



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

HAMAM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Christopher Bollen

Michel Reymond

Counsel for Respondent:

Miryoungh An, DAS/ALD/OHR/UN Secretariat

Wei Zhuang, DAS/ALD/OHR/UN Secretariat

Introduction

1. On 6 May 2022, the Applicant, a former Director, at the D-2 level, of the Office of the Special Adviser on Africa (“OSAA”), filed an application contesting the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.
2. On 3 June 2022, the Respondent filed a reply submitting that the disciplinary measure imposed on the Applicant was lawful.
3. On 9 May 2024, a hearing was held via MS Teams at which the Applicant and the former Under-Secretary-General and Special Adviser on Africa to the Secretary-General (“the USG/OSAA”) gave testimony.
4. For the reasons set out below, the application is denied.

Facts

5. In response to Order No. 071 (NY/2023) dated 17 August 2023, the parties submitted the following joint statement of agreed facts (emphasis in original):

[...]

In January 2018, [BG (name redacted for privacy reasons)], was appointed [the USG/OSAA]. The Applicant thus ceased his activities as Acting USG.

[...]

Prior to the arrival of the [USG/OSAA], OSAA was comprised of two branches, each headed by a Chief of Service at the D-1 level. The Coordination, Advocacy and Programme Development Branch (CAPDB) was headed by [RC (name redacted for privacy reasons)] and the Policy Analysis and Monitoring Branch (PAMB) was headed by [BM (name redacted for privacy reasons)], all OSAA staff reported directly to their respective D-1 level Chiefs as First Reporting Officer (FRO) and to the Director, [the Applicant], as Second Reporting Officer

(SRO). Both Chiefs reported to the Applicant, who reported to the [USG/OSAA] as both his FRO and SRO.

In or around July 2018, a strategic institutional assessment of OSAA was conducted by an external global consulting firm, which resulted *inter alia* in findings that there was a need for OSAA to review its structure and narrow the nexus between peace and development.

[...]

On 11 and 12 September 2018, OSAA held a retreat during which [the USG/OSAA] described her proposed reorganization of the Office. Instead of being divided between two branches, work would be based on seven workstreams (later changed to four workstreams [...]).

[...]

On 14 December 2018, a fact-finding panel was convened to investigate the multiple complaints of harassment filed by the Senior Managers and [VN (name redacted for privacy reasons)], against [the USG/OSAA]. On 27 June 2019, the Applicant received the outcome of his complaint.

[...]

On 14 December 2018, in view of the tight deadline for submission of OSAA's 2020 budget, due in mid-January, and pursuant to [the USG/OSAA's] request, [KB (name redacted for privacy reasons)] requested an urgent meeting via e-mail to consolidate and finalize the 2019 and 2020 work plans of the four functional teams in a way that prevents duplication, builds synergies across work streams and generates impact and adds value in line with OSAA's strategic direction. [...]

From 19 December 2018 to 7 January 2019, the Applicant went on annual leave. He announced his departure by email to all colleagues dated 18 December 2018.

[...]

After the budget narrative was submitted on 15 January 2019, **on 30 January 2019**, via e-mail, [the USG/OSAA] requested the Applicant to meet with [RC] and [BM], the functional team leaders and [ST (name redacted for privacy reasons)] to work on the costing of the budget proposal.

On 31 January 2019, the Applicant replied to her meeting invitation that since most of the budget preparation had taken place without the Applicant's knowledge, consultation or contribution, the Applicant did not see any value added from the Applicant's side and the Applicant was not able to contribute to the budget process.

[...]

On 27 March 2019, via signed memorandum copying the Chef de Cabinet, the Applicant, together with [BM] and [RC], sought urgent guidance from [ML (name redacted for privacy reasons)], Assistant Secretary-General for Human Resources, on completing the staff performance appraisal for the 2018/2019 cycle, and stated that the new “flat structure”—where staff at the P-3 and P-4 levels report to P-5 level staff as their new FROs and the P-5 staff report directly to the USG/OSAA without the involvement of the Director (the Applicant) or that of the two Chiefs [BM and RC]—and “persisting exclusion by [the USG/OSAA] of all the three top most senior staff makes it impossible for those concerned to accurately assess and provide adequate appraisal and supervision”. [The USG/OSAA] was not copied on the memorandum. The Senior Managers stated in the memorandum:

- a. “As we are fast approaching the end of the performance cycle this month of March 2019, we continue to receive queries from colleagues about how to complete their respective performance appraisal process for the period April 2018-March 2019”.
- b. “This new structure does not abide by the [United Nations] nomenclature, and the modus operandi attached to it or the lack of thereof is not in conformity with applicable [United Nations] rules and regulations[.] Moreover, functions and responsibilities as well as supervisory and managerial roles of the Director and Chiefs were stripped away through this new process. [...] Furthermore, these changes are neither reflected in nor commensurate with the colleagues’ job description or relevant personnel actions”.
- c. “While some individual staff members have endeavored to keep us informally posted about their respective work assignments, the persisting exclusion by [the USG/OSAA] makes it impossible for those concerned to accurately assess and provide adequate appraisal and supervision”.

On 12 April 2019, [the USG/OSAA] reminded all OSAA staff to complete their performance documents by 30 April 2019. She noted that for the 2018/2019 reporting period, the FRO and SRO would remain the same as during the previous reporting period, and that for the period of November 2018 to March 2019, the P-5 level functional team leaders would be additional reporting officers (AROs) for those staff members under their supervision. [The USG/OSAA] also indicated that guidance would soon be provided on how to prepare the 2019/2020 [electronic performance appraisal system report (“e-PAS”)] and work plan.

On or around 26 April 2019, based on the recommendation of the interview panel, [the USG/OSAA] selected [KJ (name redacted for privacy reasons)].

[...]

On 11 July 2019, via e-mail, copying the Applicant and [BM], [RC] said to [KJ] that he had no supervisory role in relation to her.

Following this, **on 16 July 2019**, [KJ] sought the Applicant’s advice on who could sign her administrative matters, including e-PAS, leave and telecommuting request.

[...]

On 18 July 2019, the Applicant replied to [KJ’s] 16 July 2019 e-mail by stating: “you aren’t working directly under my supervision. I can’t be your first reporting officer. You may wish to request [the USG/OSAA] to designate a suitable supervisor or first reporting officer in your case”.

[...]

On 19 July 2019, [KJ] stated to the Applicant that she had sought his advice as her SRO and Director to resolve the issue related to her administrative matters. Later that day, [KJ] sought the Applicant’s advice on her workplan as her SRO. The Applicant forwarded her e-mail to [RC] who said to the Applicant: “We spoke. I trust my communication is clear on this matter”.

On 23 July 2019, the Applicant sent to [RC] the Applicant’s draft response to [KJ] stating: “while your post is located in CAPD Branch headed by [RC], the [United Nations] Monitoring Mechanism is implemented by PAM Branch led by [BM]. Did you consult with [BM] on this issue?”

[...]

On 24 July 2019, via e-mail, the Applicant replied to [KJ] using the draft prepared by [BM]. The Applicant referred to the “meeting between [KJ], the two chiefs and [the Applicant]” in June 2019 and the 23 July 2019 meeting chaired by [AD (name redacted for privacy reasons)], and the Applicant wrote: “[...] the reporting lines in OSAA will be clarified during the retreat that [the Office of Human Resources (“OHR”)] is organizing for the office” and “[g]iven the circumstances I am afraid I cannot be of much help to you right now until the issue of reporting lines is clarified”.

[...]

