UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2023/020
Judgment No.: UNDT/2024/072
Date: 3 October 2024
Original: English

Before: Judge Sun Xiangzhuang (Presiding), Judge Joelle Adda, Judge Sean Wallace

Registry: Geneva

Registrar: René M. Vargas M.

VANSHELBOIM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
George Irving

Counsel for Respondent:
Jacob B. van de Velden, DAS/ALD/OHR, UN Secretariat
Maria Romanova, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former staff member of the United Nations Office for Project Services ("UNOPS"), contests the decision to impose on him the disciplinary measures of dismissal and a fine of twelve months' net base salary. He also contests the decision to recover from him the amount of USD63,626,806 and to withhold the release of the PF.4 form ("separation notification") to the United Nations Joint Staff Pension Fund ("UNJSPF") until such indebtedness is fully recovered. This is the "contested decision".

2. For the reasons set forth below, the Tribunal decides to reject the application.

Facts

3. At all relevant times, the Applicant was an Assistant-Secretary-General serving as either Deputy Executive Director of UNOPS or Executive Director of the UNOPS Sustainable Infrastructure Impact Investments ("S3i") programme.

4. In these roles, the Applicant was specifically tasked to identify potential partners, and money was allocated with the specific intention to develop projects that would attract private investors.

5. The contested disciplinary decision was based on the Secretary-General's conclusion that clear and convincing evidence showed that:

a. The Applicant facilitated the establishment of multiple financial relationship between UNOPS and various entities connected to Mr. David Kendrick, including We Are The Ocean ("WATO"), World-Wide Renewable Energy ("WWRE"), Sustainable Housing Solutions ("SHS"), and Myra SHS Energy. These relationships resulted in UNOPS allocating USD3.3 million to WATO, and USD58,800,000 to WWRE, SHS, and Myra SHS Energy;

b. At the same time, the Applicant entered into a series of private arrangements with Mr. Kendrick and/or Mr. Kendrick's entities and obtained direct financial and material benefits for himself and his family in the amount of at least USD3,133,186.10;

c. The Applicant did not disclose these arrangements to UNOPS as required; and

d. The Applicant filed dependency status declarations that failed to declare that his wife provided remunerated services for Mr. Kendrick and that one of his sons was financially supported by Mr. Kendrick.

6. The Applicant acknowledges his involvement with Mr. Kendrick and his failure to report or disclose these private arrangements to UNOPS as required.

7. Specifically, the Applicant agrees that:

a. In July 2017, he entered into a tennis sponsorship agreement with Mr. Kendrick relating to his youngest son. The Respondent claims that the total value of this agreement was USD1.2 million, while the Applicant says that figure "is grossly exaggerated";

b. Mr. Kendrick granted him "an interest-free revolving loan facility" for five years, with a limit of USD500,000 per annum and a total cap of USD2,000,000. He also agrees that he had used USD278,091.69 of this "loan facility" by January 2021;

c. He used Mr. Kendrick's credit cards for his personal expenses between October 2018 and December 2020. The Respondent claims that the Applicant's purchases on Mr. Kendrick's credit cards amounted to approximately USD18,082.68, while the Applicant says he "has no way to verify the figure in question" and that these charges are part of the above-referenced "loan facility";

d. Mr. Kendrick paid for repairs to the Applicant's property in Mamaroneck, NY, USA, in the amount of USD2,835. He claims that this is also part of the "loan facility";

e. Mr. Kendrick paid EUR8,215 for custom furniture and home accessories, half of which was for his apartment in Kyiv and the remainder for his son's apartment. Again, he claims that this amount was part of the "loan facility";

f. He purchased a Mercedes Benz luxury vehicle for his wife in the amount of DR598,839 with funds received from Mr. Kendrick and/or entities under his control. He argues that the purchase was made under a consultancy contract that his wife had with Mr. Kendrick, which allegedly involved her support in locating, purchasing, renovating, and furnishing an apartment in Ukraine for Mr. Kendrick. The Respondent points out that the car was initially registered in the Applicant's name;

g. He obtained, from Mr. Kendrick, accommodations, financial and other material support in relation to the relocation of his eldest son to Spain;

h. In January 2018, he signed a consultancy agreement with Mr. Kendrick to provide him with business advice; and

i. That in his dependency status declarations for the period 2019-2021, he did not disclose that his wife was pursuing remunerated employment with Mr. Kendrick's companies. He maintains that disclosure was not required because she "was under contingent employment agreement which means that had she not achieved the agreed milestones, she would not have received any emoluments".

8. The Applicant also concedes that his involvement in outside activities and/or private arrangements with Mr. Kendrick could be perceived as a potential conflict of interest and thus as misconduct.

Consideration

Scope of judicial review

9. The Applicant was charged with gross misconduct by having violated the following Regulations and Rules of the Organization: staff regulations 1.2(a),

1.2(b), 1.2(d), 1.2(e), 1.2(f), 1.2(g), 1.2(i), 1.2(l), 1.2(m), 1.2(o), 1.2(q); staff rules 1.2(k), 1.2(m), 1.2(p), 1.2(q), 1.2(s), 1.5(a), 1.5(c), 1.7; UNOPS financial regulation 5.02; UNOPS financial rules 103.02, 103.03, 108.02, 113.01, 122.20(a); and UN financial rule 104.14.

10. As set forth above, the Applicant has admitted his extensive financial relationships with Mr. David Kendrick and that he failed to disclose these relationships to the Organization. These admissions are effectively a concession that he committed misconduct.

