on 15 May 2020 confronted the Applicant about recordings that V01 alleged had been made without her consent.

c) Threat dated 16 June 2020

... It is agreed that on 16 June 2020, the Applicant sent an email to V01, with a link to eight sexually explicit videos showing V01, in which the Applicant threatened to disseminate sexually explicit material showing V01 and create an "erotic website" in V01's name with sexually explicit material that was recorded in Syria at a time that the Applicant and V01 were in a romantic relationship. Specifically:

... On 16 June 2020, the Applicant sent eight files containing sexually explicit material showing V01 to V01. The Applicant sent the material to V01 through [...] V01's personal email address. The Applicant used an email address [...] that he created to send the material. The Applicant captioned the email, "Surprise! not necessarily funny".

... In the body of the email, the Applicant stated *inter alia*:

"Important: A link on this account has footage of you. Watch carefully and quick. It will auto-delete in 1 day. It will not only be sent to your parents, if you get anywhere near my parents, anyone I know or me. The link will reach your Facebook friends, I can even go on your Whatsapp and "share with everyone", it will be one of hell of a party! You'd have opened that door – don't try me, that's my advice, everyone you know will know you for real! Though I doubt they would react to your charming looks [...] wow hahahaha.

Great, so now you feel what I felt when you blackmailed me? Enjoy

I have much more, but uploading them takes time you don't deserve. But when necessary, there will be an erotic website set up in your name in one hour. It will be a Syrian-Dutch-Palestinian tourist attraction. Your profile will be enough to prepare a nice product, because once it reaches all universities and places (I have an IT expert with me), your life, reputation and face will be ruined for generations."

... The email included a Google Drive link to eight sexually explicit videos of V01, three of which the Applicant entitled "Asmahan PORN mp4", "Call me ASMAHAN MAH", "FAT ASS PORN STAR AS..". The Applicant created the link in a way that access to the videos expired after one day from the date that he sent it to V01.

... The videos were recorded while the Applicant and V01 were in a relationship in Syria, before V01 relocated to the Netherlands. The videos were recorded using the Applicant's living room camera.

... V01 had on 15 May 2020 confronted the Applicant about recordings that V01 alleged had been made without her consent.

4. The Applicant erased the content of his UNICEF-issued mobile phone device during an investigation into the allegations involving him

... It is agreed that on 1 June 2021, the Applicant erased the content of his UNICEF-issued mobile phone device which the Applicant was asked to hand over in connection with the investigation into allegations that V01 made against him. Specifically:

... On 1 June 2021, the Applicant received from UNICEF's Office of Internal Audit and Investigations the notification of investigation into allegations that he physically assaulted V01, recorded sexually explicit material of her without her knowledge and consent, and threatened to disseminate sexually explicit material involving her.

... On the same day, the then-Deputy Representative Operations in UNICEF's Syrian Arab Republic Country Office (SCO) recovered from the Applicant, the Applicant's UNICEF issued laptop and mobile phone.

... The Applicant knew that the recovery was for the investigation into the allegations against him. Notwithstanding this, before handing over the mobile phone (i.e., a Samsung Galaxy A30s with serial number, RF8MB28WBBE, and IMEI 1 and 2, 351773110923213 and 351773110923211, respectively) to then-Deputy Representative Operations, SCO, the Applicant erased its contents.

... The Applicant erased the phone's content while the then-Deputy Representative Operations, SCO was waiting to receive the device from him. However, the Applicant did not inform the then-Deputy Representative Operations, SCO that he was erasing the phone's content. Instead, the Applicant informed the then-Deputy Representative Operations, SCO that he needed to back up information that he had stored in the UNICEF issued mobile phone device to his personal telephone. Having received the Deputy Representative's authorization to back up his information, the Applicant erased the phone's content before handing it over to the Deputy Representative Operations, SCO.

5. The Applicant misused his UNICEF-issued mobile phone device

... It is agreed that in May 2021, the Applicant gave his UNICEF-issued mobile phone device to his friend who was not employed by

UNICEF in any capacity for his friend's use without prior authorization from UNICEF. Specifically:

... On 1 June 2021, when the Deputy Representative, SCO visited the Applicant's home to seize UNICEF assets which had been issued to the Applicant for official use, the Applicant did not have in his possession his UNICEF-issued mobile phone device. The Applicant had given the device to a friend of his for his friend's personal and professional use.

... The Applicant's friend who had the device was not a UNICEF employee. Before the Applicant gave the device to his friend, the Applicant did not inform anyone in UNICEF, and he did not request authorization from anyone to give the device to his friend or anyone else.

