



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Isaac Endeley

NAVAS CASTILLO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Andrea Ernst, DAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a former Chief Service Manager / Information System Officer in the Field Technology Service (“FTS”) of the United Nations Verification Mission in Colombia (“UNVMC”), contests the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity.
2. The Respondent contends that the application is without merit.
3. For the reason set out below, the application is rejected.

## **Facts**

4. The Applicant was sanctioned for having assisted AA (name redacted for privacy reasons) in gaining employment with UNVMC, initially, as an independent contractor (“IC”) and, subsequently, as an employee of Trigyn (a private company to which UNVMC had outsourced certain tasks and functions) in accordance with the sanction letter dated 19 July 2022 (“the sanction letter”).
5. In the parties’ jointly-signed statement of 11 August 2023, which was filed in response to Order No. 060 (NY/2023) dated 25 July 2023, they provided a chronology of agreed facts. As the Appeals Tribunal stated in *Ogorodnikov 2015-UNAT-549*, when “the parties have agreed to and identified the facts ... it is not open to [the Dispute Tribunal] to conduct its own evaluation and then to substitute its view for that of the parties”. The Tribunal may therefore not examine facts already agreed by the parties, which are the following:

... In 2016, the Applicant met and entered into an intimate relationship with [AA], while he was on temporary deployment in Colombia. This relationship continued until at least June 2018, including during the Applicant’s service in Côte d’Ivoire (June-November 2016).

... On 16 October 2018, [AA] started working for the UNVMC as [independent contractor] Communications Centre Operator with a 6-month contract. [AA] reported to [MB, name redacted for privacy reasons], who in turn reported directly to the Applicant.

... On 27 January 2019, [SL, name redacted for privacy reasons] joined the UNVMC and became the Applicant's supervisor.

... Sometime between January and April 2019, Trigyn contacted [AA] for a telephone conversation relating to her application. The conversation was conducted in English. [JB, name redacted for privacy reasons], Training Officer, UNVMC, responded to the call and impersonated [AA] during the phone call.

... Around 22 April 2019, [AA] was informed that she had been selected for a position with Trigyn, with a start date in May 2019. The decision concerning her selection was taken by [SL].

... On 25 November 2019, [AA] submitted her resignation from Trigyn to [SL], with immediate effect.

6. In the sanction letter, as a mitigating factor, the Under-Secretary-General for Management Strategy, Policy and Compliance ("the USG/DMSPC") referred to the Applicant's "22 years of service in different mission settings, including hardship duty stations". Whereas the Applicant has not contested this mitigating factor, all other factual allegations made by the parties are disputed and addressed below.

## **Consideration**

### *The issues of the present case*

7. The Appeals Tribunal has consistently held that "the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review". When defining the issues of a case, the Appeals Tribunal further held that "the Dispute Tribunal may consider the application as a whole". See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

8. Accordingly, the basic issues of the present case can be defined as follows:

a. Did the Under-Secretary-General for Management Strategy, Policy and Compliance ("the USG/DMSPC") lawfully exercise her discretion

when imposing the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii), against the Applicant?

b. If not, to what remedies, if any, is the Applicant entitled?

*The limited judicial review in disciplinary cases*

9. Under the recently adopted art. 9.4 of the Dispute Tribunal's Statute, 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. (In line herewith, see the Appeals Tribunal in 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, *Nsabimana* 2022-UNAT-1254, para. 62, and *Bamba* 2022-UNAT-1259, para. 37.) The Appeals Tribunal has further explained that clear and convincing proof "requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable" (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).

10. The Tribunal notes that the Applicant had requested to hear three witnesses, namely JF, MA and PS (names redacted for privacy reasons), which the Tribunal rejected in Order No. 024 (NY/2024) dated 1 March 2024. Concerning JF and MA, the Tribunal found that no lack of clarity or irreconcilable dispute existed concerning the facts about which the witnesses were proposed to testify. Regarding PS, the Tribunal found that the proposed testimony would not be relevant

to the determination of the present case. As a legal basis, the Tribunal referred to art. 9.4 of its Statute, which provides that whereas “the Dispute Tribunal *shall* consider the record assembled by the Secretary-General”, it “*may* admit other evidence” (emphasis added). Further reference was made to the Appeals Tribunal’s judgments in *Sanwidi* 2010-UNAT-084, *Abdellaoui* 2019-UNAT-928, *Abdellaoui* 2019-UNAT-929, *El-Awar* 2019-UNAT-931, *Applicant* 2022-UNAT-1187, *Appellant* 2022-UNAT-1210, *AAO* 2023-UNAT-1361, and *AAC* 2023-UNAT-1370.

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

11. In the sanction letter, the Administration set out the factual background of the contested decision, and its various factual allegations are assessed under the following separate subheadings.

UNVMC’s recruitment of AA as an IC

12. In the sanction letter, the Administration firstly alleged that the Applicant:

a. “Convinced [BP, the then Chief of FTS and the Applicant’s supervisor in FTS, name redacted for privacy reasons] that [AA] was the best option for the position of IC with FTS, despite [BP’s] knowledge that [the Applicant] and [AA] were in or had been in a relationship, on the basis of [the Applicant’s] assurances that [he] and [AA] could be objective and professional and because, in any case, since [BP] was leaving the mission, he had informally delegated responsibility for the recruiting process to [the Applicant]”; and

b. “Recommended hiring [AA] as an IC with FTS, even though [the Applicant] knew she did not fulfil the requirements for the position”.