11. Most glaringly, the admitted actions confirm the violation of the following provisions contained in ST/SGB/2018/1/Rev.2 (Staff Regulations and Rules of the United Nations):

a. Staff regulation 1.2(b) on Core values: 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;

b. Staff regulation 1.2(e) on General rights and obligations: By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants;

c. Staff regulation 1.2(g) on General rights and obligations: Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour;

d. Staff regulation 1.2(l) on Honours, gifts and remuneration: No staff member shall accept any honour, decoration, favour, gift or remuneration from any non-governmental source without first obtaining the approval of the Secretary-General;

e. Staff regulation 1.2(m) on Conflict of interest: 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;

f. Staff regulation 1.2(o) on Outside employment and activities: Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General;

g. Staff rule 1.2(k) on Specific instances of prohibited conduct: Staff members shall neither offer nor promise any favour, gift, remuneration or any other personal benefit to another staff member or to any third party with a view to causing him or her to perform, fail to perform or delay the performance of any official act. Similarly, staff members shall neither seek nor accept any favour, gift, remuneration or any other personal benefit from another staff member or from any third party in exchange for performing, failing to perform or delaying the performance of any official act;

h. Staff rule 1.2(m) on Honours, gifts or remuneration: Acceptance by staff members of any honour, decoration, favour, gift or remuneration from non-governmental sources requires the prior approval of the Secretary-General. Approval shall be granted only in exceptional cases and where such acceptance is not incompatible with the interests of the Organization and with the staff member's status as an international civil servant. If circumstances do not allow for prior approval or if refusal of an

unanticipated honour, decoration, favour or gift, including a minor gift of essentially nominal value, would cause embarrassment to the Organization, staff members may receive it on behalf of the Organization provided that it is reported and entrusted to the Secretary-General through established procedures;

i. Staff rule 1.2(p) on Honours, gifts or remuneration: Staff members shall not accept any gift, remuneration or favour from any source having or seeking to have any type of contractual relationship with the Organization;

j. Staff rule 1.2(q) on Conflict of interest: 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;

k. Staff rule 1.2(s) on Outside employment and activities: Staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General;

l. Staff rule 1.5(a) on Notification by staff members and obligation to supply information: Staff members shall be responsible for supplying the Secretary-General with relevant information, as required, both during the application process and on subsequent employment, for the purpose of determining their status under the Staff Regulations and Rules as well as for the purpose of completing administrative arrangements in connection with their employment. Staff members shall be held personally accountable for the accuracy and completeness of the information they provide; and

m. Staff rule 1.7 on Financial responsibility: Staff members shall exercise reasonable care in any matter affecting the financial interests of the Organization, its physical and human resources, property and assets.

12. During the case management discussion ("CMD") of 3 May 2024, Counsel for the Applicant conceded some of the allegations of misconduct against the Applicant with respect to the undisclosed financial arrangements with Mr. Kendrick and his entities.

13. In this context, the Applicant ceased to challenge the details of his personal financial arrangements and undisclosed outside activities, including the precise amount of financial benefit he and/or his family ultimately received as a result. He is, therefore, seeking the following substantive remedies:[1]

a. Substitution of the contested decision with a decision on separation from service with applicable termination indemnities, and waiver of any fines or recovery action; and

b. An Order to release immediately his PF.4 form to the UNSJPF.

14. From this, it is easily gleaned that the Applicant does not challenge his effective separation from service. He challenges only the financial portions of the disciplinary sanction, to wit, the fine of twelve months' net base salary, the assessment that the Applicant is indebted to UNOPS for the financial loss suffered in the amount of USD63,626,806, and the recovery of those sums from his final financial entitlements and the withholding of his pension paperwork.

15. At the start of the hearing on 12 August 2024, the three-Judge Panel asked Counsel for the Applicant to confirm the limited scope of the application, as established during the CMD of 3 May 2024, which he did.

16. What remains under challenge, therefore, are the following questions:

a. Whether the Applicant wilfully misled UNOPS at the backdrop of the undisclosed financial arrangements and outside activities with Mr. Kendrick;

[1] Additionally, the application requested "waiver of the 10[-]page limit on this submission, and acceptance of the annexed comments in light of the complexity of this case". The request was previously granted and is no longer an issue in the case.

b. Whether there is a causal link between the Applicant's actions and the financial loss of UNOPS;

c. Whether the recovery action and its amount are proper;

d. Whether the disciplinary sanction is proportionate with the established misconduct;

e. Whether the withholding of the PF.4 form is reasonable; and

f. Whether there was any due process violation.

17. The Tribunal notes that the parties have made voluminous filings in this litigation. The case file exceeds 9000 pages, which the members of this Tribunal's Panel have spent countless hours reviewing. There are many factual disagreements between the parties, as shown in the Joint Submission of Agreed and Disputed Facts, which lists 50 pages of disputed facts.

18. However, it is not necessary to resolve all those disputes to decide this judicial review. It is clear from the Agreed Facts alone that the Applicant engaged in the substantial private financial dealings mentioned above with Mr. Kendrick while bringing to UNOPS various deals with Mr. Kendrick and his entities. Since he never disclosed any of these dealings, despite being required to do so under the applicable legal framework, this behavior constitutes blatant misconduct.

19. For example, it is unnecessary to resolve whether Mr. Kendrick issued the Applicant a line of credit (as the Respondent claims) or whether it was "an interest-free revolving loan facility" (as the Applicant claims). Nor is it necessary to determine the exact amount of the numerous payments Mr. Kendrick made to the Applicant and his family or whether they were included in the line of credit/loan facility.

20. Accordingly, the Tribunal will not conduct a deep analysis of the substantial financial gains that the Applicant received from his undisclosed financial arrangements and outside activities with Mr. Kendrick and his entities.

21. It is sufficient to note that the Applicant agrees that he engaged in undisclosed and unauthorized outside activities that entailed personal financial arrangements between Mr. Kendrick and himself (and/or his family) resulting in financial benefits of hundreds of thousands, if not millions, of dollars. The Applicant also concedes that this could amount to a conflict of interest.

22. Nor is it necessary for the Tribunal to conduct a detailed analysis of every statement the Applicant made regarding the Kendrick deals to determine whether he committed fraud against the Organization, as he invites the three-Judge Panel to do. The Applicant was not disciplined for fraud and the contested decision does not mention "fraud" in the entirety of its 73 pages. Moreover, as will be examined below, all the Applicant's actions regarding the Kendrick deals were tainted by his underlying misconduct.

23. 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". The Appeals Tribunal further held that when defining the issues of a case, "the Dispute Tribunal may consider the application as a whole" (see *Fasanella* 2017-UNAT-765, para. 20; *Cardwell* 2018-UNAT-876, para. 23; and *Barbulescu* UNDT/2024/046).

24. The Applicant challenges the financial sanctions on the basis that "[n]either the amount of the alleged liability nor the responsibility for the entire amount has been properly established". Under this broad challenge, he argues that there is no causal relationship between his actions and the alleged losses and that he was not the decisionmaker vis-à-vis the S3i and UNOPS-Kendrick deals.