On 19 August 2019, via e-mail copying [MT], [the USG/OSAA] advised OSAA staff members that an extension had been approved for

the 2018/2019 e-PAS to 30 September 2019. [The USG/OSAA] also provided specific guidance on how the e-PAS should be completed. In her message, [the USG/OSAA] wrote, *inter alia*, that:

- a. “the concept of work streams/functional teams introduced in November 2018 may have resulted in questions on how to reflect the changes in goals and FRO/SRO roles for the performance appraisal, as was previously indicated in my memo of 12 April. I hope the guidance below will bring some clarity in order to conclude the 2018-2019 reporting cycle”;
- b. Goals: “All goals as of 1 April 2018 should be reflected in one’s work plan,” “If a goal was valid for only a portion of the reporting cycle, please indicate. A staff member will still be assessed for this period subject to any extenuating circumstances”, “Any additional goals as of 1 November 2019 must also be reflected”;
- c. “FROs and SROs:

Staff up to the P-4 level:*

FRO Branch Chief

SRO Director

Additional supervisor Functional Team Leader

* Please note that different arrangements may be applicable for those reporting directly to the USG and those with special circumstances [e.g. members of the assessment team].

Staff at the P-5 level

FRO Branch Chief

SRO Director

The USG will provide inputs to the FRO in order to reflect performance during the period November 2018 to March 2019

Staff at the D-1 level

FRO Director

SRO USG

Staff at the D-2 level

FRO USG

SRO USG”

- d. “I encourage staff to use the rest of the month of August to complete their self-assessments in order to provide the FROs,

SRO and Additional Supervisors adequate time to complete their parts in September”.

- e. “Please note that ePAS arrangements for the cycle 2019/2020 may be different as they are subject to the outcome of the administrative interventions as outlined in the OSAA staff meeting on 23 July 2019”.
- f. “I hope to receive your full cooperation and should you have any queries please do not hesitate to contact me or the Executive Officer, [MT] who provided the necessary input and advice on the completion of the ePAS.”

[...]

[Between 5 and 6 September 2019, a management retreat took place, which was facilitated by a consultant.]

[...]

On 27 September 2019, via e-mail [...], [the USG/OSAA] requested the Applicant to ensure that the e-PAS of all staff members be completed by 30 September 2019. [The USG/OSAA] stated, *inter alia*, that:

- a. “As you are aware, the Office for Human Resources has exceptionally approved the extension of the completion of 2018-2019 ePAS for OSAA staff to 30 September 2019. This has been recently confirmed by the Executive Office. The ePAS process was also discussed during our recently concluded management retreat”.
- b. “In the interest of all the staff, it is important that we conclude this process. I am therefore requesting you, in your capacity as the Director of the Office, to ensure that the ePAS of all OSAA staff members are completed by 30 September”.

[...]

On 7 October 2019, ten OSAA staff members raised concerns with the USG/OSAA about noncompletion of the 2018/2019 e-PAS being detrimental to their career development.

[...]

On 1 November 2019, [CP (name redacted for privacy reasons)], Under-Secretary-General for Management Strategy, Policy and Compliance [“the USG/DMSPC”], convened a town hall meeting with OSAA staff. [MT] shared with all OSAA staff a summary of the key messages delivered by [CP] during the town hall, including that:

- a. “An independent comprehensive review of OSAA will be undertaken by external consultants and will be led by [a] former [United Nations/United Nations Development Programme] staff member”;
- b. “The Knowledge Management and Monitoring (KMM) and Policy Analysis and Coordination (PAC) functional teams will report to [RC]”;
- c. “The Intergovernmental Support (IGC) and Communications (COM) functional teams will report to [BM]”;
- d. “These reporting lines are transitional and will be re-considered based on the outcome of the independent functional review”;
- e. “ePAS for the reporting cycles 2018-2019 and 2019-2020 for all OSAA staff members are suspended until the outcome of the independent review is completed. In case OSAA staff members apply for regular or temporary job openings, OHR will certify staff member’s satisfactory performance to Hiring Managers concerned”;
- f. “As an exceptional measure, appointments of staff on fixed term appointments that are expiring soon will be extended for the regular duration, without the need for completed ePAS. Extensions will not be shortened because of the on-going independent review”.

On 4 November 2019, via e-mail to all OSAA staff and [MT], [the USG/OSAA] thanked [MT] for the note of key messages and wrote: “However, a key message was also the importance of following instructions of supervisors and failure will be treated as insubordination”.

All throughout the above period:

- a. [ST] stated that he was involved in helping the Applicant, RC and BM “formulate a position” upon “their volition, at their guidance and at their requests” which he considered as part of his “reasonable work related activities”.
- b. According to [ST], he drafted e-mails for the Applicant to send [the USG/OSAA] because the Applicant requested his inputs, and [ST] said: “that’s again entirely in line with my relationship with [the Applicant] on administrative matters as him being my second reporting officer”.

As of 1 August 2020, [the USG/OSAA] separated from the Organization due to expiration of her appointment.

Procedural Background

6. On 28 October 2020, the Office of Internal Oversight Services (“OIOS”) transmitted an investigation report concerning the Applicant to OHR. In the report, OIOS stated that in September and October 2019, it had received multiple and interrelated reports of possible unsatisfactory conduct by staff members of OSAA. OIOS assessed the matter and determined that the reports implicated the Applicant, BM and RC (collectively “Senior Managers”). OIOS investigated the concerns raised against the Senior Managers, that they, in opposition to proposed reforms of OSAA and the USG/OSAA, engaged in possible misconduct.

7. Following a review of the investigation report, and by memorandum dated 19 July 2021 (“Allegations Memorandum”), the Applicant was informed that in accordance with sec. 8 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) and Chapter X of the Staff Rules, it had been decided to issue formal allegations of misconduct against him. The Applicant was further informed that, should the allegations against him be established, his conduct would constitute a violation of staff regulations 1.2(b), 1.2(e), 1.2(g), 1.2(i), staff rules 1.2(a), 1.2(f), 1.2(g) and sec. 3.5 of ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).

8. On 16 September 2021, the Applicant submitted comments on the allegations of misconduct.

9. By letter dated 6 January 2022 (“the Sanction Letter”), the Applicant was informed of the decision by the USG/DMSPC that, on the basis of the entire record before her, the allegations of misconduct were factually established to the requisite standard and that the conduct warranted the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.

Consideration

Judicial review of the disciplinary measure of separation from service

10. Under the recently adopted art. 9.4 of the Dispute Tribunal’s Statute and the settled jurisprudence of the Appeals Tribunal, in conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine (a) whether the facts on which the disciplinary measure is based have been established; (b) whether the established facts amount to misconduct; (c) whether the sanction is proportionate to the offence; and (d) whether the staff member’s due process rights were respected.

11. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable (see para. 51 of *Karkara* 2021-UNAT-1172, and similarly in, for instance, *Modey-Ebi* 2021-UNAT-1177, para. 34, *Khamis* 2021-UNAT-1178, para. 80, *Wakid* 2022-UNAT-1194, para. 58). The Appeals Tribunal has further explained that clear and convincing proof “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable” (see para. 30 of *Molari* 2011-UNAT-164). In this regard, “the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred” (see para. 32 of *Turkey* 2019-UNAT-955).

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

12. The Sanction Letter stated that the Applicant’s actions amounted to misconduct. In particular, the Administration found that:

- a. The Applicant made inappropriate remarks towards OSAA staff members which may be perceived as demanding personal loyalty and implying retribution for disloyalty.

b. The Applicant engaged in insubordination and creating a hostile work environment.

c. The Applicant engaged with other staff members of OSAA in building opposition to the instructions, directives and authority of the USG/OSAA.

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

Charge 1—Demanding personal loyalty and implying retribution for disloyalty

14. The Sanction Letter states:

...