... On 1 June 2021, when the Deputy Representative Operations, SCO asked the Applicant to hand over the device, the Deputy Representative Operations waited for almost 90 minutes before he received it. The Applicant's friend brought the device to the Applicant in the presence of the Deputy Representative Operations, SCO. However, the Applicant did not inform the Deputy Representative Operations, SCO that he had given the device to his friend for the friend's use. Instead, the Applicant informed the Deputy Representative Operations that he had sent the device for repair due to faulty charging.

6. The Applicant viewed files with sexually explicit titles on his UNICEF-issued laptop

... It is agreed that between 16 October 2016 and 30 September 2018, the Applicant viewed video files with sexually explicit titles on his UNICEF-issued laptop. Specifically, the Applicant viewed twenty-six video files with sexually explicit titles, stored in folders with sexually explicit names, on his UNICEF-issued laptop. [...]

... It is agreed that the Applicant accessed the files through an external drive that the Applicant connected to his UNICEF-issued laptop.

6. The Tribunal adds that by letter dated 22 December 2022, the UNICEF Deputy Executive Director, Management informed the Applicant of the contested decision, namely "the disciplinary measure of dismissal, in accordance with [United Nations] Staff Rule 10.2(a)(ix), effective upon your receipt of this letter" ("the Sanction Letter").

Consideration

Legal framework

7. Staff regulation 1.2(b) (Basic rights and obligations of staff) on core values provides that “[s]taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status”.

8. Staff regulation 1.2(q) (Basic rights and obligations of staff) on use of property and assets provides that “[s]taff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets”.

9. Staff Rule 1.2(g) (Basic rights and obligations of staff) on general rights and obligations provides that “[s]taff members shall not disrupt or otherwise interfere with any meeting or other official activity of the Organization, including activity in connection with the administration of justice system, nor shall staff members threaten, intimidate or otherwise engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official functions. Staff members shall not threaten, retaliate or attempt to retaliate against such individuals or against staff members exercising their rights and duties under the present Rules”.

10. ICTD/STANDARD/2018/010 (UNICEF Standard on acceptable use of ICT [an abbreviation of information and communication technology] Resources) governs UNICEF’s policy on staff members’ use of information and communication technology. These provisions of ICTD/STANDARD/2018/010 are consistent with the provisions of CF/IC/2001-029 (Personal Use of UNICEF’s Information Technology Systems), which was in effect in 2016 at the time of the relevant conduct.

11. Section 7 of ICTD/STANDARD/2018/010 provides that the use of UNICEF ICT resources and networks is primarily for legitimate UNICEF official use.

12. Section 8 of ICTD/STANDARD/2018/010 provides that:

8. However, staff members may make personal use of the Organization's equipment and software as long as this is kept to a minimum and is also within the principles set out below.

...

8.2 Personal use must not be incompatible with the [United Nations] Staff Rules and Regulations and other applicable rules, including the Standards of Conduct of the International Civil Service. Thus, activities that are inappropriate or offensive or would bring the Organization into disrepute are strictly prohibited. This applies to all UNICEF equipment and software, including using the Internet to access objectional content.

...

Standard of review in disciplinary cases

13. Under the recently adopted art. 9.4 of the Dispute Tribunal's Statute and the settled jurisprudence of the Appeals Tribunal, in conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine (a) whether the facts on which the disciplinary measure is based have been established; (b) whether the established facts amount to misconduct; (c) whether the sanction is proportionate to the offence; and (d) whether the staff member's due process rights were respected. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (see para. 51 of *Karkara* 2021-UNAT-1172, and similarly in, for instance, *Modey-Ebi* 2021-UNAT-1177, para. 34, *Khamis* 2021-UNAT-1178, para. 80, *Wakid* 2022-UNAT-1194, para. 58). The Appeals Tribunal has further explained that clear and convincing proof "requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable" (see para. 30 of *Molari* 2011-UNAT-164). In this regard, "the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure

has been taken against a staff member occurred” (see para. 32 of *Turkey 2019-UNAT-955*).

Whether the facts on which the sanction is based have been established?

14. The Sanction Letter stated that the Applicant actions amounted to misconduct in violation of staff regulations 1.2(b) and 1.2(q), staff rule 1.2(g), and paras. 7 and 8.2 of ICTD/STANDARD/2018/010. In particular, the Sanction Letter stated that the Applicant: (a) physically assaulted V01; (b) made threats to disseminate sexually explicit material of V01; (c) erased the content of his UNICEF-issued mobile phone device during an investigation into the allegations involving him; (d) misused his UNICEF-issued mobile phone device; (e) viewed files with sexually explicit titles on his UNICEF-issued laptop.