13. The Applicant contends that BP “did not informally and/or formally delegate any responsibility for the recruitment process to [him] because this was [BP’s] duty and a responsibility that was purely delegated to him as the Chief of the

Section”. It has “been proved that officially [BP] was the only one who wrote an official memorandum to Human Resources on 21 September 2018 requesting the recruitment of three candidates, including [AA]”. BP “left the UNVMC in February 2019 while [AA’s] recruitment was done on 21 September 2018”.

14. The Respondent submits that “evidence shows that the Applicant convinced [BP], then Chief, Field Technology Service (FTS) to hire [AA] for the IC position with FTS, illustrated by sworn statements of the Applicant himself as well as his former supervisor, [BP], and [AA]”. BP “was nominally the hiring manager, but he stated that due to the urgency to fill the position, [his] multiple activities and his upcoming departure from the mission he had informally delegated the responsibility of the hiring process to the Applicant”. BP “[u]ltimately ... accepted the Applicant’s recommendation to hire [AA].

15. The Respondent further contends that the Applicant “recommended hiring [AA] as an IC with FTS, even though he knew that she did not fulfil the requirements for the position”. In particular, the Applicant “knew that [AA] does not speak English although fluency in English was a required recruitment criterion for the position of an IC Communications Centre Operator within FTS”, and “at the material time, the Applicant told his then supervisor, [BP], that [AA] fulfilled the requirements for the position”.

16. The Tribunal notes that in BP’s interview statement to the investigation report, BP explains that he had agreed to hire AA in “view of the pressure from the administration to implement the new service and the urgent need for personnel to start service operations”. The Applicant had conducted the processing and final evaluations of the different job candidates, and when he informed BP that AA had been selected for the IC position, BP’s first reaction was negative as he knew the Applicant and AA had been “seeing each other”, although he did not think of it as “a serious relationship”. The Applicant, however, had “assured [him] that there was no longer anything between them, that she fitted the required profile and that their relationship would be strictly professional”.

17. In the Applicant's interview statement to the investigation, he stated that AA started working in the Mission on 16 October 2018, but that already in June 2018, he had ended their relationship, which he described as one of "boyfriend and girlfriend" rather than a more committed one. As for AA's professional skills, he had found them relevant for the job in the communication centre as she had "experience as administrator" and "worked in various call centres". The Tribunal notes that these professional credentials are confirmed by AA's *curriculum vitae* ("CV"). The Applicant further noted that they "didn't have enough people in the warehouse area or in the area of mail and pouch". The Applicant had asked BP concerning AA, "Do you think we could give her a chance? She has the experience". BP responded to him that due to his previous "relationship" with her "it's really going to be difficult because we don't know how she's going to behave". The Applicant had answered him, "No, no, there'll be no problem". BP responded to him, "Look, you had a relationship with her and it's dangerous. We don't know her and it may affect your career".

18. In the interview statement of AS, a Trigyn employee in FTS, she explained that when she saw AA's CV before she was hired, she did not find that AA was competent for the job. In AA's interview statement, she, however, alluded to AS and her having a very problematic relationship stating that AS made her "life unpleasant" in the UNVMC. This is also confirmed by a report dated 18 November 2019 of UNVMS's "Conduct and Discipline" (presumably, the Mission's Conduct and Discipline entity) in which it is stated that AS "used to bully [AA] and create a bad atmosphere with her co-worke[rs] in order to isolate [AA]". The Tribunal therefore only attaches limited evidentiary value to AS's interview statement due to her negative view of AA. Regarding the 18 November 2019 report, the Tribunal, at the same time, notes that the report fails to state who its actual author is, from where the information included therein derives, or what its purpose is. Based thereon, the Tribunal finds also that the report's evidentiary value is limited unless corroborated by other evidence.

19. The Tribunal further notes that the interview statements of BP and the Applicant are consistent on most important points, and that it is undisputed that it

was BP, and not the Applicant, who actually took the decision to hire AA. It further follows from the quotations set out above that BP's motivation for hiring AA was (a) pressure from the administration to deliver certain results, and (b) an urgent need for personnel. Accordingly, it was not undue influence from the Applicant. Due to the Applicant's previous relationship with AA, the Applicant rather intended to address BP's skepticism by providing some personal assurances. In the circumstances, this seemed reasonable, and as BP then decided to hire AA, he thereby also accepted the risk. Accordingly, the Applicant cannot be blamed for withholding any information and thereby unlawfully influencing the selection decision as BP was fully informed about the Applicant's relationship with AA.

20. Subsequently, AA also proved herself to be qualified for the job, as SL (BP's successor and the Applicant's next supervisor), in his interview statement, affirmed that AA was "delivering her job very well, very satisfactory and we decided [she] was actually a permanent requirement, so we decided to advertise the job through Trigyn International".

21. Finally, it is nowhere stated in any of the interview statements that the Applicant had portrayed AA as the "best option" for the position, as otherwise alleged in the sanction letter. Rather, when the Applicant stated that he found AA to be suitable for the job, he did not compare her with any other job candidates but assessed her based on her own skills and experiences.

#### Trigyn's recruitment of AA

22. The Administration claimed in the sanction letter that the Applicant "[r]ecommended hiring [AA] as a Trigyn employee to [SL], while failing to disclose [his] relationship with [her] or her lack of English, and despite the fact that she would remain part of [his] reporting line".