Between 2010 and 2019, [the Applicant] made inappropriate remarks towards OSAA staff members, including [KK (name redacted for privacy reasons)], Senior Economic Affairs Officer, OSAA, [KB], Officer for Strategy, Policy and Innovation, OSAA, [DW (name redacted for privacy reasons)], Programme Management Officer, OSAA, [BY (name redacted for privacy reasons)], Programme Management Officer, OSAA, and [JV (name redacted for privacy reasons)], Special Assistant to [the USG/OSAA], [...] which may be perceived as demanding personal loyalty and implying retribution for disloyalty, including that contract renewals and promotion opportunities may be adversely impacted.

...

15. The Applicant submits that this charge is not established by clear and convincing evidence. The Applicant submits that the allegations made against him are false and were made in retaliation for him filing a complaint against the USG/OSAA. He states that the charge mostly concerns events which allegedly transpired from 2010 to 2018 (before the appointment of the USG/OSAA) and which were not reported to OIOS at the relevant time. During the hearing, the Applicant testified that he never requested any staff member at OSAA to pledge personal loyalty to him. He stated that he believes that a staff member's loyalty must lie with the Office and with its mission to best serve the Member States. The Applicant further stated that he was not in a position to influence any contract renewals and promotion opportunities for staff

members and that there is no evidence to indicate that his comments resulted in retribution.

16. The Respondent submits that five witnesses stated to OIOS that the Applicant made remarks demanding personal loyalty and implying retribution for disloyalty, for instance, when they first joined OSAA or in the context of reassignment or were denied promotion. The Respondent states that whether the events dated back to 2010 does not make the case “retaliatory” against the Applicant. There is no time limit after an event within which a disciplinary process should be initiated.

17. The Tribunal notes that five witnesses, namely, RC, KB, BY, DW and JV provided evidence to the fact-finding panel stating that the Applicant made remarks demanding personal loyalty and implying retribution for disloyalty. RC stated that he was aware that the Applicant had so-called “loyalty talks” with OSAA staff members, including DW. In addition, CC (name redacted for privacy reasons), Team Assistant, OSAA, stated that the Applicant requested a “loyalty pledge” from the staff and he was aware that the Applicant told KK and KB that if they looked for jobs outside OSAA, “I will know that. If I get a call, I will consider that as being disloyalty.”

18. In addition, the USG/OSAA provided evidence that JV told her that the Applicant had called him to his office every day since he joined OSAA, closed the door and asked him questions, which made him feel uncomfortable, and that the USG/OSAA decided to intervene. The USG/OSAA’s evidence is corroborated by her email of 11 November 2019 to the Applicant stating:

...

I have noticed since the arrival of [JV] on 25 October 2019 that you have regularly called him to your office for one on one meetings. [...] these conversations have made my Special Assistant feel uncomfortable as you have asked him to share information about my meetings and activities, including those of a confidential nature. [...] I would kindly request that you refrain from this conduct and should you want to discuss anything with my Special Assistant, it be done openly or in writing, with me in copy.

...

19. The Tribunal considers the witnesses' evidence to be consistent and convincing as to the Applicant's conduct. In addition, the Tribunal notes that the evidence is corroborated by the Applicant's own statement in his response to the allegations of misconduct and his application that the staff members' loyalty to the Organization should come with being loyal to him as Director, "needing to be able to trust the staff that [he] work[s] with" since he ran the office. The Applicant further stated that "all USGs who are politically appointed by the Secretary-General are in reality transitory appointments by their very nature for a limited duration in comparison to the civil service staff that actually run their departments and remain the glue that holds departments together between the constant coming and going of political appointments".

20. The Tribunal finds no merit to the Applicant's argument that he was not in fact in a position to influence the career of staff members. The Applicant was a senior manager in OSAA. It is understandable that his comments demanding personal loyalty from subordinate staff members could legitimately cause a fear of retribution for disloyalty.

21. Furthermore, the Applicant provided no support for his claim that this aspect of the matter is in retaliation against him as a result of his complaint against the USG/OSAA. The Tribunal finds no evidence that the five OSAA staff members who provided witness evidence on this charge colluded to incriminate the Applicant wrongfully. Rather, the evidence indicates that the Applicant was well known for the practice of demanding loyalty in the office.

22. Based on the above, the Tribunal finds that there is clear and convincing evidence that the Applicant made inappropriate remarks to OSAA staff members, including ones which may be perceived as demanding personal loyalty and implying retribution for disloyalty, including that contract renewals and promotion opportunities may be adversely impacted.

Charge 2—Engaging in insubordination and creating a hostile work environment

23. The Sanction Letter states:

...

Between 2018 and 2019, you, together with [BM] and [RC], in opposition to the proposed reform and [the USG/OSAA], engaged in insubordination and creating a hostile work environment by one or more of the following:

[...] You refused to implement and took steps to act against [the USG/OSAA's] instructions and/or directives or otherwise engaged in conduct in order to oppose the new office structure and the reporting lines that [the USG/OSAA] put in place for the OSAA reform.

1. Although requested to do so by [the USG/OSAA], you did not complete the 2018/2019 e-PAS cycle for staff members for whom you were the second reporting officer (SRO), and you continued to refuse, together with [BM] and [RC], to act on the staff members' 2018/2019 e-PAS until your demand for the OSAA structure and reporting lines be addressed.

2. Although requested to do so by [the USG/OSAA], you refused to engage with [KJ], Senior Programme Management Officer, OSAA, upon her recruitment, and you refused to assume administrative responsibilities as her SRO related to her conditions of service.

3. Although requested to do so by [the USG/OSAA], you refused to be involved in the later phase of the OSAA's 2020 budget planning and preparation process on the grounds that [the USG/OSAA] had not included you in the substantive component of the budget process.

...

24. The Tribunal will examine whether each of the above-mentioned three facts is established by clear and convincing evidence.

Refusal to complete the 2018/2019 e-PAS

25. The Tribunal notes that the Applicant does not dispute that he refused to process the OSAA staff members' e-PAS for the 2018/2019 cycle. The Applicant, however, argues that there was no clarity on the reporting lines due to the USG/OSAA's decision to change the structure of OSAA and that it was "unlawful" for him to complete the e-

PAS as doing so would contravene ST/AI/2010/5 (Performance management and development system).

26. The Applicant submits that in April 2018, the USG/OSAA rescinded the existing workplan for OSAA, which is the main basis for establishing the e-PAS evaluation process, and started to dismantle the existing reporting lines. Notably, she established weekly Management Committee Meetings (“MCM”), in which she distributed assignments to P-5 level staff and asked them to report directly to her and obtain their fidelity. The Applicant submits that due to the USG/OSAA’s actions, the Senior Managers lost their supervisory functions over the P-5 level staff and from acting as their reporting officers. The Applicant contends that it is therefore incorrect to state that the Applicant “refused” to complete the 2018/19 e-PAS cycle. In reality, the USG/OSAA’s reform had removed his supervisory functions both for P-5 level and D-1 level staff and thereby made it impossible for him to evaluate staff for that cycle. During the period of the reform, the Applicant had no oversight over staff and had no say in either their assignments or their day-to-day activities; he could therefore not appraise their performance.

27. The Respondent submits that the Applicant’s claims have no merit as the record establishes that between April 2019 and October 2019, the USG/OSAA repeatedly instructed the Applicant to process and complete the 2018/2019 e-PAS for staff members for whom he was the designated SRO. The Respondent argues that the Applicant’s claims that he had no supervisory functions or that it was unlawful for him to act as SRO have no merit. The Respondent submits that the USG/OSAA divided the 2018/2019 e-PAS reporting period into two—one from April 2018 to October 2018 and the other from November 2018 to March 2019, during which a functional team leader should be added as an additional supervisor or additional reporting officer (“ARO”) as applicable. The Respondent states that whether the USG/OSAA directly interacted with the P-5 level functional team leaders on some tasks/assignments mostly via the weekly management committee meetings in which the Applicant also participated does not absolve the Applicant from his responsibilities as SRO for them.