15. The Tribunal will examine whether the underlying facts of each of the charges are established by clear and convincing evidence.

Physically assaulting V01

16. The Sanction Letter states:

... In March or April 2020, you physically assaulted V01 in order to take away from her a mobile phone which she had in her hand during a fight with you, resulting in a bruise on V01’s hand.

...

17. The Tribunal notes that the Applicant admits that in March or April 2020, he had an argument with V01 in V01’s apartment in the Netherlands. The Applicant, however, disputes that he physically assaulted V01.

18. The Respondent states that V01’s evidence of the Applicant’s actions with respect to this conduct is clear and unequivocal—she suffered a bruise after the Applicant twisted her hand to take a mobile phone from her. In addition, the Applicant

admitted that his fight with V01 “may have actually caused a miniscule red mark” on V01.

19. The Respondent further submits that V01’s evidence is corroborated. BC (name redacted for privacy), who was V01’s neighbor in the Netherlands, attended to the bruise on V01’s hand following the fight. Contrary to the Applicant’s assertion, V01 stated that she went to BC’s apartment after the fight where BC attended to her. The Applicant has failed to provide any evidence to support his allegation that BC was not V01’s neighbor. The Tribunal notes that BC’s statements to the UNICEF Office of Internal Audit and Investigations (“OIAI”) are not inconsistent with the Applicant’s own account of the incident, as during the investigation, the Applicant stated that there was talking and shouting between him and V01 and he did not dispute the evidence that he left V01’s apartment after the fight. BC stated that she heard loud voices from V01’s apartment during the fight and she stated that after the Applicant left V01’s apartment, V01 came to her apartment. With respect to the bruise on V01’s hand, BC stated that “[V01’s] hand was “a bit red”, and that BC “applied some oils.” These similarities attest to the credibility of her statements to OIAI.

20. The Tribunal notes that during cross-examination, the Applicant admitted that he left V01’s apartment after their fight. He admitted that because he left V01’s apartment, he had no way of knowing whether anyone attended to the bruise on V01’s hand. Accordingly, taken together, the Applicant’s denial of V01’s evidence with respect to this conduct is without merit.

21. Based on the above, the Tribunal concludes that it is established that there is clear and convincing evidence that the Applicant physically assaulted V01 during the course of their argument.

Making threats to disseminate sexually explicit material of V01

22. The Sanction Letter states:

... On 18 March 2020, you sent a WhatsApp message to V01 in which you threatened to disseminate sexually explicit material of V01 which you recorded without her consent when you were in a romantic relationship with her in Syria.

... Between 18 March 2020 and 12 June 2020, you provided sexually explicit material of V01 which you recorded without her consent to AB, Child Protection Officer, Tartous Field Office, Syrian Arab Republic, in order for AB to threaten V01 with dissemination of the material.

... On 16 June 2020, you sent an email to V01, with a link to eight sexually explicit videos of her, in which you threatened to disseminate sexually explicit material of her and create an “erotic website” in V01’s name with sexually explicit material that you recorded without her consent when you were in a romantic relationship with her in Syria.

...

23. The record clearly establishes the Applicant’s actions with respect to this conduct. The Applicant does not deny that he sent the message dated 18 March 2020 and email dated 16 June 2020 to V01 threatening to disseminate sexually explicit material showing V01. The Applicant does not deny that he provided the sexually explicit material showing V01 to his romantic partner, AB in order for AB to threaten V01 with dissemination of the material.

24. The Applicant’s assertion that his motivation for engaging in the conduct—namely that he did so because V01 threatened to disseminate sensitive and private material showing him and AB and blackmailed him—is not relevant to the consideration that he engaged in the conduct. There is no justification for the Applicant to threaten and provide AB with material to threaten V01 with dissemination.

25. In regard to the issue of the Applicant recording the explicit material without V01’s consent when they were in a romantic relationship in Syria, the Tribunal finds that the facts are established by clear and convincing evidence. The Tribunal finds no

merit in the Applicant's argument that V01 consented to the recording of the sexually explicit material that the Applicant used to threaten her. It is clear from the record that V01 was unaware that the Applicant recorded their intimate moments. This is also clear from her reaction to AB's threat of 12 June 2020. Following this threat, V01 sent a WhatsApp message to the Applicant asking him, "Where is this coming from?" in reference to the sexually explicit image that AB had sent to her.

