



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2023/042
Judgment No.:	UNDT/2025/009
Date:	14 February 2025
Original:	English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

HERRERA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Francisco Navarro, UNHCR
Sandra Lando, UNHCR

Introduction

1. The Applicant is a former staff member of the United Nations Refugee Agency (“UNHCR”). On 12 November 2023, he filed an application contesting (a) the decision of UNHCR’s Director of the Division of Human Resources (“the DDHR”), dated 4 July 2023, to place him on administrative leave without pay (“ALWOP”) until 31 August 2023; (b) the management evaluation response dated 14 August 2023 by UNHCR’s Deputy High Commissioner (“the DHC”) upholding the DDHR’s decision to place the Applicant on ALWOP; and (c) the DDHR’s decision dated 31 August 2023 to extend the ALWOP until 7 September 2023.
2. On 12 December 2023, the Respondent filed his reply contending that the application is only partially receivable and, in any event, without merit.
3. On 8 May 2024, the Applicant filed a rejoinder to the Respondent’s reply.
4. On 25 October 2024, the case was assigned to the undersigned Judge.
5. Pursuant to Order No. 116 (NY/2024) dated 22 November 2024, the parties filed their respective closing statements on 6 December 2024.
6. For the reasons set out below, the Tribunal rejects the application.

Facts

7. On 22 November 2022, the Inspector General’s Office (“IGO”) received a report of possible misconduct implicating the Applicant. The report was filed by a former UNHCR staff member (“the Complainant”) and involved allegations that the Applicant had engaged in sexual abuse against her on 16 December 2014 in Geneva.
8. At the time of the alleged incident in December 2014, the Complainant was an Assistant Communications Officer on a temporary assignment at the P-1 level, and the Applicant was serving as a Senior Liaison Officer, Humanitarian Coordination, at the P-4 level, at UNHCR Headquarters in Geneva. By the time of the report to the IGO in November 2022, the Complainant had separated from

UNHCR, and the Applicant was on a non-reimbursable loan to the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict in New York as a Senior Interagency Coordination Officer, at the P-5 level. He held an indefinite appointment.

9. The IGO opened an investigation into the matter on 22 November 2022 and proceeded to gather forensic and documentary evidence as well as to interview 15 witnesses, including the Complainant.

10. On 3 April 2023, the IGO notified the Applicant that he was the subject of an investigation into the alleged sexual abuse.

11. The IGO investigators interviewed the Applicant on 26 April 2023 and 7 June 2023. The Applicant denied the allegations.

12. On 30 June 2023, the Applicant's non-reimbursable loan to the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict ended.

13. On 3 July 2023, the Chief of UNHCR's Personnel Administration Section advised the Applicant that since he had not been reassigned, he would be placed on special leave with full pay ("SLWFP") until his next assignment.

14. By letter dated 4 July 2023, the DDHR notified the Applicant of the decision to place him on ALWOP until 31 August 2023 or until the completion of the investigation and any disciplinary process, whichever was earlier. The decision was based on rule 10.4(c) of the Staff Regulations and Rules of the United Nations, as well as paras. 10.3 and 10.4 of UNHCR AI/2018/18/Rev.1 (Administrative Instruction on Misconduct and the Disciplinary Process).

15. The DDHR noted in the letter that there was probable cause to believe that the Applicant had engaged in sexual abuse and that the alleged misconduct was of such gravity that it would, if established, warrant separation or dismissal under staff rule 10.2(a)(viii) or (ix). The DDHR further stated that the available evidence suggested that it was more likely than not that the Applicant had engaged in the misconduct.