As the head of entity, the USG/OSAA had the authority to engage with her staff as she deemed necessary and appropriate. There is also no requirement that an SRO must directly and exclusively oversee tasks of a staff member. The Applicant was not excluded from the management committee meetings. The Applicant's dissatisfaction with the USG/OSAA's decision to include the P-5 team leaders in the meetings does not affect his duties as SRO.

28. The Tribunal finds the Applicant's claims that he could not know which staff members he was supervising as an SRO to be baseless for the following reasons. First, during the 2018/2019 performance cycle, the Applicant was the designated SRO for OSAA staff members up to the P-5 level and first reporting officer ("FRO") for the two D-1 level Chiefs of Service, which is documented by the official record, including Inspira (the online jobsite for the United Nations Secretariat). The memorandum of 9 November 2018 announcing OSAA's new structure did not outline any changes to the 2018/2019 reporting lines, including those of the Applicant.

29. Second, prior to the introduction of the functional teams in November 2018, the Applicant served as SRO for OSAA staff members up to the P-5 level. Nothing on record shows any change to reporting lines between the Applicant and the OSAA staff members for whom he was the designated FRO or SRO for the 2018/2019 performance cycle.

30. Third, the record establishes that there was some correspondence in which instructions were given to the Applicant as to how to finalize evaluations for the 2018/2019 e-PAS cycle in OSAA. In particular, the USG/OSAA on numerous occasions reiterated that the Applicant was the SRO for OSAA staff up to the P-5 level and the FRO for the two D-1 level Chiefs of Service, by repeatedly instructing him to complete the 2018/2019 e-PAS for them, for instance, by email of 19 August 2019, and during the September 2019 retreat.

31. Fourth, the Applicant's claim that it would have been unlawful for him to act as SRO is unsubstantiated. There is no indication that the USG/OSAA's request for the

Applicant to act as SRO or FRO was a violation of section 5 of ST/AI/2010/5. In respect of the USG/OSAA's decision to appoint AROs, the Tribunal notes that the decision accorded with section 5.2 of ST/AI/2010/5 which stipulates that additional supervisors may be designated when a staff member worked for more than one supervisor for more than 25 per cent of his/her time or for assignments of at least 30 working days, provided such arrangements were put into place with the agreement of the FRO at the work planning stage or at the beginning of the additional assignment or when the staff member's supervisor changes during the cycle.

32. Finally, the Tribunal finds that even if the Applicant experienced some confusion in the reporting lines due to the change of OSAA's structure, this alleged confusion was resolved by the issuance of a memorandum dated 12 April 2019 from the USG/OSAA to all OSAA staff including the Applicant. The memorandum clarified that for the reporting period from 1 April 2018 to 31 March 2019, the FROs and SROs would remain the same as during the reporting period from 1 April 2017 to 31 March 2018. Furthermore, the Applicant attended a management committee meeting on 7 May 2019, during which the reporting lines were yet again clarified and documented in writing in the meeting summary note. The reporting lines were further clarified by an email sent on behalf of the USG/OSAA by her Special Assistant on 19 August 2019.

33. It follows that the Applicant was well aware of the reporting lines, at least, by 7 May 2019. Even if the Applicant did not agree with the reporting lines, he was required to fulfil his functions as an SRO. However, he still did not complete the e-PAS evaluations by 30 September 2019, as requested. Instead, he maintained that he would not complete the e-PAS of his supervisees until the reformed office structure was changed to meet his demands. The Tribunal notes that even after the September 2019 management retreat, which partly satisfied the Applicant's demand, he persisted to resist to complete the e-PAS, as shown in the email he sent to the other Senior Managers in which he wrote "I think the draft could be more specific and link the completion of the e-PAS with an agreed structure of the Office as we have all along

reiterated over and over again...” Furthermore, on 30 September 2019, the Applicant responded to the USG/OSAA, stating *inter alia*, that:

... [I]n our last Management Team meeting [...] we have all agreed that we will finalize the [ePAS] by October 15th provided that appropriate reporting lines are restored in the Office, which hasn't taken place despite the strong recommendations made to go back to what was agreed following the 2018 retreat and move away from unilateral decisions. [...] As agreed, you scheduled a staff meeting for Thursday, 19 September, but then you cancelled it at the last minute as no agreement was reached regarding the reporting.

...

34. It is clear from the Applicant's communication that he did not want or need a further clarification of the reporting line, but instead he wanted the previous OSAA structure to be restored before he was prepared to fulfil his duties as SRO.

35. Based on the above, the Tribunal is satisfied that the record establishes that there is clear and convincing evidence that the Applicant repeatedly refused to process the e-PAS evaluations of OSAA staff members.

Refusal to engage with KJ and to assume administrative responsibilities as her SRO.

36. The Tribunal notes that the Applicant does not dispute the facts that he refused to engage with KJ on any work-related exchange and that he refused to assume administrative responsibilities as her SRO. The Applicant, however, argues that he could not engage with her because he was not involved in her recruitment and she was reporting directly to the USG/OSAA rather than to him. He contends that he could not engage with KJ as her SRO because he had no oversight or supervision over her. In essence, the Applicant's defense is that he was not involved in KJ's recruitment and was not her SRO and therefore he could not process her administrative requests, such as the approval of her workplan, without him deferring to the USG/OSAA as KJ's *de facto* supervisor. The Applicant states that upon KJ's arrival on 18 June 2019, the Applicant and the two Chiefs explained to her the absence of reporting lines and

informed her that the workplan did not give them any supervisory role or responsibility in OSAA, including over her.

37. The Respondent submits that the Applicant's claims are meritless and that the Applicant was KJ's designated SRO in OSAA. The United Nations official records, including Inspira, identified the Applicant as KJ's SRO and RC as her FRO. It is not in dispute that the Applicant was RC's FRO. The Applicant knew of RC's refusal to sign off on KJ's administrative matters, including her workplan, annual leave and telecommuting request. The Applicant assisted in RC's conduct as the record shows that they coordinated their responses to KJ and the USG/OSAA. Furthermore, the Applicant individually sought and received advice from the Executive Office of the United Nations Department of Economic and Social Affairs that: "[the Applicant is] responsible to (1) either 'take over' the function or (2) to 'order' the D-1 to do the job" and he should seek clarifications from his head of entity, the USG/OSAA. The advice was clear that he should have processed the requests himself or via the FRO. The Applicant consciously disregarded the advice and refused to engage with KJ as her SRO.

38. The Tribunal finds that the case record and the testimony of the Applicant establish that the Applicant refused to professionally engage with KJ and to assume administrative responsibilities as her SRO, even when he was repeatedly directed by the USG/OSAA to do so. It is undisputed that the Applicant refused to act on KJ's workplan, her leave and telecommuting requests, and her e-PAS. The fact that the Applicant refused to engage with KJ is further established by several email exchanges between the Applicant, RC and KJ from 11 to 16 July 2019. KJ stated to OIOS that the Applicant and the other Senior Managers met with her on 19 June 2019, three days after she joined OSAA, when she had not yet had time to engage in any work project at OSAA, and they told her that they could not work with her due to problems in her recruitment. This shows that even prior to KJ working on substantive matters, the Applicant had already decided not to engage with her on work and administrative matters as her SRO.

39. The Tribunal finds that the Applicant was clearly aware that he was required to engage with KJ and to assume administrative responsibilities as her SRO. The fact the USG/OSAA directly interacted with KJ on some tasks or assignments did not absolve the Applicant from his responsibilities as SRO for KJ. KJ continued to treat the Applicant and RC as SRO and FRO copying them on her emails, but they kept returning her emails stating that they were not responsible for her supervision. In particular, the Tribunal observes that the Applicant had no problem in engaging as SRO with KJ's predecessor, who went on special leave in February 2019. The Applicant provided no reasonable explanation why he treated KJ differently from her predecessor, who the Applicant had no problem supervising. During his OIOS interview, the Applicant stated that he had a "problem with the recruitment process in which the chief was not involved, that's the only thing".