26. At the hearing, the Applicant played a video clip of V01 in the living room of his home in Syria taken by the camera used to film the explicit sexual material. The clip merely shows V01 glancing at a space in the Applicant's living room while she brushed her hair with her hand and took a sip of water from a bottle, none of which has anything to do with glancing at a camera. Contrary to the Applicant's assertions, the video clip showing V01 does not show V01 glancing at any camera, nor does it support his assertions that V01 was aware that she was being recorded.

27. It follows from the above that the fact the Applicant made threats to disseminate sexually explicit material of V01, recorded without her consent, is established by clear and convincing evidence.

Erasing the content of the Applicant's UNICEF-issued mobile phone device during an investigation into the allegations involving him

28. The Sanction Letter states:

... On 1 June 2021, with intent to obstruct the investigation, you erased the content of your UNICEF-issued mobile phone device which you were asked to hand over in connection with the investigation into the allegations that V01 made against you.

29. The Tribunal finds that the evidence on file clearly shows that on 1 June 2021, the Applicant erased the content of his UNICEF issued mobile phone which he was asked to hand over in connection with the investigation into the allegations that V01 had made against him. When he erased the phone's content, he knew that the phone was being recovered from him for the purpose of the investigation—he was duly

notified of this. As a UNICEF staff member, the Applicant was required to cooperate with the investigation and assist the investigators. Although the Tribunal is aware that, in *AAE*, UNAT-2023-1332 (see para. 138), the Appeal Tribunal “agree[d] with the Dispute tribunal’s caution against construing the duty to cooperate “so broadly as to deny [a] staff member’s right to privacy, private property and freedom from self-incrimination”, but agreed with the majority in the Dispute Tribunal impugned judgment No. UNDT/2022/030, which did not find misconduct with respect to the Appellant’s deletion of the WhatsApp messages on his private phone, given the lack of clarity as to the Appellant’s legal obligations to preserve or disclose the content, in the case at hand, the Applicant erased the content of his UNICEF issued mobile phone, and not his private phone. The Applicant’s assertion that evidence concerning the allegations by V01 was in his personal phone and not his UNICEF issued mobile phone is totally irrelevant to the issue at hand. Therefore, the Applicant failed to comply with the minimum expectation set out under the United Nations Staff Regulations and Rules, and in fact demonstrated an intent to obstruct the investigation.

30. It follows from the above that the fact the Applicant erased the content of his UNICEF-issued mobile phone device during an investigation into the allegations involving him is established by clear and convincing evidence.

Misusing his UNICEF-issued mobile phone device

31. The Sanction Letter states:

... In May 2021, you gave your UNICEF-issued mobile phone device to your friend who was not employed by UNICEF in any capacity for his use without prior authorization from UNICEF.

32. The Respondent states that the evidence shows that in May 2021, the Applicant gave his UNICEF-issued mobile phone device to his friend who was not employed by UNICEF in any capacity for his friend’s use without prior authorization from UNICEF. The Tribunal notes that the Applicant does not dispute this. It follows that it is clearly established that the Applicant misused his UNICEF-issued mobile phone device.

Viewing files with sexually explicit titles on his UNICEF-issued laptop

33. The Sanction Letter states:

... ... Between 16 October 2016 and 30 September 2018, you viewed twenty-six video files with sexually explicit titles on your UNICEF-issued laptop. You were informed that, if established, your conduct would constitute a violation of ... Staff Regulations 1.2(b) and 1.2(q), ... Staff Rules I.2(g), and paragraphs 7 and 8.2 of ICTD/STANDARD/2018/010 (UNICEF Standard on acceptable use of ICT Resources).

34. The Respondent states that the evidence shows that between 16 October 2016 and 30 September 2018, the Applicant viewed twenty-six video files with sexually explicit titles on his UNICEF-issued laptop. The evidence shows that the Applicant accessed the files through an external drive that the Applicant connected to his UNICEF-issued laptop.

35. The Tribunal notes that during the Applicant's cross-examination, he stated that he does not dispute that he viewed the files on his UNICEF-issued laptop. He stated that he briefly "viewed" the files in order to clean up his personal hard drive. The Applicant further claims that he did not know that viewing of such files was prohibited. The Tribunal finds no merit to this defense. The length of time or the alleged reason for why the Applicant viewed the files is not relevant to the finding that he viewed twenty-six video files with sexually explicit titles for personal purpose on his UNICEF-issued laptop.