23. The Applicant contends that SL stated in his interview statement that what "FTS does ... is to suggest to people who are working as ICs to apply for Trigyn post[s] in advance before the expiration of the IC contract". The Respondent has "failed to prove that [the Applicant] hired [AA] as Trigyn staff". The Applicant "never



recommended the hiring of [AA] as Trigyn staff”, because “[all] FTS ICs staff were subsequently hired by Trigyn which was a common practice and protocol”. Regarding the “allegation of failing to disclose a relationship with [AA] to [SL] ... there was nothing to disclose because there was no relationship anymore with [AA]”.

24. The Respondent submits that, on 21 January 2019, the Applicant “instructed [AA] to apply for a position with Trigyn, a contractor providing services to the mission, which is documented by an e-mail from [the Applicant] to [AA]”. In this email, the Applicant “provided [AA] with the link to the vacancy notice, advised her that her CV would have to be in English, and told her to mention that she had been working for the FTS for six months”. When Trigyn “scheduled a phone interview with [AA], her colleague [JB], impersonated [AA], because the interview was conducted in English, which [AA] did not speak”. On 4 April 2019, the Applicant’s “new supervisor”, SL, “recommended the extension of [AA’s] contract as an IC until 16 July 2019. SL was “unaware of the Applicant’s relationship with [AA] and the Applicant did not inform him about [AA’s] lack of English skills. In May 2019, AA “started working for Trigyn”, where she “remained in the Applicant’s reporting line, this time under the direct supervision of [UT, name redacted for privacy reasons] ... who reported to the Applicant directly”. When UT was on leave, AA “reported directly to the Applicant”, and the Applicant “still did not disclose his relationship with [AA] to [SL]. The Applicant’s “failure to disclose their relationship to [SL] did not lapse upon the recruitment of [AA] with Trigyn; on the contrary, the Applicant’s failure continued for as long as he was pursuing his on-and-off relationship with [AA] while at the same time being her supervisor”.

25. The Tribunal notes that, as stated above, SL explained that he approved hiring AA on a permanent basis in the Trigyn job due to her excellent work performance as an IC. SL underscored that “the responsibility of hiring [AA]” was, of course, mine”. To do so, SL explained that Trigyn had advertised the job for which AA applied and was then selected after which, according to SL, “we [presumably, referring to himself] approved the selection”. SL explained the recruitment process as follows: “you propose to Trigyn, you give Trigyn the terms

of reference and they have candidates, since [it] is common we also provide them different names”. SL further stated that AA “was delivering well, we knew her and she was approved by Trigyn, it was an easy decision”.

26. According to the Applicant’s interview statement, he explicitly rejected having recommended AA for the Trigyn position as he stated that, “No, I didn’t recommend it”. Rather, the Applicant explained that, “What I can say about the skills I saw in [AA] is that, for example, back then the warehouse was a complete mess. She came and put it in order, [she was] a very hardworking person who worked overtime. In fact, I would come down and she was always working”. The Applicant also explained that AA had told him that she had thought her contract was at risk. In response, the Applicant had “sent her an email telling her, ‘Your contract doesn’t depend on me, it depends on [SL], on your professionalism and on your performance in the job’”.

27. In the interview statement of AS, she, on the other hand, stated that hiring AA was the Applicant’s decision and SL “knew about it”. As stated above, AS, however, had a difficult relationship with AA for which reason the Tribunal will attach no evidentiary importance to this statement.

28. Consequently, the Tribunal finds that it is only reasonable to conclude that the basic reason why SL approved Trigyn’s hiring of AA was her competent performance as an IC and not the recommendation of the Applicant.

29. In the sanction letter, reference is also made to the Applicant not disclosing to SL that AA could not speak English. The Tribunal also finds that this allegation is misguided. Since SL is an English speaker (unlike most other investigation interviews, his interview was conducted in English and not in Spanish), he would also already have known that AA had limited English language skills before hiring her as he already knew her.

30. Concerning the Applicant’s relationship with AA, he admits that he did not reveal this to SL in his closing statement. He, however, submits that he did not do so because he did not consider this important as they were no longer together. In

this regard, the Tribunal accepts the Applicant's submission, as also confirmed in his interview statement to the investigation, that the romantic aspect of their relationship ended in June 2018 and therefore before she started working in the FTS warehouse—at least. The Respondent has not proven the opposite.

31. With regard to AA working in the Applicant's reporting line, the Tribunal notes that, unlike the Applicant, she was hired and employed by Trigyn and not UNVMC. In SL's interview statement, he, nevertheless, stated that there was "a supervision line" between the Applicant and AA, and SL stated that the Applicant was AA's "first reporting officer". In the interview statement, SL, however, contradicted this by describing the "structure" of work hierarchy as follows: "I [was] the Chief of FTS, [the Applicant was] my direct supervised Service Manage[r] and he over[saw] the work of the FTS warehouse. The FTS warehouse [had] a Chief which [was] a Trigyn contractor, [UT], and [AA] is subordinated to [UT]".

32. AA, in her interview statement, affirmed that the Applicant was not her first reporting officer as she explained that, "My immediate supervisor [was UT] to whom I report[ed] everything. He [gave] me instructions and everything I know today [was] thanks to him". The Tribunal therefore finds that whereas the Applicant supervised the FTS warehouse where AA worked as a Trigyn employee, she did not formally report to him but to UT.

The Applicant supervising AA as an IC while being in a relationship with her

33. In the sanction letter, it was alleged that the Applicant had "[a]cted as [AA's] direct supervisor, while [she] was working as IC-FTS-UNVMC and as Trigyn employee, despite the fact that [he was] in a relationship [with her]".

34. The Respondent submits that AA reported to [MB], who in turn reported directly to the Applicant", which also follows from the facts agreed by the parties.