25. Thus, the Tribunal defines the overall issues of the present case as follows:

a. Was there a causal relationship between the Applicant's actions and the losses alleged to have been suffered by UNOPS?

b. If so, what is the amount of those losses?

c. Was the disciplinary sanction proportionate to the misconduct? and

d. Was the withholding of the PF.4 form a proper and reasonable exercise of discretion?

26. The ensuing analysis will focus on the issues that are still under challenge.

Whether the Applicant wilfully misled the Organization

27. Although neither the sanction letter nor the application mentions the word "fraud", the Applicant stated during a CMD that he challenges "whether there was fraud committed by [him] that resulted in a $63 Million loss". The Tribunal deems this to be a challenge to the amount of loss, if any, and not to the fact of whether fraud was committed. To the extent that the Applicant challenges whether he committed fraud, that argument is quickly disposed of.

28. Occupational fraud, that is "fraud committed by individuals against the organizations that employs them", is generally viewed as falling within one of three primary categories: asset misappropriation, corruption, and financial statement fraud. The "corruption" category involves nearly half of the cases studied by the Association of Certified Fraud Examiners and encompasses such schemes as conflicts of interest, bribery, illegal gratuities, and economic extortion.[2]

29. The Applicant concedes that his involvement in outside activities and/or private arrangements with Mr. Kendrick could be perceived as a potential conflict of interest, which amounts to fraud. Additionally, the financial benefits that the Applicant received from Mr. Kendrick also constitute illegal gratuities, even absent proof of an explicit *quid pro quo* (which would elevate the payments to bribery).

30. Thus, the Tribunal finds that, indeed, the Applicant committed fraud against the Organization by leading it into multiple business partnerships with the Kendrick entities, with which he engaged in undisclosed and unauthorized outside activities, and from which he received several financial and material benefits.

[2] Association of Certified Fraud Examiners, "Occupational Fraud 2024: A Report to the Nations", https://www.acfe.com/-/media/files/acfe/pdfs/rttn/2024/2024-report-to-the-nations.pdf, pp. 10-11.

31. Furthermore, the Tribunal is convinced that the Applicant intentionally misrepresented the investment "opportunities" with the Kendrick entities to the Organization by, *inter alia*, creating an exaggerated sense of urgency and need, concealing relevant information and minimizing the concerns of others to expedite the internal process of approval.

Was there a causal link between the Applicant's actions and the financial loss of UNOPS?

32. The Applicant argues that there is no causal link between his actions and any alleged loss sustained by UNOPS, primarily because he was not the decision-maker on the deals in question. Instead, he claims that the decision-making process for S3i projects was a collective "corporate" endeavor. Investment opportunities were presented to the Senior Leadership Team ("SLT"), then to the Engagement Acceptance Committee, which was later expanded, and renamed EAC-Plus (EAC+). Such "collective" bodies were composed of selected members of the UNOPS Corporate Operations Group and will be referred hereinafter as the EAC+.

33. He also argues that the EAC+ analyzed the proposals and made recommendations, but the ultimate decision power rested with Ms. Greta Faremo, who was the Executive Director ("ED") of UNOPS.

34. This argument is factually correct but ignores the actual realities surrounding this corporate decision-making. The prospective investment deals were sourced by the Applicant and brought to the EAC+ with his recommendation.

35. There is evidence in the record that the Applicant was the supervisor of most EAC+ members and that he "dominated" the meetings. There was little expertise amongst the EAC+ members in how to analyze and assess these complex investment deals under the S3i projects and, as stated by one EAC+ member in his interview to OIOS, "for whatever reasons, we were not going out to hire relevant experts" to advise the EAC+.

36. In addition, the evidence includes numerous statements by EAC+ members that the Applicant imposed extreme time pressure on the EAC+ to move the projects forward. The Applicant was reported to exhibit frustration and anger when he was challenged or questioned about his proposals. And, when proposing deals, the Applicant would alternate between providing very little supporting documents on his proposals or, burying the EAC+ in minutia and paper.

37. In fact, on one documented occasion, the Applicant even acted offended when asked to better explain S3i's selection of projects and partnerships, stating: "I find this exercise unnecessary and borderline humiliating".

38. This evidence makes it clear that the EAC+ was not a truly independent body reviewing the Applicant's proposals sufficient to absolve him from responsibility.

39. As for Ms. Faremo, she said in her interview to OIOS that when she took over as ED of UNOPS, the Applicant had been acting in that role and was considered by many to be "Mr. UNOPS". This sentiment was shared by other staff members of the EAC+, as established during the investigation.[3] Due to "his level, role, and responsibility, and [her] trust, [she] trusted that he did these things properly". According to the ED, "the predictability [she] could offer to UNOPS was to trust [the Applicant] with the delegated authority" and she admits to being "never deep in the operational details" herself.

40. The Tribunal notices, moreover, that this reputation of "Mr. UNOPS" was not imposed on the Applicant by others, but rather cherished and constructed by him. The evidence shows very clearly how the Applicant portrayed himself as the

[3] OIOS Investigation Report:

"67. Ms. Faremo said that despite the investigation and audits on the Kendrick entities there was never any suspicion on Mr. Vanshelboim. Ms. Faremo trusted him completely and said that many considered him to be '*Mr. UNOPS*.' He was credited for saving UNOPS from bankruptcy in 2007 (footnote omitted). Mr. Provenzano also recognized this, '*[Mr. Vanshelboim] has a long-established track record that a lot of people just gave him the benefit of the doubt for* (footnote omitted).' Similarly, Mr. McKerrow said that Mr. Vanshelboim '*was this guy who saved us from the depths of despairs in 2005*' and so he enjoyed a 'sort of revered status'" (emphasis in the original).

"savior" of UNOPS. In a Note to File dated 10 March 2019, the Applicant stated (emphasis added):

> […] had I not done some of those "protective things" (especially in the first half of my term), **without any exaggeration - UNOPS would simply not be in existence today** […]

41. So, for the Applicant to now claim that all the S3i activities were a collective exercise, that he was not the one with decision-making power and thus that he was not responsible for the decisions taken at the S3i, defies his own logic.