16. On 19 July 2023, the IGO provided the Applicant with the draft findings of the investigation in accordance with art. 90 of UNHCR AI/2019/15 (Administrative Instruction on Conducting Investigations in UNHCR).
17. On 4 August 2023, the Applicant requested management evaluation of the DDHR's decision to place him on ALWOP.
18. On 8 August 2023, the Applicant wrote to the DDHR inquiring about the notice period for his resignation, and the DDHR replied on 9 August 2023.
19. On 14 August 2023, the DHC upheld the DDHR's decision to place the Applicant on ALWOP.
20. On 15 August 2023, the Applicant sent the DDHR additional questions about the implications of resigning during the ongoing investigation and about his entitlements. The DDHR responded on 22 August 2023.
21. On 18 August 2023, the Applicant submitted his comments on the IGO's draft investigation findings.
22. On 28 August 2023, the Applicant submitted his resignation from UNHCR with effect from 7 September 2023, requesting a waiver of the notice period and opting to take early retirement.
23. On 30 August 2023, the DDHR accepted the Applicant's resignation and approved his request for a waiver.
24. On 31 August 2023, the DDHR decided to extend the Applicant's ALWOP until his effective date of separation on 7 September 2023.
25. On 5 September 2023, the Applicant requested the DHC to reconsider the management evaluation and submitted additional evidence regarding the allegations of misconduct.
26. On 7 September 2023, the Applicant was separated from UNHCR.
27. On 12 November 2023, the Applicant filed the application described in para. 1 above.

The parties' submissions

28. The Applicant's primary contentions may be summarized as follows:

a. The DDHR "erred in fact and in law" in deciding to impose ALWOP on the Applicant. In reaching the decision, the DDHR "ignored material facts and made incorrect deductions from the evidence". Consequently, the decision "violated the principle of sound administration and the presumption of innocence; and was disproportionate and abusive".

b. There was no "probable cause" to impose ALWOP. There must be a reasonable suspicion before probable cause can be established. This means that "a reasonable person would believe that a crime was in the process of being committed, had been committed, or was going to be committed". As this precondition was not met in the present case, the DDHR "erred in fact" by establishing that probable cause existed, "hence the decision on ALWOP should be annulled".

c. The investigation report was "based solely on [the Complainant's] assertions of the alleged offence and hearsay evidence". There was no impartial and independent evidence corroborating the truth of the content of the Complainant's assertions; and no witnesses or material or forensic evidence "which could prove that the alleged offence occurred, and which could connect [the Applicant] to the alleged offence as a perpetrator". Besides the Complainant's statements, "there is not even a hint of proof, which would indicate that the alleged abuse happened at all or that it could be in any way linked to [the Applicant]". "If the alleged assault cannot be proven, there is no case to answer".

d. The Applicant has "consistently categorically denied" the allegations and the Complainant's testimony was "inconsistent on numerous critical points". The Complainant's assertions "are contradicted by those of several of her own witnesses on key points". Moreover, the Applicant has "steadfastly maintained that [he does] not know [the Complainant] and [has] not had contact with her, and no witness has ever

testified to seeing [them] interact”. “The sole representation of the aggrieved person alone cannot be considered as objective”.

e. “In the subject interviews and draft findings, the IGO departed from its fact-finding aim and focused on finding circumstantial evidence to corroborate [the Complainant’s] statements”. The Applicant’s “recommendations for securing critical evidence” were disregarded, ignored, or have not received a response, and the IGO “failed to carry out its due diligence with regard to [the Complainant] and her credibility”.

f. The DDHR also “erred in law by not observing the rules applicable at the time of the alleged events” and by applying staff rule 10.4(c) as it existed in 2023. In the Applicant’s view, “the new rules (adopted in the context of the [sexual exploitation and abuse—‘SEA’] amendments) could not have been applied, as the alleged misconduct had occurred before the amendments were enacted and promulgated”. In other words, since the incident under investigation was the alleged sexual abuse committed on 16 December 2014, “the Staff Rules applicable in 2014 should have been applied by the DDHR”. Moreover, the alleged offence also “pre-dates the adaptation of UNHCR AI/2018/18 Rev.1”. Accordingly, “the DDHR was not obliged to apply the administrative measure as stated in the impugned decision” since “the possibility of ALWOP was merely a discretionary right, which could have been applied only if all other conditions were met”. Thus, “the DDHR incorrectly concluded that the preconditions of ALWOP were met, rendering the decision unlawful”.

g. The Tribunal “must also evaluate why UNHCR waited almost eight months to adopt the ALWOP”. The allegations of sexual abuse were made in November 2022, the Complainant’s witnesses were interviewed in January 2023, and the Applicant was interviewed in April 2023. “Had there been any evidence substantiating probable cause, it would have been obtained by this date, at the latest”. If the ALWOP is intended to defend the legitimate interests of the Organization or to safeguard the integrity of the investigation, it should have been adopted at an earlier stage.

h. The DDHR's "abusive and seriously detrimental" action led to the Applicant's resignation, "causing financial and moral damages". To frame the resignation as voluntary is to ignore "the coercive environment created by procedural errors" and the overall situation which "amounts to constructive dismissal". Consequently, the Applicant requests the rescission of the contested decision and the award of compensation for lost income and for moral damages.

i. In his rejoinder to the Respondent's reply, the Applicant submits that the initial decision placing him on ALWOP and the subsequent decision to extend the ALWOP constitute "a single administrative decision which does not necessitate a separate management evaluation and/or application to the Tribunal". According to him, "the latter was merely a continuation of the initial ALWOP". Therefore, his challenge against the decision to extend the ALWOP is receivable.