35. In BP's interview statement, he confirms that AA was in the Applicant's "direct reporting line" when hired as an IC. BP further points out that AA "was

assisting [UT] in the management of the FTS warehouse during the interface times when she was not working as an operator. I was in charge of that group (Assets Management), but she reported to [UT]”.

36. As for the status of the relationship between the Applicant and AA at the given time, in his interview statement, the Applicant explicitly denies them being in a relationship when she worked as an IC. Rather, he states that the relationship ended in June 2018, and she only started working as an IC with UNVMC in October 2018. As also stated above, the Tribunal accepts this statement.

37. The Tribunal finds that based on the evidence before it, the Applicant only directly supervised AA when she was undertaking the “operator” function as an IC with UNVMC.

The facts established after the Tribunal’s judicial review

38. Based on the above, the Tribunal finds that the Respondent has not fully established the facts presented in the sanction letter in accordance with any of the relevant evidentiary standards. These standards are (a) clear and convincing evidence for a termination sanction, or (b) the preponderance of the evidence for any other, and lesser, sanctions. Rather, with reference to its findings above, the only facts, which the Respondent has established in accordance with any of the relevant standards are:

- a. The Applicant recommended that BP hire AA as an IC in UNVMC after he had conducted the processing and final evaluations of the different job candidates;
- b. During AA’s employment as an IC from October 2018 to May 2019, the Applicant only acted as her supervisor when she undertook the “operator” functions, but not the remainder of the time;
- c. When AA worked as a Trigyn employee in the FTS warehouse from May to November 2019, the Applicant did not tell his then supervisor, SL, that AA and he had previously been in a romantic relationship, which ended

in June 2018. At this time, the Applicant had the responsibility of the overall supervision of the FTS warehouse, although as a Trigyn staff, AA reported directly to UT.

*Whether the established facts amount to misconduct?*

The relevant legal framework

39. The Appeals Tribunal has generally held that the Administration enjoys a “broad discretion in disciplinary matters; a discretion with which [the Appeals Tribunal] will not lightly interfere” (see *Ladu* 2019-UNAT-956, para. 40). This discretion, however, is not unfettered. As the Appeals Tribunal stated in its seminal judgment in *Sanwidi* 2010-UNAT-084, at para. 40, “when judging the validity of the exercise of discretionary authority, ... the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. This means that the Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”.

40. The Appeals Tribunal, however, underlined that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary General amongst the various courses of action open to him” or otherwise “substitute its own decision for that of the Secretary General” (see *Sanwidi*, para. 40). In this regard, “the Dispute Tribunal is not conducting a ‘merit-based review, but a judicial review’” explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision” (see *Sanwidi*, para. 42).

41. Among the circumstances to consider when assessing the Administration’s exercise of its discretion, the Appeals Tribunal stated “[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on

which tribunals may for good reason interfere with the exercise of administrative discretion” (see *Sanwidi*, para. 38).

42. The Tribunal notes that in the sanction letter, the USG/DMSPC found that the Applicant’s action amounted to “serious misconduct in violation of Staff Regulations 1.2(b), 1.2(m) and Staff Rule 1.2(q)”.

43. The mentioned provisions provide as follows:

*[Staff regulation 1.2(b)]*

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

*[Staff regulation 1.2(m)]*

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

*[Former staff rule 1.2(q) as per ST/SGB/2018/1/Rev.2 (Staff Regulations and Rules of the United Nations) in effect at the relevant time]*

... A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member’s status as an international civil servant shall disclose any such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation.

44. Consequently, the Applicant was under the obligation to act with a minimum level of probity, impartiality, fairness, honesty and truthfulness as required by the established facts (staff regulation 1.2(b)). Also, if it is found that an actual or possible conflict of interest arose out of these facts, the Applicant was obliged to disclose this conflict to his head of office in order to allow UNVMC to

mitigate its impact and resolve it in accordance with its own best interests (staff regulation 1.2(m)). Finally, if the Applicant's involvement in a matter could result in an actual or potential conflict of interest as per the facts, he should have formally excused himself therefrom (former staff rule 1.2(q)).

45. In the sanction letter, it is, however, not set out how the different alleged offences of the Applicant specifically violated staff regulations 1.2(b) and 1.2(m) and former staff rule 1.2(q). The Tribunal will therefore review this in the following sections of this Judgment.

#### The parties' submissions

46. The Applicant submits that the contested decision was "arbitrary and totally disproportionate based on unfounded and clear lack of evidence", and that his "conduct did not amount to misconduct". The Respondent was "underestimating [his] performance reports and/or evaluations that were always rated as outstanding and/or exceed expectations for 28 year of service which includes the [United Nations] Core Values and Behaviors in all efforts where Integrity was all the time rated more than outstanding and always upholding the standards of conduct of the United Nations".

47. The Respondent submits that the Applicant "advanced [AA's] interest over those of the Organization and failed to uphold the highest standards of integrity, when he recommended hiring [AA] in FTS despite his knowledge that she did not fulfil the requirements for the position of either FTS IC or Trigyn employee". He "further created a conflict of interest, when he failed to disclose his relationship with [AA] to his supervisors" and "compounded the conflict of interest, by acting as [AA's] direct supervisor and having her in his reporting line". In "both instances", his "personal interests interfered with the performance of his official duties and responsibilities and with the integrity, independence and impartiality required of his status as international civil servant". He further "failed to excuse himself from being involved in any matter that would give rise to a conflict of interest situation", and "deprived the Organization [of] the full knowledge required

to resolve the conflict of interest situation in a manner favorable to the interests of the Organization”.