42. Indeed, this extraordinary deferral to the Applicant on matters of utmost importance to UNOPS (financially, strategically, and reputationally) may expose Ms. Faremo to liability for the losses UNOPS sustained from approving the Kendrick deals on her watch. There is also evidence that some other members of the EAC+ were less than diligent in reviewing the proposals involving Kendrick entities.

43. However, the liability of others is not an issue before the Tribunal in this case. Contrary to the Applicant's assertion, it is irrelevant for the disposition of this case to determine if the Organization has pursued, administratively or otherwise, the alleged co-responsibility of others, if any. The alleged failures of Ms. Faremo and the EAC+ in approving deals that the Applicant recommended do not absolve the Applicant of his own responsibility in the pursuit and recommendation of these deals.

44. Beyond that, and most importantly, the Applicant admittedly failed to advise anyone in the process that he had substantial financial relationships with Mr. Kendrick, whose business entities were key parties in the deals the Applicant was proposing.

45. In fact, in the aforementioned Note to File, the Applicant flatly stated: "I'm not aware of any real or perceived conflicts of interest between SHS (including their partners) and UNOPS personnel (including our partners)". This denial was blatantly false given that SHS was a Kendrick company and that the Applicant had signed an Advisory Agreement with Mr. Kendrick 14 months earlier.

46. It is self-evident that any reasonable person would have had serious concerns about the Kendrick deals if they had known of these relationships when the Applicant proposed the deals.

47. Indeed, this is the essence of the Organization's prohibition against conflicts of interest. The Applicant's personal financial relationships with Mr. Kendrick clearly interfered with the performance of his official duties and the integrity, independence and impartiality required of him in evaluating and proposing the Kendrick deals to UNOPS.

48. Although admitting his undisclosed financial dealings with Mr. Kenrick, the Applicant argues that there was no actual conflict of interest therein. He points to the Advisory Agreement he had with Mr. Kendrick, under which Mr. Kendrick provided the Applicant with an interest-free "loan facility" of USD500,000 per year (or in generic terms, Mr. Kenrick gave the Applicant free use of one-half million USD annually).

49. Most recently at the hearing, the Applicant said that Mr. Kendrick wanted him to accept the aforementioned financial and material benefits to guarantee that the Applicant stayed at UNOPS because he was the only one Mr. Kendrick trusted in the Organization.

50. The Applicant claims that he signed this Advisory Agreement to persuade Mr. Kendrick to remain involved with UNOPS by reassuring him that the Applicant would stay working there. Of course, this is inconsistent with the Applicant's own testimony that Mr. Kendrick pursued him for years seeking to partner with UNOPS. But, most importantly, this assertion defies logic. The Applicant has essentially asked the Tribunal to believe that a businessman pursuing partnerships with UNOPS demanded that a staff member of UNOPS (i.e., the Applicant) receive financial and material benefits **on the side** for the businessman to enter said partnerships. To be clear, the Tribunal does not believe that.

51. Equally illogical is the second inconsistency with this particular issue. The Applicant claims that he had repeatedly turned down Mr. Kendrick's offers to leave the United Nations and make more money in the private sector. If that is the case, then why would Mr. Kendrick want reassurance that the Applicant would stay at UNOPS? The Advisory Agreement between the Applicant and Mr. Kendrick gives some insight into this.

52. The one-page Advisory Agreement states in its relevant parts:

> The advice sought by DK will be centered on various political issues as well as possible ways and means to fund different types of DK's business activities from non-UN sources.
>
> […] The parties concur that the scope of this AA will be outside of the countries where UNOPS and DK's business ventures may get potentially involved in any kind of collaboration activities. DK will be requesting any advice from VV as private individual and not on behalf of any of his companies or business ventures. At no point may VV be asked to support the interest of DK's companies or business ventures, and VV may refuse to provide advice that might conflict with his employment.
>
> VV will not be paid any fees under this AA. However, DK will issue an interest free revolving loan facility to VV for a period of up to five years. The amount so loaned will not exceed US$ 500,000 per annum and will be capped at US$ 2 million for the entire duration of this AA. VV will pay back this loan within a maximum of two years following his separation from the UN. DK will keep running totals of the loaned amounts.

53. It is clear that this agreement was drafted in an effort to avert future accusations of wrongdoing. As the Applicant wrote to the SLT, "I understand the concept of plausible deniability very well". At the same time, the agreement transparently reveals that the loan repayment is tied to the Applicant's separation from UN service (i.e., when his "non-UN" advice would no longer be needed by Kendrick). Thus, under the Advisory Agreement, Mr. Kendrick gave the Applicant access to millions of dollars, interest-free, with no need to pay any monies back until after he ceased working for the United Nations.

54. Of course, if there was no actual conflict of interest, then why did the Applicant not disclose the existence of these financial arrangements as required? The obvious answer is that doing so would have imperiled approval of the Kendrick deals by UNOPS.

55. Disclosure would have effectively placed a flashing red light on every Kendrick-related proposal warning that the Applicant had substantial financial ties to Mr. Kendrick. At the very least, this warning would have caused anyone reviewing the Kendrick proposals to look extraordinarily hard at the details rather than relying solely on the Applicant's recommendation.

56. However, the Applicant not only failed to activate this warning light, but he also covered up the light. In response to audits initiated by the SLT in 2021, the Applicant wrote an email update stating: "If someone had lingering doubts: I'm not SHS shareholder, never was and never will be, so **I have no incentive to prop up them or anybody else without solid reasons**". (emphasis added)

57. It is clear from this statement that the Applicant understands that receiving "incentives" could cause someone to "prop up" a company. The Tribunal rhetorically wonders if millions in interest free "loans" with no repayment date somehow do not qualify as "incentives" or "solid reasons".

58. In fact, an email exchange between the Applicant and his son about Kendrick's sponsorship of the son's tennis career demonstrates the absurdity of the Applicant's argument that the arrangement was unrelated to his UNOPS employment. When told what Mr. Kendrick had promised to pay him, the son wrote "this is insane, how is this possible. I'm not even a good tennis player yet". In reply, the Applicant wrote "[p]art of my job is to make insane things happen".

59. It seems that the Applicant seeks "to make insane things happen" in this litigation by arguing no conflict of interest when the evidence of such a conflict is overwhelming.