40. Based on the above, the Tribunal finds that the record establishes that there is clear and convincing evidence that the Applicant refused to engage with KJ and to assume administrative responsibilities as her SRO.

Refusal to be involved in the later phase of OSAA's 2020 budget planning and preparation process

41. The Tribunal notes that the Applicant does not deny that between January and April 2019, the USG/OSAA requested him to get involved in the later phase of the OSAA's 2020 budget process including a "costing exercise", and he refused to engage in that phase. Rather, the Applicant asserts that the USG/OSAA's request was either impossible for him to fulfil due to him being excluded from the budget preparation since November 2018 or was humiliating to his status as a Director.

42. The Respondent contends that the Applicant's assertions have no merit and that the USG/OSAA did not exclude the Applicant from the budget preparation process. The record shows that the Applicant was involved in the budget process to the extent possible. On 18 December 2018, the Applicant chaired a meeting to finalize OSAA workplans for 2019/2020 based on which the programme budget would be prepared.

After the Applicant went on annual leave, from 19 December 2018 to 7 January 2019, he continued to be copied on budget-related emails. OSAA was under a very tight deadline set by the Office of the Controller, and it would have been irresponsible for the USG/OSAA to wait for the Applicant to return before starting the preparation. The Applicant, upon his return, was expected to catch up on his emails and resume his leadership role on the tasks including the budget.

43. At the hearing, the Applicant testified that before the appointment of the USG/OSAA, he was in charge of leading the process of the preparation of OSAA's strategic framework, including setting OSAA's goals and defining OSAA's priorities and mission. The Applicant stated that in November 2018, the USG/OSAA imposed a new work structure which assigned the task of developing the strategic framework and structure to a Task Team, which included RC, KK, DW, and ST instead of to the Applicant. The Applicant submits that he was excluded from the Task Team and the strategic framework was instead developed by P-5 level staff without his participation. The Applicant testified that the first time he was asked to work on the budget was past mid-December 2018, just before he was due to go on annual leave. By then, however the strategic framework was already finalized. Having been excluded from working on it thus far, the Applicant states that he had no means to meaningfully contribute to the budget process. He submits that he did not "refuse" to be involved in the 2020 budget preparation; in reality, the USG/OSAA attempted at the last minute to make him take ownership of, and accountability for, a process from which she had excluded him from the start. For these reasons, he feels he was justified in his conduct.

44. The Tribunal notes that the record establishes that the Applicant repeatedly refused to participate in OSAA's 2020 budget planning and preparation process. For example, the Applicant refused to be involved in the 31 January 2019 internal meeting on the costing of the budget proposal, the 14 March 2019 meeting on the strategic framework of OSAA with the Controller's team, and the 5 April 2019 meeting on finalizing the budget narrative document. On 31 January 2019, the Applicant replied to the USG/OSAA's meeting invitation stating that since most of the budget

preparation had taken place without his knowledge, consultation or contribution, he did not see any value added from his side and he was not able to contribute to the budget process.

45. The Tribunal finds that the Applicant's arguments that he was either excluded or humiliated by the request to work on the budget is without merit for the following reasons.

46. First, the record does not indicate that the Applicant was willfully excluded from OSAA's 2020 budget planning and preparation process. The circumstance was that OSAA was faced with tight impending deadlines (the deadline for submission of the narrative for the budget proposal was 15 January 2019 and the deadline for the submission of the costing exercise was 15 February 2019). The record establishes that between October and December 2018, the Applicant received or was copied on budget related emails and attended management committee meetings during which the budget was discussed. The Applicant then went on annual leave from 19 December 2018 to 7 January 2019. During his annual leave, the USG/OSAA and ST worked together in an attempt to progress the budget, and it is not disputed that while the Applicant was on annual leave, he was copied on emails relating to the budget process, particularly, the one dated 26 December 2018 from the Office of the Controller setting the deadline for submission of the narrative for the budget proposal on 15 January 2019. The Tribunal finds it reasonable that substantive work on the budget would have been continued in the Applicant's absence by other team members.

47. At the hearing, the USG/OSAA testified that she had not taken the supervisory role away from the Applicant. She explained that the Applicant remained involved in the budget preparation, while clarifying that the functional teams would work on the narratives and submit for clearance to the Applicant and the USG/OSAA. She acknowledged that she had approved the Applicant's leave during the critical time for budget preparation, and took care of the urgent tasks during his absence. The Tribunal finds that it is reasonable that the Applicant, as a senior manager, would have been

requested by the USG/OSAA, following his return to work, to catch up on the budget work and be involved in its finalization. The record further establishes that upon the Applicant's return to work, on 8 January 2019, he participated in a management committee meeting, and was informed of the extremely tight deadline. The Applicant was not prohibited from reviewing and giving feedback on the budget narratives, and after the submission on 15 January 2019, the USG/OSAA explicitly requested him to take part in the remaining budget process, including meetings with the Controller's team to explain and strengthen the budget proposal. The Applicant declined to engage, arguing that he had been "excluded" from the process. However, as discussed above, there is no indication that he had been willfully excluded from the budget process.

48. Second, the fact that the Applicant was not part of the budget Task Team does not mean that he was excluded from the process. The Respondent submitted that the Task Team was tasked to consult with relevant stakeholders and develop the strategic framework, progress of which was to be reported to the management committee meetings which the Applicant was part of. The budget was to be approved by the management of OSAA, including the USG/OSAA, and the Task Team was not the decision-maker. The Tribunal finds no evidence to indicate that the Applicant was prohibited from providing his guidance and feedback on the work of the Task Team and to the USG/OSAA.

49. Third, the Tribunal finds no merit to the Applicant's argument that it was inappropriate or humiliating for him to be asked by the USG/OSAA to work on the costing component of OSAA's yearly budget. At the hearing, the Applicant testified that the costing component is a mechanical exercise which is performed once the activities of the year and the strategic framework are finalized. The Applicant stated that this task can be done by a Program Officer and an Administrative Assistant with basic accounting skills. The Tribunal notes that, shortly after the submission of the strategic framework, the USG/OSAA requested that the Applicant work on the costing component. The Applicant submits that the USG/OSAA's request was inappropriate as the costing preparation could be performed by any staff member and, in fact, had

until then been assumed by Programme Officers or Administrative Assistants and never by the Director at the D-2 level. The Applicant states that the request by the USG/OSAA was thus humiliating to him, who was basically reduced to performing mundane administrative tasks; he therefore declined this further attempt at marginalization of his functions and suggested that the USG/OSAA refer to staff members whose post was appropriate to the task. However, the Tribunal finds no indication that the USG/OSAA requested the Applicant to work on an inappropriate administrative task alone. Rather, the Applicant was not requested to lead the team working on that task. The record establishes that the Task Team, including ST, who had previously worked in the same exercise for the OSAA budget, was to work under the Applicant's supervision. For example, by email of 30 January 2019, the USG/OSAA requested the Applicant to take the lead and meet with RC, BM, the functional team leaders and ST to work on the costing of the budget proposal. The Tribunal finds nothing inappropriate or humiliating about this request.

50. Based on the above, the Tribunal finds that the record establishes that there is clear and convincing evidence that the Applicant refused to be involved in the later phase of OSAA's 2020 budget planning and preparation process.

Charge 3—Building opposition to the instructions, directives, and authority of USG/OSAA

51. The Sanction Letter states:

...

[The Applicant] engaged with other staff members of OSAA in building opposition to the instructions, directives and authority of [the USG/OSAA] or those working under or in furtherance of her instructions, thereby frustrating or delaying the implementation of [the USG/OSAA's] instructions or directives.