The circumstances of the relationship between the Applicant and AA

48. In general, the Tribunal finds that a United Nations staff member’s legal obligations under her/his employment contract stemming from a private relationship with either an IC and/or an employee of private company, such as Trigyn, working for the United Nations must be assessed on a case-to-case basis in due consideration of the particular circumstances of the specific situation.

49. In the Applicant’s interview statement, he, *inter alia*, described his relationship with AA as follows:

Look, I met [AA] in 2016 when I came [to Colombia] on [temporary duty assignment, “TDY”]. That’s why I think it’s important to emphasize that I came [to Colombia] on TDY. I went back and we continued the relationship at a distance, even when I was back at my duty station, in Côte d’Ivoire. I went back to Côte d’Ivoire in June 2016, and I came back [to Colombia], purely to be with her and meet her family, in August 2016, for two weeks. Then I went back to Côte d’Ivoire. Then, in November, they gave me the job and I came back [to Colombia]. At that point, we weren’t in a relationship anymore, it wasn’t very good, but we were still very good friends. Later, simply because I was now here, we restarted the relationship. We got back together several times. As you know, all couples have ups and downs, and there were times when we broke up, got back together, broke up, and so on and so forth, until mid-June 2018. I’d definitely already told her I wouldn’t stay together with her, because, as a person, if I can put it this way, overall, out of 10, she’s an 8; she’s a wonderful woman, she’s a very good person, as a homemaker, as a partner, as a mother, but she has her psychological and emotional problems. She can’t control them, and that was why we kept on breaking up ...

...

I’d define it as a ... Let’s call it, if we want to call it that: boyfriend and girlfriend. It wasn’t a relationship where we were going towards an overall goal, like getting married or living together. And that was the main problem I had, because she saw it differently. Over the years, I always said, from the beginning, “Look, I’ve got a problem here. I work for an institution where I get moved around a lot and I’m in the middle of a divorce, so I can’t commit and I don’t want to



commit. After this divorce, I want to be, let's put it this way, free, and have my freedom and my independence, and not have those problems of having to report to someone, you see." No, I was tired of that kind of relationship, and then I was coming out of a relationship, a divorce. You'll understand the psychological state, the children. So I told her no, I had no intention of doing that, and at first she accepted it, she accepted it, and then more and more she started insisting, "No, I want to live with you, I want us to be a family, I want a father for my daughter." I adore her, the feelings I have for [AA] are very strong, for her daughter they're very strong. We ended up complementing each other, you see? And we became, let's not say a family, because it wasn't like that, but it was a very nice relationship. We'd go to the cinema, we'd go to the shopping mall, we'd go to [name of place redacted], we'd take the bus. For six or seven months they helped me look for an apartment to buy, we bought bikes, we went on bike rides. She came and stayed at weekends, Saturdays and Sundays only. Only afterwards, later, it increased to Friday nights, afterwards, because she said, "Well, we want to spend a bit more time with you, we're bored where we're living and I'd like to see whether we can stay on Fridays." "No, no problem, my apartment has two bedrooms and there's no problem." Even when we broke up, she'd come looking for me. Sometimes she'd come and wait for me in the park where I live, for up to three or four hours, and I'd say, "What are you doing?" "No, I was waiting for you to come out of your building because I wanted to talk to you. Let's get back together, I can't live without you." She'd start crying and I'd say, "No, it can't be like this," and she'd go on and on "Like it or not, there's affection and tenderness," you know. I'd say, "Let's go back to being friends, no problem, come with your daughter, but, I mean, a relationship, I've told you over and over again that a serious relationship's not what I'm looking for."

...

It turned out that [AA] had gone away for whatever reason, since she'd seen that she wouldn't get anywhere with me. She went back to [name of place redacted] and I contacted a friend of hers and said, "Please talk to her and tell her that she has to come back to work." She'd been absent for about three or four days. "What's going on?" She felt bad, she didn't want to come back, and eventually she came back. When she came back, I wasn't going to pick her up at the airport, but she called me and said, "Look, I'm here." I said, "What happened?" "What's happening is I've got nowhere to go. Where I lived before, which was a house, there's no room anymore." So of course I said, "Well, I'll come and get you, but [AA], please, on one condition: there are two bedrooms in my house, my room and yours, and we're here as friends." I brought her home, gave her a key and all that. Then, because I always work late, I go out and all that, she, because of her emotional problems, began going on at me to say yes,