29. The Respondent's main contentions may be summarized as follows:

a. The application is "only partially receivable" and, in any event, "without merit". The Applicant was "lawfully placed on ALWOP pursuant to staff rule 10.4(c) and para. 10.3 of UNHCR/AI/2018/Rev.1" because there was "probable cause" that he had engaged in sexual misconduct.

b. The Appeals Tribunal has previously held that the initial placement on ALWOP and the extension of ALWOP constitute "distinct decisions, each taken at different stages of the process based on a fresh assessment of different sets of facts as existing at the relevant time". Therefore, the Dispute Tribunal only has jurisdiction to review "those decisions for which the staff member had requested management evaluation".

c. "There are also two distinct administrative decisions in this case". The first one was the 4 July 2023 decision to place the Applicant on ALWOP, and the second one was the decision of 31 August 2023 to extend the ALWOP. The first decision considered the evidence then available while the second decision "was based on a fresh assessment of new sets of

facts”, namely the IGO’s draft investigation findings, the Applicant’s comments on those findings, and his resignation letter.

d. The Applicant failed to seek management evaluation of the separate decision to extend the ALWOP as required by the rules. In addition, the outcome of a management evaluation exercise is not an administrative decision subject to judicial review. Rather, the judicially reviewable decision is the underlying administrative decision alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member. Thus, the application is “only receivable as regards the Applicant’s placement on ALWOP between 5 July 2023 and 31 August 2023”.

e. The question of receivability notwithstanding, the decisions to place the Applicant on ALWOP and to extend it were both lawful. “The standard of proof for placement of staff members on ALWOP in cases of [sexual exploitation and abuse] is probable cause”. In this case, based on the “evidence supporting the allegations of sexual abuse”, the DDHR established the existence of probable cause warranting the Applicant’s placement on ALWOP.

f. “There is no merit to the Applicant’s submission that [the DDHR] was wrong in applying current staff rule 10.4(c) and UNHCR/AI/2018/18/Rev.1 on grounds that his alleged misconduct took place in 2014”. Rather, the DDHR correctly applied the rules in force at the time when the decision was made. “Staff members do not have an acquired right to the application of rules governing administrative leave at the time when the alleged misconduct was committed”. Their employment relationship with the United Nations is statutory and subject to change through the amendment of regulations and rules. Moreover, administrative leave “is not a benefit or entitlement but an administrative measure that the Organization may adopt to protect its interests during the pendency of an investigation or disciplinary process for misconduct”.

g. Further, the existence of probable cause that the Applicant committed sexual abuse constitutes exceptional circumstances also warranting his placement on ALWOP under the rules in force in December 2014. Besides, considering that the alleged misconduct was of such gravity that, if confirmed, it would have warranted the sanction of separation from service or dismissal, the placement on ALWOP was justified.

h. The decision was “a reasonable and legitimate measure to protect the Organization by upholding its integrity, reputation and credibility during the investigation and disciplinary process”. In the present case, the decision was a reasonable and legitimate measure to achieve the objective of the Organization’s policy of zero tolerance for sexual misconduct, acting as a deterrent for staff members. There is no merit to the Applicant’s contention that the decision was equivalent to a summary dismissal. ALWOP is not a disciplinary measure; the DDHR complied with the formal requirements set out in staff rule 10.4; and there was no procedural or confidentiality breach.

i. The Applicant’s request for moral damages is unsupported and his request for compensation for loss of earnings is unsubstantiated and unreasonable. After seeking and obtaining detailed advice regarding his entitlements, the Applicant chose to resign before the conclusion of the investigation rather than possibly face a disciplinary process. Therefore, the application has no merit and should be dismissed.