...

52. The case record establishes that the Applicant, on multiple occasions, built opposition to the USG/OSAA's instructions and proposed reforms.

53. The Tribunal finds that the evidence on the record shows that, on numerous occasions, the Applicant exchanged e-mails with his subordinates and asked the subordinates to draft or comment on documents where they expressed disagreement with the authority of the USG/OSAA, for example:

a. In July 2019, BM shared with the Applicant, RC, VN, and ST her draft communication to OHR complaining that KJ had been recruited without RC's input and conveying ST's claim that he had been harassed by KJ. The Applicant thanked BM for the "excellent draft" and gave her his comments.

b. In September 2019, the Applicant shared with BM, RC, VN, ST and [JW (name redacted for privacy reasons)], his draft response to the USG/OSAA's request to finalize the 2018/2019 e-PAS, in which he stated, among other things: "I think the draft could be more specific and link the completion of the e-PAS with an agreed structure of the Office as we have all along reiterated over and over again". ST and VN made suggestions to the draft.

c. On 11 November 2019, the Applicant sent ST a draft answer to the USG/OSAA's email to the Applicant requesting the Applicant to refrain from calling JV to his office for one-on-one meetings.

d. The testimonial evidence provided to OIOS by KB and JV corroborated that the Senior Managers involved other staff members in shaping and reinforcing the opposition to the USG/OSAA's authority in the office. KB stated that the Senior Managers and other staff members deliberately worked against the USG/OSAA and targeted him as he was seen as the USG/OSAA's "right hand person". He added that following a contentious meeting with the USG/OSAA, the Senior Managers would gather with VN and MA (name redacted for privacy reasons), and "then 2-3 hours afterwards an email would go out". JV stated that ST and RC frequently attacked the USG/OSAA in meetings, and that whenever the USG/OSAA made her decision on a particular issue, the Applicant, BM, JW and ST would align and fight back saying "it is

not possible. This cannot be like this. This has always been in another way”, as if the decision had not been made.

e. Upon the Applicant’s request, RC prepared four questions to be asked by the Advisory Committee on Administrative and Budgetary Questions (“the ACABQ”) members of the USG/OSAA about the issues that the Senior Managers had been contesting in the office. For example, on 4 June 2019, the Applicant shared with RC and BM “draft questions for the ACABQ on [a Human Resources] item” and invited them to add questions; in response, RC added four questions; and BM agreed with RC’s questions and said the questions should be asked “just the way we discussed in [the Applicant’s] office last week”.

f. This shows that the Senior Managers attempted to escalate their issues to the ACABQ and link them to the budgetary review process which could have negatively impacted the office.

54. Based on the above, the Tribunal finds that the record establishes that there is clear and convincing evidence that the Applicant did engage with other staff members of OSAA in building opposition to the instructions, directives and authority of the USG/OSAA.

Whether the established facts amounted to misconduct

55. 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(e), 1.2(g), 1.2(i), Staff Rules 1.2(a), 1.2(f), 1.2(g) and Section 3.5 of ST/SGB/2019/8”. With reference to the Tribunal’s considerations below, it finds that the Applicant failed to adhere to the staff regulations and rules outlined in the Sanctions Letter.

56. First, the Tribunal finds that the Applicant’s demands of personal loyalty and implying retribution for disloyalty violate the provisions of staff regulation 1.2(b)

which provides that staff members shall uphold the highest standards of efficiency, competence and integrity. The Organization entrusted the Applicant with a senior managerial position and the Applicant, unfortunately, misused his authority to intimidate and threaten junior staff members. The Applicant's threats of retribution for disloyalty violate staff rule 1.2(g) which provides that staff members shall not threaten, retaliate or attempt to retaliate against staff members exercising their rights and duties.

57. The Applicant's conduct amounted to harassment and abuse of authority in the workplace in violation of staff rule 1.2(f) which provides that "[a]ny form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited". In addition, the Applicant's behavior towards KK, KB, BY, DW and JV can be regarded as abuse of authority under sec. 3.5(c) of ST/SGB/2019/8 which obliges staff members to "[d]emonstrate commitment to zero tolerance of any prohibited conduct and treat all people in the workplace courteously and with dignity and respect, as well as with an awareness of their own behavior and how it may be perceived and/or received by others".

58. Second, the Tribunal finds that it constituted misconduct when the Applicant persistently refused to complete the 2018/2019 e-PAS of OSAA staff and to engage with KJ in order to assume administrative responsibilities as her SRO. As established above, the Applicant was aware of his duties as SRO and his disagreement with the reporting lines does not mitigate the established fact that he refused to carry out his duties as a manager. The Applicant's persistent refusal to discharge his functions as SRO violated staff regulation 1.2(e) which provides that that "[b]y accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view [...]". The record shows that the Applicant used his refusal to complete the e-PAS evaluations as leverage to oppose the structural reform in OSAA. The Applicant maintained that he would only perform his duties as SRO when the USG/OSAA agreed to reverse her proposed reforms. This behavior is not only unprofessional but also itself contributed

to the creation of disharmony in OSAA. The Applicant used his senior position as leverage in furthering his goal to undermine the USG/OSAA's authority and to undo her reform at the expense of OSAA staff. The Tribunal finds that the Applicant's behavior was particularly grave because his refusal to perform his functions resulted in OSAA staff having no e-PAS for two years, which could potentially damage their career.

59. In terms of the Applicant's refusal to engage with KJ, the Tribunal finds no merit to the Applicant's arguments that he was justified in his refusal to supervise KJ because he was not involved in her recruitment or because the reporting lines were unclear, and the situation was "chaotic". The Applicant had an obligation to act as KJ's supervisor even if he was not involved in her recruitment. Whether or not the SRO was consulted on a recruitment process, or the extension of a temporary assignment, does not allow the SRO to disengage from the selected candidate or staff member entirely. It is clear that the Applicant victimized KJ due to his disagreement with the USG/OSAA's handling of KJ's recruitment. Further, the Applicant's refusal to engage with her had an adverse impact on KJ. It is undisputed that during the 5-6 September 2019 OSAA retreat, KJ openly stated that she felt unsafe at work because she was excluded and rejected in the office. The Tribunal finds that the Applicant did not treat KJ courteously or with dignity and respect, but rather used his role as her manager to try to exert pressure on the USG/OSAA to reverse her reforms. As a senior manager, the Applicant failed to uphold the professional standards of conduct required of him in his interactions with KJ. His behavior amounts to misconduct as it breaches staff rule 1.2(f) which prohibits any form of discrimination or harassment as well as abuse in any form at the workplace, and staff regulation 1.2(g) which provides that staff members shall not use their office for personal reasons to prejudice the positions of those they do not favour.

60. Third, the Tribunal finds the Applicant's refusal to be involved in the later phase of OSAA's 2020 budget planning and preparation process to constitute misconduct. The Applicant failed to discharge his functions as a senior official of

OSAA tasked with working on the budget process in breach of staff regulation 1.2(e) and his persistent refusal to follow the USG/OSAA's requests that he work on the budget process constituted insubordination in breach of staff rule 1.2(a), which stipulates that "[s]taff members shall follow the directions and instructions properly issued by the Secretary-General and by their supervisors". The Applicant's conduct demonstrated that he was willing to put OSAA's operations at risk if it would further his attempt to undermine the USG/OSAA. At the hearing, the USG/OSAA recalled feeling "humiliated", "dehumanized", and "harassed", as a result of the Applicant's insubordination, and his disregard for most of her instructions or requests, including her request that he be involved in the OSAA budget process.