we should get back together; otherwise, she even, on the lower floor of my apartment, she opened the window and said that she was going to jump from the fifth floor. One day she said, “I’m going to take a knife and slash my wrists.” She threatened me like that several times and even threw herself on the floor. I called Security on one of these occasions. I said, “Please, ma’am, could you help me, because I think I have a person here I can’t control.” The lady said, “Sir, I’m not authorized to call the police, you have to call them yourself. You have to do it.” That day I said to [AA], “Please calm down. What’s wrong with you?” She was out of control. “I’m going to call the police,” and she calmed down. “Look, I just don’t want them to take my daughter away.” I don’t know why. She’d previously tried to take her own life because of a failed marriage, so she was afraid they’d take her daughter away, but that wasn’t my intention. My intention was to calm her down, not to call the police, because she started crying and pleading, and I said, “Well, go to your room and I won’t call the police.” I closed the door, I locked it, because, imagine, I was also psychologically affected. I didn’t know what her intentions were, because while I was sleeping she could have stabbed me. I didn’t know how to deal with the situation. It was the first time I’d had to deal with that and I didn’t know what to do. I didn’t call the police. The next day, everything was calm. She went to work and I came to work. Then, as I was leaving, I said to her, “Look, I’m going to [“JJ’s”, redacted for privacy reasons] party.” I wasn’t invited to [JJ’s] farewell party; I told her I was going to [JJ’s] party. I wasn’t invited. I was lying to her because she was very jealous of me with my co-workers – [names redacted for privacy reasons], everybody. She was jealous of me with absolutely anyone, so I used to lie to her. I’d say I was going somewhere, let’s say with some friends, when in actual fact I was going to have a coffee with [names redacted for privacy reasons]. And then if she found out that I was going out with her co-workers, imagine, she used to go crazy, until one day I said, “Let’s try something. I’m going to tell you the truth from now on, but please accept it.” When I told her the truth, it was worse. On that occasion [JJ], from the training unit, was leaving, and I told [AA] I was going to [the party of name redacted for privacy reasons], and [AA] said, “Why don’t you take me with you?” “Well, I don’t know if you’re invited.” So she said, “No, I wasn’t invited.” Straight away, as I was leaving the building, I received five calls. I turned my phone off, because in 60 minutes she’d call me 50 times. So—I’m getting there—I turned my phone off and went to the house of [name redacted for privacy reasons] from FTS, because she’d invited me to her flatwarming party. I was there all night. Long story short, around 12.30 or 1 in the morning, I turned my phone on. When I turned it on, [name redacted for privacy reasons] called me and said, “[the Applicant’s first name], I want to talk to you. I’ve just had a call from [AA] telling me that I’m disgusting, a lesbian, that I’m sleeping with you, that I’m

shameless.” I said, “I’m so sorry, I apologize, I’ll talk to her.” She’s at my house because she’s got nowhere else to go, I’m putting her up there. I’ve begged her a thousand times to find her own place, to leave. I can’t stand this situation of harassment that she has me in too, and I haven’t been able to solve the problem. So I left, and when I got home I called the police. The police came – I have records – and I went out into the street and explained to them, “Officers, I have a problem. Up there, there’s a person I’m helping because she has nowhere to go. I used to go out with her and she’s saying that she’s still my lover and I don’t know what. She has a very strong character, she’s temperamental and she’s psychologically ill because she has an obsession with me. She can’t control her emotions and she’s already made a scene with me several times. Here’s the security lady,” and I was lucky that it was same one I’d called several times, “She’s the one who told me that I had to call the police, and that’s why I’m calling you. I don’t want to go up there because she’s just made a scene with a friend of mine. I don’t want to go up there, I don’t know what might happen. I don’t want her to come and cause a disaster, kill herself or jump, and then I get the blame. I want you to get her out of my apartment.” The police came and talked to her until 2.30 in the morning. Then they left, saying that the next day she had to leave before noon or they would come and take her away. And that’s how it was. You know what the ridiculous thing was? After I received that notification from you, I went to the police to get the report and there wasn’t one. I have evidence, though. I asked the administrator of the building if she still had the videos, and she does. She’s got the videos of the police arriving and leaving, and the length of time they were there. There’s also the security lady’s record of what happened that day and why the police came.

...

... Now, in terms of the situation of [AA], a person that I couldn’t control, as I say, I’m not going to speak ill of her. I’m not like that. It would be unjust, and I am a just person. There is a God, and God knows that justice will be done. But [AA], as I say, she’s 8 out of 10, she’s an 8, a very good woman, a very caring person, a hard worker. Her problem is psychological and emotional. She couldn’t stand the idea of sharing me with my female friends, with any woman, because she was incredibly jealous of me. She thought I was having sex with [name redacted for privacy reasons], that I was going out with [name redacted for privacy reasons], that I wanted something with [name redacted for privacy reasons]. She was even jealous of me and her best friend, [name redacted for privacy reasons]. With [name redacted for privacy reasons], she said, “I know [name redacted for privacy reasons] has just written to you,” when I hadn’t called [name redacted for privacy reasons] or anything like that. So she was sick, sick emotionally and psychologically sick. So she accused me of being with all these women, and sometimes I

would get home at 10 or 11 at night, because I didn't even want to come home, because I knew it was Friday and she was waiting for me there with her daughter, and I knew there'd be big trouble. She couldn't control her emotions. That's why I have recordings where I asked [AA] to please calm down, I recommended a psychologist and she went to the psychologist. What she did was, when she went to the psychologist and the psychologist said, "Your relationship is toxic, your relationship is not good," she saw it as him wanting to separate her from the love of her life, that's how she saw it. So the victim, then, the victim was me. I didn't know how to handle the situation, how to handle a person who was putting me under so much pressure. So that's how things really are, then. ...

50. AA, in her interview statement, described the relationship as follows:

I, [AA's name], first met [the Applicant] in 2016. I worked in a warehouse and from the moment I met him I thought he was a very handsome man. He kept going to the warehouse and we decided to have a relationship. He told me from the beginning that he was a married, committed man. He lived on [number redacted] and I would go to his apartment. He even met my daughter, because I am a single mother. We had a relationship. He went to Africa. After a few months he returned to Colombia and we continued our relationship and at that time I only earned the minimum wage in Colombia. I continued to live in the room I have lived in since I arrived in Bogotá. He generously helped me and gave me a bed and a television set so that me and my daughter could be comfortable. He knew my family because the three of us had the opportunity to travel to [name of place redacted]. He gave us clothes, toys for my daughter, even a computer for my daughter to do homework, and took us to visit [name of place redacted].