60. The Tribunal finds that the evidence clearly and convincingly shows that the Applicant's misconduct, including his conflicts of interest, caused the financial losses that UNOPS sustained.

61. This conflict was the Applicant's first transgression, which was compounded by his failure to disclose his financial relationships with Mr. Kendrick and get approval for those arrangements. The failure to disclose prevented the Organization from being aware of these conflicts and taking appropriate steps to mitigate their impact on UNOPS. Thereafter, every action that the Applicant took on behalf of UNOPS regarding Kendrick entities was tainted by his first transgression.

62. It is certain that, had the Applicant sought prior approval of these financial arrangements from the Secretary-General, one of two things would have happened. Most likely, the Secretary-General would have refused approval. Or, if the Secretary-General granted approval, he would have prohibited the Applicant from any involvement with dealings between UNOPS and Kendrick entities. Because the Applicant admittedly failed to seek approval, the Secretary-General was unable to take either of these actions to protect the interests of UNOPS.

63. Thus, the Applicant cannot avoid his responsibility for the Kendrick deals by claiming that the EAC+ and the ED approved the deals since he did not disclose to them the essential fact of his conflict of interest. It is patently obvious that the Applicant's conflict of interest and his failure to report the conflict are causally linked to the financial losses of UNOPS from the Kendrick deals, irrespective of any additional possible responsibility of the ED, UNOPS, and/or the EAC+.

64. The contested decision in this case applied the joint and several liability doctrine as it expressly states that "the Secretary-General has decided that you are jointly and several liable for UNOPS's financial losses". The legal concept that addresses this type of situation is called the doctrine of "joint and several liability" or "responsabilité conjointe et solidaire". Under this doctrine, each party is independently liable for the full extent of damages but may seek contribution from the other wrongdoers.

65. The joint and several liability finds legal support in staff rule 10.1(b), which states (emphasis added)

> Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, **such staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered** by the United Nations as a result of his or her actions, if such actions are determined to be wilful, reckless or grossly negligent.

66. Therefore, as determined above, the Tribunal considers that the Applicant misled the Organization by both omitting his blatant conflict of interest with Mr. Kendrick, and "pushing" UNOPS to enter into highly risky deals with the Kendrick entities, while minimizing concerns and concealing relevant information. This behavior leads to the conclusion that his actions constitute misconduct and were wilful for the purpose of staff rule 10.1(b) above.

67. Thus, the Applicant can be held responsible for the full amount of loss that UNOPS suffered, as he was. However, he may seek contribution elsewhere from any others deemed responsible as well.

What is the amount of the financial losses of UNOPS?

68. The contested decision states that UNOPS lost a total of USD63,626,806 in connection with the Kendricks entities. It says that this consists of USD58,800,000 allocated to WWRE, SHS, and Myra SHS Energy, plus accrued interest and other fees owed to UNOPS.

69. As noted above, the USD58,800,000 sum would not have been allocated by UNOPS had the Applicant disclosed his conflict of interest with Mr. Kendrick. Thus, it seems on its face that this amount is clearly part of the loss of UNOPS.

70. The remaining amount of financial loss attributed to the Applicant (USD4,826,806) refers to the interest and fees that were due by 31 March 2022 in relation to the Renewable Energy Project (Myra SHS), the Monterrey Wind Project, and the Social Housing Project, which were all Kendrick deals.

71. However, the Tribunal considers that this claim for lost interest and fees is less clear. The Respondent calculated interest and fees based on the terms of the loan agreements, but it is both illogical and unfair to do so. If the Applicant had disclosed his conflicts, the loans would not have been given, and UNOPS would not be entitled to the benefit of those loans, including above-market interest rates and various fees. In other words, the Respondent cannot have it both ways.

72. The Applicant argues that all of the claimed losses were not his fault but instead resulted from UNOPS prematurely withdrawing from the deals. In this regard, he argues that the Organization failed to mitigate its damages.

73. Of course, this argument ignores the fact, as set forth above, that UNOPS would not have entered into the deals with Mr. Kendrick had the Applicant properly disclosed his conflict of interest. He cannot validly claim that UNOPS should stick with the deals, which he admits were always highly risky, once it discovered his conflicts of interest.

74. Furthermore, as per UNOPS Quarterly Business Review for Q1 2022 dated 23 March 2022, SHS and its relevant subsidiaries formally defaulted on 7 April 2022 on the repayment due under the 2019 Housing Agreements and the Pakistan Housing Agreement, amounting to a total of USD39,826,806. On the same day, Myra SHS Energy failed repay USD23,800,000 to UNOPS for the principal in relation to the Monterrey project and the 2019 Energy Agreement.

75. Thus, the evidence does not support the Applicant's allegation that the financial loss resulted from a premature "cancellation" of the investments/deals. Instead, the evidence shows that the Kendrick entities were in default on their repayment obligations prior to the withdrawal of UNOPS.

76. The Applicant also argues that the calculations failed to consider USD6,156,778 that the Kendrick entities paid to UNOPS in 2021. However, the record shows that this sum was considered in the Respondent's calculations as a setoff against the claim for interest and fees.

77. In addition, the Applicant has similarly failed to present any evidence that the deals would have produced income or returns if UNOPS had not, allegedly, pulled out of them prematurely. Of course, the burden is on the Respondent to prove the loss, and the Tribunal finds that he has done so by evidence that the Applicant's fatal misconduct resulted in these deals even occurring. The burden then shifts to the Applicant to present evidence refuting that. Moreover, the Applicant also bears the burden to show that UNOPS failed to mitigate its damages.

78. The mitigation of damages doctrine generally holds that a party cannot recover for losses that the party could have avoided by reasonable efforts. Failure to mitigate damages is an affirmative defense so the party raising it has the burden of showing such a failure.

79. The Applicant's mere testimony that UNOPS would not have lost its investment had it stayed in these highly risky deals, is not credible and does not meet his burden of proof.

80. If anything, the Applicant's allegations throughout the proceedings indicate otherwise. As he said, the investment deals with the Kendrick entities were "unsecured loans". By not being "secured", the Organization had very little options at its disposal to recover investments once the Kendrick entities defaulted on their repayment obligations.