Whether the established facts amounted to misconduct

36. The Applicant's actions, as established by the facts indicated above, constitute serious misconduct. The Applicant was responsible for ensuring that he acted at all times in a manner befitting his status as an international civil servant. It is not an excuse that he engaged in the established conduct towards V01 because V01 threatened and blackmailed him. The Applicant made clear threats to disseminate sexually explicit material of V01. It is immaterial that the threats were not carried out. The record

establishes that V01 took the threats seriously and she was severely impacted by them and by the Applicant's physical assault. In respect to viewing files with sexually explicit titles on his UNICEF-issued laptop, the Tribunal agrees with the Respondent that it is not acceptable for staff members to view files with sexually explicit titles on their UN-issued devices. Staff members are expected to know the legal and policy framework applicable to them. It follows that it is clearly established that the Applicant viewed files with sexually explicit titles on his UNICEF-issued laptop. The Tribunal notes that the Applicant himself accepts in his closing submission dated 23 February 2024 that his actions amounted to misconduct. He states that his actions "are an inarguable breach of the code of conduct".

Whether the disciplinary measure applied was proportionate to the offence

37. The principle of proportionality in a disciplinary matter is set forth in staff rule 10.3(b), which provides that "[a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct".

38. The Administration has the discretion to impose the disciplinary measure that it considers adequate to the circumstances of a case and to the actions and behaviour of the staff member involved, and the Tribunal should not interfere with administrative discretion unless the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity (see *Portillo Moya*; and also *Sall* 2018-UNAT-889, *Nyawa* 2020-UNAT-1024).

39. The Appeals Tribunal has held that the Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose (see *Toukolon* 2014-UNAT-407). The Appeals Tribunal has further stated that due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. The Appeals

Tribunal further explains that this means that the Dispute Tribunal should “objectively assess the basis, purpose and effects of any relevant administrative decision” (see *Samandarov* 2018-UNAT-859).

40. In the Sanction Letter, the Administration imposed on the Applicant the disciplinary measure of dismissal, in accordance with staff rule 10.2(a)(ix). In determining the appropriate sanction, the Administration considered the nature of the Applicant’s actions, the past practice of UNICEF in matters of comparable misconduct, as well as whether any aggravating or mitigating factors apply to the Applicant’s case.

41. The Respondent submits that the sanction imposed on the Applicant—dismissal—was not blatantly illegal, arbitrary, excessive, abusive, discriminatory, or absurd in severity. In making this determination, UNICEF considered in aggravation the fact that the Applicant’s actions were not limited to a single incident of misconduct—his actions included physical assault, aggressive threats, intentional interference with the investigation into his conduct, and misuse of UNICEF’s assets. In addition, UNICEF considered the profound impact his conduct had on V01, who attempted to kill herself after viewing the sexually explicit videos which the Applicant threatened to disseminate. The Applicant did not express any remorse for his actions. Instead, he sought to justify them, including laying blame on V01 for his actions towards V01.

42. The Applicant, on the other hand, contends that the disciplinary measure of dismissal was disproportionate in his case and that the Administration failed to properly take into account mitigating factors, such as V01’s own actions against the Applicant.

43. The Tribunal finds that the Applicant engaged in multiple actions, as set out above, which amounted to serious misconduct. Therefore, his conduct not only displayed a serious failure to uphold the minimal standards of integrity conferred on an international civil servant, but it also displayed a flagrant disregard of the rules of the Organization. The Applicant’s conduct undermined the trust and confidence placed in him by UNICEF. Such trust and confidence are essential for the continuation of an

employment relationship. In these circumstances, the Tribunal considers that it was appropriate for UNICEF to end its employment relationship with the Applicant.

Whether the Applicant's due process rights were respected

44. Upon review of the record, the Tribunal finds that the Applicant's due process rights were respected throughout the investigation and disciplinary process. The case files shows that OIAI conducted a thorough investigation, which included interviews with relevant witnesses and gathering other relevant documentary and forensic evidence. OIAI conducted an interview with the Applicant. Prior to the interview, the Applicant was informed of the nature of the allegations against him. He was provided with the audio-recording of his interview and was given the opportunity to provide further information to the investigators.

45. In the Charge-Letter, the Applicant was informed of the allegations against him, his right to seek the assistance of counsel and the Applicant was given the opportunity to respond to the allegations. The Applicant was provided with the OIAI investigation report and all relevant supporting material. The Applicant duly provided his response to the Charge-Letter, which was considered by OIAI. The Applicant had an opportunity to provide witness testimony at the hearing before the Tribunal.

46. Based on the above, the Tribunal finds that the Applicant's due process rights were respected.

Conclusion

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

(Signed)

Judge Joelle Adda

Dated this 1st day of May 2024

Entered in the Register on this 1st day of May 2024

(Signed)

Isaac Endeley, Registrar, New York