As the days went by, he told me where he worked. He would take his clothes to where I lived and I would wash and iron his clothes, but of my own free will. He never, ever asked me to do it. I was the one who did it. I fell in love with him so much that I didn't ... what I was doing. When the mission moved to COPRECOM he looked for an apartment in the [name of neighbourhood redacted]. We would still go out on Sundays and holidays or he would come to where I lived and stay there. I continued washing and organizing his clothes. I liked to do it, in part to repay what he gave me and contributed, since the salary I earned was definitely not enough and very often my daughter and I ate very little. Sometimes I would skip meals to be able to feed my daughter. Eventually they moved the mission to this building, where it is now. He and I and my daughter would spend weekends walking the streets, looking for an apartment for him to move into. When we found the apartment I came with my daughter on weekends, starting from Friday, and we would spend

the weekends together. We used to go out. He bought us bicycles and we would go on bike rides. I did housework without him asking me to do it. He kept bringing us clothes and [illegible]. Today he reproaches me for that. He was good to us. I worked and one day a week I started later. On that day, I would first go to his house, wash, iron and tidy up his house and then I would go to work. He wanted to help me to better myself and have a better life and the means to feed my daughter, so he suggested that I apply for the post they had at the time. A mistake was made, me for taking the post and him for wanting to help me through favouritism and choosing me. The truth is he did help me with his good intentions but I have earned my job because I work very hard to carry out my duties.

#### The Applicant's actual and/or possible conflict of interest in the situation

51. Considering the history and specific nature of the relationship between the Applicant and AA, the Tribunal finds that from the time when AA was first being considered as an IC and throughout her entire employment at UNVMC, also as a Trigyn employee, the Applicant should have understood that, at least the potential of a conflict of interest could have arisen out of this relationship, even if the romantic aspect had already ended. It, thus, follows from both the descriptions of the Applicant and AA that they remained in close private contact throughout her employment at UNVMC and, although no longer intimate, the relationship was emotionally strong and intense, at least on AA's part.

#### UNVMC's recruitment of AA an IC

52. The Tribunal notes that based on AA's CV, the Applicant properly, impartially, fairly, honestly and truthfully presented her skills and experience to BP when recommending him to hire her as an IC. AA's success in the job further demonstrates that his assessment of her skills and experience was correct. The Tribunal therefore finds that the Respondent has not demonstrated that the Applicant violated staff regulation 1.2(b) in this regard.

53. As the Applicant's supervisor BP was fully aware of the relationship, the Tribunal also finds that the Applicant did not breach any duty to inform him thereabout under staff regulation 1.2(m).

54. To avoid any, at least, potential conflict of interest, the Applicant should, on the other hand, have formally excluded himself from any involvement in the selection process of AA as per former staff rule 1.2(q). Instead, it follows from the established facts that the Applicant conducted the processing and final evaluations of the different job candidates and recommended hiring AA. When AA was recruited, the Applicant should also have ensured that her reporting line to him when working as an “operator” was changed to avoid the appearance of any potential or actual conflict of interest.

#### Trygin’s recruitment of AA

55. SL explained that he approved Trigyn hiring AA, but also that he was unaware of the relationship between the Applicant and AA. Considering the circumstances of the case, by failing to disclose this to SL, the Applicant breached his duty to do so under staff regulation 1.2(m) even if the romantic relationship had already ended. Also, in terms of acting with the necessary level of probity, impartiality, fairness, honesty and truthfulness as required by the circumstances, the Applicant failed to inform SL about the relationship as he otherwise should have done in accordance with staff regulation 1.2(b).

56. The Applicant’s failure to disclose the private relationship to SL therefore deprived UNVMC of the possibility to take measures to eliminate or mitigate such potential conflict of interest under staff regulation 1.2(m). SL could, for instance, have ensured that the professional interaction between the Applicant and AA would be kept at a bare minimum. Towards the end of AA’s tenure with UNVMC as a Trygin employee, interpersonal private problems between the Applicant and AA also negatively affected the workplace, when according to the Applicant’s interview statement, AA phoned a colleague hosting a private party, which the Applicant attended, and insulted this colleague.

57. On the other hand, as Trigyn conducted the hiring process and selected AA upon the approval of SL, the Respondent has not proved how it would be relevant

for the Applicant to formally exclude himself or take other action to mitigate and remedy the situation with reference to former staff rule 1.2(q).

The Applicant supervising AA as an IC when undertaking “operator” functions

58. Considering the circumstances of the relationship between the Applicant and AA, he should further have limited his interactions with AA in the workplace as much as possible to avoid any potential or actual conflict of interest. This would reasonably have included excluding himself formally from supervising her. The Applicant failed to do so and was therefore in breach of staff rules 1.2(b) and (p), in this regard. With regard to staff rule 1.2(m), as BP was fully aware of the relationship, the Applicant was not in violation of this provision.

Conclusion on whether the established facts amount to misconduct

59. Accordingly, when considering the Applicant’s established offences, the Tribunal finds that, under *Sanwidi*, the USG/DMSPC acted within the scope of her discretion when finding that the Applicant had engaged in misconduct. This finding is, however, restricted to the limited situations described above and not all the circumstances outlined in the sanction letter.

*Whether the sanction was proportionate to the offence?*

60. In the sanction letter, the USG/DMSPC imposed on the Applicant the disciplinary measure of “separation from service, with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii)”.