81. Indeed, the Housing Loan Agreements did not provide for transfer of ownership in land or equipment to UNOPS. UNOPS did not, and could not, record in its financial statements any property, plant or equipment related to S3i. In fact, as the Respondent explained, the Social Housing Project descriptions for Kenya, Ghana and Pakistan, stated that provision of land was contingent on the actual building of housing units. However, "not even a single house was built", as Mr. Soll, the current Chief Financial Officer of UNOPS, observed during the hearing.

82. In this sense, the Applicant has also failed to demonstrate how UNOPS could have recovered some of its losses related to the Kendrick entities in any way other than holding jointly accountable the people responsible for it.

83. In view of the foregoing, the Tribunal finds that the Applicant is to be held liable for the financial loss that the Organization suffered in connection with the Kendrick entities, and that the amount of loss attributable to him is USD58,800,000, which only consists of the principal capital that UNOPS gave to the Kendrick entities.

Whether the disciplinary sanction is proportionate to the misconduct

84. The Dispute Tribunal Statute provides in art. 9.4 that, in reviewing a disciplinary decision, the Tribunal shall, *inter alia*, determine "whether the disciplinary measure imposed was proportionate to the offence". This provision was recently added to the Statute but is merely a codification of a long-standing jurisprudence (see, e.g., *Sanwidi,* 2010-UNAT-084).

85. The principle of proportionality has been described as meaning that the sanction "should not be more excessive than is necessary for obtaining the desired result" (see *Machanguana* UNDT/2013/149, para. 48, citing *Sanwidi,* UNDT/2012/169).

86. In applying the principle of proportionality, the Appeals Tribunal stated in *Branglidor* 2022-UNAT-1234, para. 59, that:

> [T]he Administration has broad discretion in determining the disciplinary measures imposed on staff members as a consequence of misconduct. The Administration is the best authority to select a satisfactory sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. Thus, in determining the proportionality of a sanction, the UNDT should observe a measure of deference, but more importantly, it must not be swayed by irrelevant factors or ignore relevant considerations.

87. As noted earlier, the Applicant is not challenging the portion of the disciplinary sanction that dismissed him, just the imposition of a fine of twelve months' net base salary, lack of applicable indemnities, the aforementioned financial recovery action and withholding of his pension paperwork.

88. The sanction letter recounts that the Secretary-General considered the nature of the Applicant's misconduct, the penalties imposed in cases of comparable misconduct and whether there were any mitigating or aggravating factors. In doing so, he found "that the established misconduct is unprecedented, both as regards the amount of loss suffered by UNOPS and the reputational damage done to UNOPS and the United Nations as a whole".

89. The Secretary-General considered the financial and reputational loss to be an aggravating factor, along with the Applicant's seniority, his increased responsibility for the interests, property and assets of the Organization, and the deliberate and protracted actions in securing funding for the Kendrick entities from the resources of UNOPS. He also found that there were no applicable mitigating factors.

90. In reviewing that decision, the Tribunal agrees that the misconduct was unprecedented, causing enormous financial loss to UNOPS and tremendous damage to the reputation of UNOPS and the United Nations. Dismissal or termination without indemnities alone would not serve to punish the wrongdoer or deter others from similar wrongdoing. Indeed, financial misconduct calls for financial penalties in the form of a fine. The size of the fine imposed is outweighed by the financial benefits that the Applicant received from Mr. Kendrick and dwarfed by the monies that UNOPS lost.

91. Therefore, the Tribunal considers that the disciplinary sanction, including the fine, was proportionate to the misconduct.

Whether the withholding of the PF.4 form is proper and reasonable

92. Under staff rule 10.1(b), staff members whose misconduct is deemed to have been wilful, reckless or grossly negligent and the cause of any financial loss to the Organization, may be required to reimburse the Organization either partially or in full.

93. As per the Practice of the Secretary-General in disciplinary matters and cases of possible criminal behavior, 1 January 2022 to 31 December 2022 (document A/78/603) (emphasis added):

> 20. Full recovery often depends on the sufficiency of final entitlements. **To ensure as large a recovery as possible**, in appropriate cases the Under-Secretary-General for Management Strategy, Policy and Compliance **may decide to withhold transmission of the necessary documentation to the United Nations Joint Staff Pension Fund** in order to delay the payment of a withdrawal settlement or pension entitlements to allow the Pension Fund, at its discretion and with the agreement of a former staff member, to split a lump-sum payment between a former staff member and the Organization to allow for financial recovery by the Organization.

94. According to ST/AI/155/Rev.2 (Personnel payroll clearance action):

> 11. Staff members separating from service, in accordance with their contractual obligations to the United Nations are responsible for:
>
> (a) Settling all indebtedness to the United Nations.
>
> …
>
> 12. The Under-Secretary-General for Administration and Management may refuse to issue the P.35 form [(Personnel payroll clearance action)] or may delay its issuance until a staff member has satisfactorily fulfilled the requirements set out in paragraph 11 above.
>
> 13. Staff are reminded that the non-issuance of a P.35 form will prevent them from receiving their pension benefits since this form is required by the Pension Fund for the processing of those pension benefits. Staff are also reminded that failure to comply with the obligations set out in paragraph 11 above may result in the suspension of the separation procedure, which may delay any payments otherwise due to the staff member.

95. The PF.4 form is the separation notification form that has to be sent to the UNJSPF for it to process a staff member's pension benefits. It is prepared upon completion/issuance of the P.35 form.

96. Withholding the release of the separation notification is essentially the Administration's last available effort to try to secure repayment because, as stated in *Aliko* 2015-UNAT-539, para.42:

> It is easy to understand the difficulties of the payment and of the recovery after the staff member's separation or to be reasonably certain that he or she will honour the debt.

97. Pertinently, as the Dispute Tribunal asserted in *Azar* UNDT/2021/125, para. 22 (emphasis added):

> the main tool for recovery of money owed to the Organization is offsetting against a staff member's salary and entitlements. It is more effective and quantifiable and does not undermine the provisional function of the entitlement as does withholding of the notification to UNJSPF. **The latter, therefore, is rather an extraordinary measure, the resort to which should be reserved to situations where execution against the salary and entitlements is impossible or insufficient**. For this reason, in accordance with section 12, it must be decided on at an appropriately high level, that is the USG/Management.