61. Fourth, the Tribunal finds that the Applicant's involvement in building opposition to the instructions, directives, and authority of USG/OSAA constitutes misconduct in breach of staff rule 1.2(a) and staff regulation 1.2(b). The Applicant's conduct was aimed at frustrating the USG/OSAA's reforms and thwarting her leadership at OSAA. The record establishes that the Applicant engaged his subordinates in opposing and undermining the authority of the USG/OSAA and to dismantle her leadership. His conduct divided the office and contributed to a toxic atmosphere of conflict and distrust. The Applicant's request for RC to prepare questions for the ACABQ members to ask the USG/OSAA about the issues that the Senior Managers had been contesting in the office was a breach of staff regulation 1.2(i) which provides that "[s]taff members shall exercise the utmost discretion with regard to all matters of official business. They shall not communicate to any Government, entity, person or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General". This shows that the Applicant led the Senior Managers in their attempt to escalate their issues to the ACABQ and link them to the budgetary review process which could have negatively impacted the office. The Tribunal considers that the Applicant's conduct exhibited a serious lapse of professional judgment, integrity and competence and breached the Organization's trust

placed in him as a senior manager. The Applicant essentially used the means available to him as a Director at the D-2 level to obstruct or overturn the USG/OSAA's decisions and in the process potentially damaging the reputation of the office.

62. The Applicant asserts in his defense that he was justified in his conduct as the USG/OSAA was abusive or "dictatorial". He submits that he was expected to coordinate work with others and ensure compliance with the rules within the Organization, "rules that, apparently, [the USG/OSAA] did not know and/or did not want to abide by as ascertained in a previous investigation that was concluded following successful complaints of abuse levelled against her, where it was confirmed that [the USG/OSAA] created an environment [...] of harassment and abuse of authority through her "dictatorial coveting" designed to side line and constructively dismiss the senior management including the Applicant".

63. The Tribunal finds that the Applicant's actions went beyond reasonable communications between staff members on a problematic issue with a supervisor. It was clear that the Applicant, together with other managers, felt marginalized and harassed by the USG/OSAA. In the related case of *De Melo Cabral* UNDT/2024/086, this Tribunal acknowledged at para. 62 that the context of the situation in OSAA was difficult as the USG/OSAA brought in reform without consulting the senior managers in her team or working to build healthy professional relationships with them. This resulted in the Applicant, together with other senior managers, feeling sidelined by the USG/OSAA and the creation of two camps in OSAA. It is appropriate that they took steps to address this issue, including collaborating on filing a collective complaint against the USG/OSAA. However, the Tribunal finds that the Applicant was not justified in his wider campaign of insubordination and building opposition to the instructions, directives, and authority of the USG/OSAA. The Respondent correctly points out that having filed a complaint against his manager/supervisor, regardless of whether it was substantiated or not, does not exempt the Applicant from his obligations under the Staff Regulations and Rules.

64. At his level of seniority in OSAA, the Applicant was reasonably expected to ensure that the office functioned well, with a high degree of competence and integrity. Instead, he clearly let his own personal dissatisfaction with the USG/OSAA take precedence and also influence his subordinates in causing opposition to the instructions, directives, and authority of the USG/OSAA.

65. The Tribunal therefore finds that the Applicant's overall conduct not only violated multiple staff regulations and rules cited above but also exhibited a serious lapse of integrity and competence and breached the Organization's trust in him as a senior manager.

Whether the disciplinary measure applied was proportionate to the offence

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

67. The Administration has the discretion to impose the disciplinary measure that it considers adequate to the circumstances of a case and to the actions and behavior of the staff member involved, and the Tribunal should not interfere with administrative discretion unless the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity (see, for instance, *Kennedy* 2024-UNAT-1453; *Abdrabou* 2024-UNAT-1460; *Portillo Moya* 2015-UNAT-523; and also *Sall* 2018-UNAT-889, *Nyawa* 2020-UNAT-1024).

68. The Appeals Tribunal has held that the Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose (see, for instance, *Toukolon* 2014-UNAT-407). The Appeals Tribunal has further stated in *Samandarov* 2018-UNAT-859, at para. 24, that “due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a

margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. This obliges the [Dispute Tribunal] to objectively assess the basis, purpose and effects of any relevant administrative decision”.

69. In the Sanction Letter, the Administration imposed on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii). In determining the appropriate sanction, the Administration stated that it had considered the nature of the Applicant’s actions, the past practice of the Organization in matters of comparable misconduct, as well as whether any mitigating or aggravating factors apply to the Applicant’s case. It decided that there are no mitigating factors applicable to the Applicant’s case.

70. The Applicant submits that the sanction is disproportionate to the alleged offence and that the USG/OSAA’s own conduct should have been taken into account. He states that the sanction was unlawful as “his abuser [the USG/OSAA] was only subject [to] administrative measures. The allegations against the Applicant were all ‘management issues’ [...]”.

71. The Respondent submits that the sanction imposed on the Applicant was not blatantly arbitrary, or absurd in severity. All relevant circumstances were considered in reaching the contested decision. While there were no mitigating factors, the Administration considered that the following circumstances constitute aggravating factors: (a) the Applicant was serving at the D-2 level and was the second-in-command at OSAA at the material time; (b) the Applicant’s conduct was repeated over a period of time and he did not correct his course of action despite having been given time and multiple opportunities to do so; and (c) the Applicant displayed a marked disregard for the clear and repeated instructions to carry out his managerial duties, to the detriment to OSAA staff members.

72. As discussed above, the Tribunal has found that the Applicant's actions amounted to misconduct. The Tribunal considers that the finding of misconduct has to be assessed within the context of the situation at hand. The context of the Applicant's misconduct is relevant to assess the seriousness of his misconduct, particularly given that the fact-finding panel appointed on 14 December 2018 found that the USG/OSAA "took a series of decisions that had the effect of marginalizing her senior managers, and that her actions exhibited poor judgment and lacked the managerial sensitivity that was required in the circumstances" and that "it has been decided to take administrative action in relation to [the USG/OSAA]". Furthermore, on 19 February 2020, the Inspection and Evaluation Division of OIOS published the results of its survey and evaluation of the workplace culture at OSAA. In relevant part, it found the following:

... "In November 2018 the Under-Secretary-General implemented a revised organizational structure with four functional teams. However, the lack of a common understanding and guidelines on its implementation resulted in unclear roles, responsibilities and reporting lines. [...] As a result, many staff were uncertain what was required of them, how to proceed with their work, and from whom they would take instructions. [...] Review of the reform documents indicated that change management efforts were not supported by a clear reform roadmap with a framework of supporting documents, information notes, guidelines and standard operating procedures, which could have helped to clarify roles and responsibilities for implementation".

73. The Applicant's role within OSAA is also relevant to the context of the situation. Given his seniority and managerial position, the Administration stated that the Applicant was held to a higher standard of conduct to be a role model for the other more junior staff members. It was considered that, given the serious nature of the misconduct, his past positive performance could not mitigate the weight of the misconduct, particularly when the established conduct portrayed a gross failure on his part to conduct himself to the higher standard as a seasoned United Nations staff member and a senior manager. The Tribunal agrees with the Administration's approach in holding managers to a higher standard of accountability, which reflects the increased trust that is placed in them by the Organization.