61. Specifically, regarding the imposition of a disciplinary sanction, the Tribunal notes that the Appeals Tribunal has held that the “matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved” (see, para. 45 of *Appellant 2022-UNAT-1216*). Also, whereas the “principle of proportionality requires that a disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct”, the Administration has “discretion to impose

a disciplinary measure that it considers adequate to the circumstances of a case, and the Tribunal should not interfere with administrative discretion unless it is tainted by irrationality or is arbitrary” (see, para. 26 of *Specker* 2022-UNAT-1298).

62. The “ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline”, and the “most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, then length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency” (see, paras. 70 and 72 of *AAD* 2022-UNAT-1267).

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

64. The Applicant, in essence, contends that the sanction is disproportionate and that his otherwise long and unblemished work record with the Organization has not been appropriately considered.

65. The Respondent submits that the imposed sanction is “within the range of reasonable disciplinary options available to the Secretary-General and is consistent with settled [Appeals Tribunal] jurisprudence on similar matters”, referring to *Szvetko* 2023-UNAT-1311, *Reiterer* 2023-UNAT-1341, *Amani* 2022-UNAT-1301, and *Payenda* 2021-UNAT-1156. In “imposing the specific disciplinary measure, the USG/DMSPC was also mindful of the [Appeals Tribunal] jurisprudence in [*Jenbere* 2019-UNAT-935] wherein [the Appeals Tribunal] found that compromising the objectivity and integrity of selection processes ‘will not be tolerated’ and, thus, that imposing a disciplinary measure less than those



terminating the employment relationship was ‘too lenient’. Since “the sanction was not unreasonable, absurd or disproportionate ... it was proportionate to the Applicant’s serious misconduct even if considered severe or harsh”.

66. The Respondent further contends that “the Applicant’s long service of over 20 years in different mission settings, including hardship duty stations constitutes a mitigating factor in this case”. The Applicant’s performance record “cannot be considered as a relevant factor for the determination of the appropriate sanction” as a “good performance record is not to be treated as an exception in respect of international civil servants [who] are expected to uphold the highest standards of integrity and to comply with local laws”.

67. The Tribunal notes that staff rule 10.2 provides an exhaustive list of disciplinary and administrative measures available to the decision-maker when sanctioning a staff member’s misconduct. The sanction imposed on the Applicant is one of the harshest sanctions, only third to separation without termination indemnity and dismissal.

68. In this regard, the Tribunal observes that, as “aggravating factors”, the USG/DMSPC “considered” the following when issuing the contested decision:

- a. The Applicant “remained unremorseful and refused to acknowledge any fault on [his] part regarding the creation and maintenance of a conflict of interest affecting the interests of the Organization;”
- b. His “misconduct compromised the objectivity and integrity of the selection process and damaged the reputation of the Organization in matters relating to selection processes amongst FTS staff members”; and
- c. The Applicant “had multiple opportunities to disclose [his] relationship with [AA] to [his] supervisor, [SL], during the prolonged material period of time, and failed to act on them”.

69. The Tribunal finds that holding the Applicant at fault for not feeling remorse or refusing to acknowledge his mistakes is excessive. The Applicant genuinely

misunderstood the situation as, throughout the case, he has consistently maintained that he saw no problem in his relationship with AA since the romantic aspect had already ended before she applied for the IC post. Similarly, he has stated that the reason he did not disclose the relationship to SL was because he did not believe that it was important—he was therefore not intending to hide its existence from SL. Also, the Applicant correctly presented AA's skills and experience as stated in her CV, BP was fully aware of their relationship, and AA subsequently proved to be a success in UNVMC. Accordingly, he cannot be seen as having tampered with the outcome of the selection process and thereby with its integrity.

70. On the other hand, as the Tribunal held above, due to the nature and circumstance of the relationship between the Applicant and AA, he was indeed in an actual, and not just potential, conflict of interest when AA was hired as an IC and when the Applicant directly or indirectly supervised her in the FTS warehouse, both as an IC and as an Trigyn employee. Rather than acting on this conflict of interest and taking appropriate remedial measures, the Applicant went ahead and entirely dismissed and ignored it, even if he was strongly warned by BP, his own supervisor, against AA working in warehouse.

71. The Tribunal therefore finds that the Applicant seriously compromised the objectivity of the selection process for the IC post and should also have avoided any direct or indirect supervisory roles vis-à-vis AA. This negatively impacted the Organization's reputation amongst FTS staff members, who were aware of the relationship, and the general work environment in FTS, as also demonstrated by controversy between the Applicant and AA in connection with a colleague's private party. Potentially, which the Applicant should also have understood, the situation could also have critically affected UNVMC's status and standing in the host country, both with the Government and in the eye of the general public.

72. Accordingly, albeit the Respondent not being able to fully establish all the facts, misconduct allegations, and aggravating circumstances presented in the sanction letter, the Tribunal finds that in terms of proportionality, the contested disciplinary sanction fell within the scope of discretion of the USG/DMSPC. This

is, in particular, so as he was awarded a full termination indemnity. Whereas separating him from service could appear harsh, the gravity of the Applicant's wrongdoings was such that, in the given circumstances, the sanction did not lead to a perverse, absurd or even unreasonable result in accordance with *Sanwidi*.

*Whether the Applicant's due process rights were respected*

73. The Applicant makes no submissions regarding his due process rights, and the Tribunal sees no such issue in the present case.

### **Conclusion**

74. The application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 7<sup>th</sup> day of May 2024

Entered in the Register on this 7<sup>th</sup> day of May 2024

*(Signed)*

Isaac Endeley, Registrar, New York