98. The test set out by the foregoing caselaw requires that, for the withholding of the separation notification to the UNJSPF to be justified, it must be the last resort where execution against the salary and separation entitlements was impossible or insufficient.

99. In this case, the Administration decided to avail itself of the foregoing provisions and withheld the release of the separation notification until fully recovering the indebtedness attributable to the Applicant either from him or other sources.

100. As demonstrated above, the amount of the Applicant's indebtedness with the Organization is USD58,800,000. It was objectively impossible for the Organization to recover this debt against the Applicant's salary and separation entitlements alone.

101. Accordingly, the last resort test is sufficiently met, and the Tribunal considers that withholding the release of the separation notification in this case was a lawful exercise. In view of the Applicant's gross misconduct, which resulted in an unprecedented financial loss to the Organization, the Tribunal agrees that withholding the release of the separation notification is also a proper exercise of administrative discretion, and reasonable given the circumstances.

Whether there were any due process violations

102. The Applicant alleged several instances of due process violations during the investigation and disciplinary process, namely that:

a. He was precluded from providing evidence during the investigation and disciplinary process by not having access to his official email and computer upon being placed on Administrative Leave Without Pay ("ALWOP");

b. OIOS did not take into consideration the Applicant's comments to its findings, which were provided only one week before issuance of the investigation report;

c. OIOS never shared the recording of the Applicant's testimony with him, but only an edited and inaccurate written summary;

d. The Applicant's request for extension of time to file comments on the Allegations Memorandum due to COVID-19 related illness was callously rejected; and

e. OIOS was biased against the Applicant and approached the investigation as a conspiracy to defraud from the outset.

103. Recalling that due process starts in a disciplinary process where the findings of an investigation indicate that misconduct may have occurred, as per staff rule 10.3(a), the ensuing analysis will consider each of the foregoing allegations in turn.

Access to UNOPS official email and computer

104. According to the Applicant, he has not been able to provide critical exculpatory evidence since being placed in ALWOP because of lack of access to his official email account and computer.

105. The Tribunal, however, is not persuaded by this claim, which is misleading at best.

106. At the outset, the Tribunal clarifies that the decision to seize the Applicant's computer is lawful and consistent with the OIOS Investigation Manual. With respect to the restriction of access to the official email account, the Tribunal finds it reasonable to protect the integrity of the evidence.

107. Second, the Tribunal recalls that it gave the Applicant ample opportunity to produce new evidence during these proceedings, and the Applicant's filings indicate that he actually had access to volumes of emails. On 29 March 2024, Counsel for the Applicant requested leave to submit additional documentation called "annexes 18 to 37". The new annexes contained several completely or partially legible photographs of email correspondence from the time the Applicant worked at UNOPS. In his submission, Counsel for the Applicant further stated that (emphasis added):

> [his] email box for the relevant period contains well over 500,000 emails and given that the Respondent withdrew the Applicant's direct access to these documents while no content searches are possible, the Applicant has to invest thousands of hours to sift through the old correspondence. **[The Applicant] has already identified hundreds of relevant documents that will be ready for release within a maximum of 60 calendar days**.

108. By Order No. 42 (GVA/2024), the Tribunal requested the Applicant to amend the record by producing legible copies of "annexes 18 to 37", and further noted the following:

> While it is unclear to the Tribunal why already identified and deemed "relevant" documents require 60 calendar days to be submitted into evidence, it will, in the interest of justice and in the fair disposition of this case, grant the Applicant's request.

109. However, during the CMD of 3 May 2024, Counsel for the Applicant explained that the Applicant used a backup programme to retrieve some emails, but that programme did not allow the printing of physical or PDF copies. As a result, the Applicant requested the Respondent to retrieve certain emails from the Applicant's United Nations account, to which the Respondent agreed as long as the requested emails were identified by date and time.

110. Applicant's Counsel further clarified that he had not reviewed the "hundreds of relevant documents" that his client allegedly identified, and would not produce them or other additional documentation beyond what had already been provided.

111. On 20 May 2024, the Applicant informed the Tribunal that, through technical assistance, he was able to produce legible copies of the documentation pending and did not require the Respondent's assistance anymore. He then filed a revised submission of additional documentation containing new annexes 18 to 34, and a motion for corrigendum. By Order No. 63 (GVA/2024), the Tribunal accepted the Applicant's requests and admitted the new evidence into the case record.

112. These new annexes contain several contemporaneous emails between the Applicant, the ED of UNOPS, EAC+ members, and others. None of them substantially supports the Applicant's defense but leads the Tribunal to its third point in this issue.

113. During these proceedings, the Applicant provided several copies of emails and documents from his official UNOPS email account, which he considers exculpatory and contradictory to the Respondent's allegations against him. Thus, his claim that he was hampered by the lack of access is factually incorrect.

114. If the Applicant was prevented from providing evidence at the investigation and disciplinary process by not having access to his UNOPS official email account, the Tribunal wonders how he has been able to retrieve many of them now during these proceedings.

115. The answer to this rhetorical question is given by the Applicant himself: he kept a backup programme from his time at UNOPS. Since this backup programme and the technical assistance he hired have always been at the Applicant's disposal, the Applicant has failed to demonstrate how the investigation's lawful action has possibly impacted his due process rights.

116. Fourth and foremost, even if it were accepted that possible due process shortcomings occurred during the investigation and disciplinary process, the Tribunal has certainly corrected said shortcomings during these proceedings.

117. Furthermore, at no point at all has the Applicant ever identified what evidence or critical correspondence is allegedly missing from the record. In fact, when the Tribunal requested specifics and allowed the Applicant to file the alleged "already identified hundreds of relevant documents", Counsel for the Applicant backtracked and said that the record was extensive enough.

118. It follows that the Applicant's argument does not stand. The reasonable precaution of denying access to emails and the UNOPS computer to protect the integrity of the evidence during the investigation did not, in any way, denied the Applicant of due process. The record shows that he already had access to at least "hundreds of documents" via his backup programme and that, ultimately, he only deemed 20 such documents to be sufficiently relevant to produce to the Tribunal.

The Applicant's comments to the investigation

119. The Applicant claims that OIOS did not take into consideration the comments he provided on 25 April 2022, one week prior to the issuance of the investigation report of 3 May 2022.