74. In *Kennedy* 2021-UNAT-1184, the Appeals Tribunal stated that “a decision on the appropriate sanction for misconduct involves a value-judgment and the consideration of a range of factors. The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency” (see, para. 68). The Appeals Tribunal further clarified what considerations may be relevant as follows (see, paras. 69 and 70, emphasis added):

... What factors are relevant considerations will necessarily depend on the circumstances and nature of the misconduct. Some considerations can include:

a) *the staff member’s intent or whether the action was accidental, careless, reckless or deliberate.* Factors relevant to this are whether the staff member made full, timely disclosure to a direct or indirect supervisor, the staff member’s self-awareness of the conduct, whether the staff member followed operational procedures in connection with the misconduct, whether the staff member engaged in the misconduct despite prior warning, whether the misconduct was fraudulent, manipulative or deceptive, whether the staff member acted alone or with others resulting in differing degrees of knowledge, participation and responsibility, whether the staff member organized and planned the conduct or whether it was the result of a rash action or temporary lapse of judgment, and whether the staff member concealed or attempted to conceal the misconduct or otherwise deceive or mislead the employer from discovering the misconduct;

[...]

c) the harm or damage to the Organization, employer, colleagues and other staff members, and clients and the public, which can range from none to significant. Factors relevant to this are whether there was actual harm that can be tangible or intangible, the number of persons harmed, *whether the harm affected the Organization’s operations and productivity, whether the harm includes loss of finances, loss of trust or integrity in the Organization;*

d) the disciplinary history or future of the staff member, namely whether the staff member has a history of disciplinary

violations or other misconducts and sanctions. Factors relevant to this are whether the misconduct in question is the first violation or part of a history or pattern of violations and the nature of the prior violations, whether there are mitigating factors present in the staff member's employment history, and *whether the staff member has committed to taking steps to ensure there will be no repetition or continuation of the misconduct.*

... In conclusion, we find the sanction letter and record provided inadequate reasons for judicial review leading to the finding that no rational connection or relationship between the evidence and the objective of the disciplinary action has been established. As a result, we are unable to assess the proportionality and lawfulness of the imposition of the disciplinary sanctions.

[...]

75. The Tribunal will assess the Applicant's conduct with reference to the guidance in *Kennedy*:

a. "Whether the action was accidental, careless, reckless or deliberate." The Tribunal finds that the Applicant's actions in this case were deliberate. He was aware that he was acting in opposition to the USG/OSAA's instructions and he was aware that his deliberate refusal to act as SRO for OSAA staff members and work with KJ would be damaging for the work of OSAA.

b. "Whether the staff member made full, timely disclosure to a direct or indirect supervisor; whether the staff member followed operational procedures in connection with the misconduct; whether the staff member was self-aware of the conduct." The Tribunal finds that the Applicant was self-aware of his conduct as misconduct. He was a senior manager, with considerable experience at the United Nations. There was therefore no excuse for his persistent refusal to act as SRO for OSAA staff members and work with KJ, even if he disagreed with the USG/OSAA's reform. The Tribunal notes that the Applicant continued the misconduct until the departure of the USG/OSAA.

c. “Whether the staff member’s misconduct was the result of a rash action or temporary lapse of judgment”. The Tribunal finds that the Applicant’s conduct was not a temporary lapse of judgment, but, in fact, his misconduct continued over a considerable length of time. For example, as the Tribunal noted above, the Applicant was well aware of the reporting lines in OSAA by the issuance of a memorandum dated 12 April 2019 from the USG/OSAA to all OSAA staff. Furthermore, the Applicant attended a management committee meeting on 7 May 2019, during which the reporting lines were yet again clarified and documented in writing on the meeting summary note. The reporting lines were again reiterated by an email sent on behalf of the USG/OSAA by her Special Assistant on 19 August 2019. Despite these, the Applicant continued his misconduct until the USG/OSAA left the Organization on 1 August 2020.

d. “Whether the misconduct was minor or technical, or substantive or severe, or involves a minor misstep or honest mistake or is the result of a lack of expertise or experience; whether the conduct is contrary to the express or implied duties and obligations of the staff member”. The Tribunal considers that the Applicant’s misconduct could not be qualified as minor or technical. The Applicant’s conduct also was contrary to his express or implied duties and obligations as a staff member, especially as a senior manager who had a duty of care towards his supervisees and an obligation to promote a harmonious working environment. Instead, the Applicant’s misconduct contributed to the toxic work environment within OSAA.

e. “Whether the conduct involves a single act or numerous acts and/or a pattern of misconduct; whether the conduct involves multiple violations, either related or unrelated to each other”. The Tribunal considers that the Applicant engaged in a pattern of misconduct that consisted of multiple violations. The Applicant’s refusal to process OSAA staff members’ e-PAS, his refusal to act

as KJ's SRO and his refusal to work on the OSAA budget lasted many months, even after the reporting lines were clarified.

f. "Whether there was harm or damage to the Organization, employer, colleagues and other staff members, and clients and the public, which can range from none to significant; whether a number of persons were harmed". The Tribunal has established that the Applicant's misconduct harmed OSAA staff for whom he was SRO, including KJ. He demanded personal loyalty from OSAA staff members and implied retribution if it was not given. The Applicant's refusal to complete the e-PAS evaluations resulted in OSAA staff having no e-PAS evaluations for two years, which could potentially negatively impact those staff members. The USG/OSAA testified to feeling harassed by the Applicant's conduct. In addition, the Applicant was the D-2 level Director, the second-in-command, at OSAA. He colluded with two D-1 level Chiefs of Service knowing that his conduct would not alleviate the division or hostility present in OSAA. The Applicant knew his actions would harm his colleagues and create a hostile work environment in OSAA.

g. "Whether the staff member has a history of disciplinary violations or other misconduct and sanctions; whether the misconduct in question is the first violation or part of a history or pattern of violations; whether the staff member has a record of prior violation". The Tribunal notes that the Applicant had no history of disciplinary violations prior to the USG/OSAA's arrival.

h. "Whether the staff member has committed to taking steps to ensure there will be no repetition or continuation of the misconduct". The Applicant has demonstrated no remorse for his conduct, even when confronted at the hearing with the testimony of the USG/OSAA who was visibly moved recalling the impact the Applicant's actions had on her during her tenure at OSAA.

76. Based on the above, the Tribunal finds that although USG/OSAA's mismanagement was relevant to the context of this case, the sanction imposed upon the

Applicant was proportionate. The Applicant engaged in a pattern of actions, as set out above, which amounted to misconduct. Therefore, his conduct not only displayed a failure to uphold the standards of conduct required of a senior international civil servant, but it also displayed a disregard for the rules of the Organization. The Applicant's conduct undermined the trust and confidence placed in him by the Organization. Such trust and confidence are essential for the continuation of an employment relationship. In these circumstances, the Tribunal considers that it was within the Organization's administrative discretion to decide to end its employment relationship with the Applicant.

Whether the Applicant's due process rights were respected

77. The Applicant submits that "the procedure has been marred with violations of [his] rights, including, critically, the non-disclosure even after formal request of the relevant information and protective measures following disciplinary procedures taken against the USG who was found to have abused power vis-a-vis the Applicant".

78. Upon review of the record, the Tribunal finds that the Applicant's due process rights were respected throughout the investigation and disciplinary process. The case file shows that the Applicant was informed of the allegations of misconduct, and he had opportunities to respond before the disciplinary action was taken. He was interviewed by OIOS and asked about material aspects of the matter. Following the interview, he was given the audio-recording of his interview and was given an opportunity to submit written statements on the topics discussed during the interview. In the Allegations Memorandum, the Applicant was provided with all supporting documentation, was informed of his right to seek the assistance of counsel, and was given the opportunity to comment on the allegations against him. He was afforded an extension of time to submit his comments and his counsel, on his behalf, submitted comments, which were duly considered and addressed in the Sanction Letter. In addition, the Applicant had an opportunity to provide witness testimony at the hearing before the Tribunal.

79. In terms of the Applicant's claim that he suffered prejudice from the non-disclosure of the fact-finding panel's report in respect of his complaints against the USG/OSAA, the Tribunal notes that the Applicant, as a complainant under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority), is not entitled to a copy of the fact-finding panel's report or its supporting materials.

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

Conclusion

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

(Signed)

Judge Joelle Adda

Dated this 11th day of December 2024

Entered in the Register on this 11th day of December 2024

(Signed)

Isaac Endeley, Registrar, New York