120. The Tribunal notices, however, that there is a whole section in the investigation report dedicated to the Applicant's account and written comments. In it, OIOS clarified the contents of the Applicant's 28-page written submission, which did not contain a single supporting document or evidence.

121. Indeed, the Applicant's comments contain, *inter alia*, an outline of S3i, his role in developing it, an explanation of the evolution of his relationship with Mr. Kendrick and the selection of the Kendrick entities to partner with S3i. The Applicant agreed that he received some financial incentives from Mr. Kendrick but submitted that those had nothing to do with his functions and responsibilities at UNOPS. He also alleged that the arrangement with Mr. Kendrick at no point impacted his impartiality and that he was being used as a scapegoat by senior managers of UNOPS.

122. In the Tribunal's view, the narrative of the Applicant's comments without any supporting documentation had no probative value demanding an extension of the investigation. Indeed, it seems consistent with the Applicant's previous practice of using lengthy prose instead of proof in dealing with his supervisor and the EAC+. Thus, it does not consider inappropriate that OIOS concluded and issued its investigation report only one week after receiving said comments from the Applicant.

123. Instead, the Tribunal considers that OIOS adequately considered the Applicant's comments and appropriately included them into its investigation report, thus committing no due process violation in this respect.

The Applicant's interview recording

124. The Applicant alleges that his due process rights were violated by only receiving an edited and inaccurate written summary of his interview with OIOS.

125. However, the Applicant did not explain how the written summary was "inaccurate", much less how this alleged inaccuracy impacted his rights. The Applicant equally did not provide any evidence showing that he contemporaneously requested said recording and/or an amendment of the summary.

126. As the record shows, OIOS complied with its legal obligations by providing the Applicant with the investigation report and all its supporting materials, informing the Applicant of the allegations against him and of his right to seek the assistance of counsel, and by giving him the opportunity to provide comments on the allegations.

127. Therefore, even if OIOS did indeed not provide the Applicant with the complete audio recording of his interview, the Applicant has failed to demonstrate how this alleged shortcoming has impacted his due process rights.

The rejection of the Applicant's request for extension of time to file comments on the Allegations Memorandum

128. The Applicant received the Allegations Memorandum on 30 September 2022. He was requested to provide any written statement or explanations he might wish to give in response to the allegations against him within ten working days, i.e., by 10 October 2022.

129. The Applicant requested and received successive extensions of time to submit his comments, which were only provided on 5 December 2022, i.e., two months later.

130. The Applicant's grievance is that his last request for extension of time was rejected. According to him, despite his COVID-related illness, the Administration refused to give him a couple of more weeks to complete his response.

131. The evidence on record shows, however, that there was a reasonable explanation behind the refusal. After previously granting two months of extensions, the Respondent asked the Applicant to provide proof of illness to support the latest request. The Applicant, however, refused to provide a PCR test to document his COVID by stating that "a PCR test is pretty hard to get and would cost me $120 which is a bit of an issue given that I've been left without any income for a full year".

132. When confronted with the possibility of getting a PCR test through medical insurance, the Applicant claimed that he was not insured since 30 September 2022. However, the evidence on record contradicts this claim. Two Personnel Action Forms dated 1 November 2022 and 1 January 2023 confirms that the Applicant was still covered by the UNOPS medical plan at that point.

133. Indeed, an email from a Senior Human Resources Associate to the Applicant dated 3 January 2023 offers the Applicant the possibility to "continued enrollment" in his medical plan coverage during the extension period of unpaid administrative leave. The email also shows that the Applicant did not pay for his portion of the medical plan premiums from 1 October 2022 to 31 December 2022, but that the enrollment was effective.

134. Thus, the Tribunal finds that the Applicant misrepresented his situation by claiming he could not get a PCR test because he was not insured. Instead, he chose not to get or produce the test.

135. Moreover, the Applicant has not explained how an additional extension to file his comments would have affected the investigation to his benefit. He filed his comments on 5 December 2022, despite his asserted need for even more time, and he seems to have completely laid out in those comments his explanation for why the matter should not proceed further. The fact that his explanation was unpersuasive does not mean that he was denied due process.

The approach of OIOS to the investigation

136. Finally, the evidence does not support the Applicant's assertion that OIOS approached the investigation "as a conspiracy to defraud from the outset".

137. On 7 December 2021, OIOS interviewed the Applicant. The pre-interview information sheet specified that information in the possession of OIOS at that time suggested that Mr. Kendrick financed some of the Applicant's personal expenses.

138. On 11 March 2022, OIOS prepared another pre-interview information sheet inviting the Applicant for a second interview. In it, OIOS clarified that it had obtained information suggesting, *inter alia*, that the Applicant provided companies associated with Mr. Kendrick exclusive access to S3i/UNOPS funds in exchange for financial and material benefits and withheld important information from UNOPS related to the Kendrick entities.

139. The foregoing evidence supports the Respondent's allegation that the investigation did not have any specific angle and that, as it progressed, OIOS came across more evidence implicating the Applicant in additional matters.

140. Also, the Applicant provided no evidence in support of his allegation that the investigation was biased against him. Instead, he bases this "conspiracy" theory on the fact that other people in UNOPS were also part of the S3i initiative and responsible for approving the investments that were later qualified as losses.

141. However, as established above, the fact that other people in UNOPS, particularly the ED and the EAC+ members, signed off on the investments deals the Applicant recommended with the Kendrick entities does not alter the Applicant's own responsibility in the matter. It also does not prove that the investigation was biased against the Applicant.

142. Therefore, the Tribunal concludes that none of the Applicant's allegations of due process violations are supported by evidence. The Organization conducted itself properly throughout the investigation and disciplinary process, having respected the Applicant's rights and the applicable legal framework.

Conclusion

143. In view of the foregoing, the Tribunal DECIDES that:

a. The amount of financial loss attributable to the Applicant is USD58,800,000; and

b. The application is rejected in its entirety as to all other claims.

(Signed)	*(Signed)*	*(Signed)*
Judge Sun Xiangzhuang	Judge Joelle Adda	Judge Sean Wallace

Dated this 3rd day of October 2024

Entered in the Register on this 3rd day of October 2024
(Signed)
René M. Vargas M., Registrar, Geneva