Considerations

The issues of the case

30. Pursuant to the well-established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has the authority to define the contested administrative decision in a case (see, for instance, *Dia* 2024-UNAT-1452, para. 39). The Appeals Tribunal has also 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” (*Fasanella* 2017-UNAT-765, para. 20, and similarly,

in, for instance, *Loto* 2022-UNAT-1292, para. 45; and *Massabni* 2012-UNAT-238, paras. 25-26).

31. In that regard, the Tribunal notes at the outset that this case is not about the merits of the allegations of sexual misconduct brought against the Applicant nor is it about the conduct or the outcome of the investigation into those allegations. Rather, this case is about (a) the decision dated 4 July 2023 to place the Applicant on ALWOP until 31 August 2023 or until the completion of the investigation and any disciplinary process; (b) the DHC's management evaluation response of 14 August 2023 upholding the DDHR's decision to place the Applicant on ALWOP; and (c) the DDHR's decision dated 31 August 2023 to extend the ALWOP until the Applicant's effective date of separation on 7 September 2023.

Receivability

32. Regarding the second contested decision, namely the DHC's 14 August 2023 management evaluation response upholding the DDHR's decision to place the Applicant on ALWOP, the Respondent submits that the outcome of a management evaluation is not an administrative decision subject to judicial review. Such an outcome is not a reviewable administrative decision within the meaning of art. 2.1(a) of the Dispute Tribunal's Statute and the Applicant has failed to establish that the management evaluation response violates his terms of appointment or his employment contract. Rather, only the underlying administrative decision that was submitted for management evaluation is reviewable by the Tribunal.

33. On his part, the Applicant asserts that in the management evaluation, the DHC "failed to acknowledge the absence of verifiable evidence corroborating the accuser's claims" and wrongly concluded that "credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct". He notes that the DHC relied on cases that differ from the present case "to such an extent that they cannot be applied directly". He therefore contests the outcome of the management evaluation process.

34. As the Appeals Tribunal has held on multiple occasions, a response to a request for management evaluation is "a decision or action of a complementary

nature, lacking in the qualities of finality and consequence, and thus will not constitute ‘an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment’ as contemplated in Article 2(1) of the [Dispute Tribunal’s] Statute” (*Kalashnik* 2016-UNAT-661, para. 27, and see also *Melbiksis* 2023-UNAT-1386, para. 36).

35. The Appeals Tribunal has also reiterated that “[a] determination as to whether a decision is of an administrative nature or not is to be undertaken on a case-by-case basis having regard to the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision (*Hoxha* 2024-UNAT-1465, para. 43; see also, for instance, *Najjar* 2021-UNAT-1084, para. 29; *Andati-Amwayi* 2010-UNAT-058, para. 19, and *Ngokeng* 2014-UNAT-460, para. 27).

36. In the present case, the DHC’s management evaluation response had no direct or adverse consequence on the Applicant’s terms of appointment or his contract of employment. It was merely an “action of a complementary nature” following the initial challenge against the underlying decision to place the Applicant on ALWOP. Accordingly, the Tribunal finds that the Applicant’s claim concerning the management evaluation response is not receivable *ratione materiae*.

37. The Respondent also challenges the receivability of the Applicant’s appeal against the third contested decision, namely the decision to extend the ALWOP. According to the Respondent, the initial decision to place the Applicant on ALWOP and the subsequent decision to extend it are two distinct decisions, each taken at a different stage of the process, and each requiring a separate request for management evaluation before it can be brought to the Tribunal. The separate decision to extend the ALWOP was based on a new set of facts, including the issuance of the draft investigation findings, the Applicant’s comments on those draft findings, and his resignation letter. While the Applicant timely sought management evaluation of the decision on the initial placement on ALWOP, he failed to request management evaluation of the decision to extend the ALWOP. Accordingly, the appeal against the decision on the extension is not receivable.

38. The Applicant argues in his rejoinder that under the jurisprudence of the Appeals Tribunal, extensions need not be treated as new decisions if the grounds remain unchanged. He further argues that the DDHR's extension decision dated 31 August 2023 "is lacking even the fundamental characteristics of an administrative decision; it cannot stand alone should the underlying original ALWOP decision be annulled by the Tribunal". It should therefore be considered as a continuation of the original contested ALWOP decision, and the Tribunal should accept the challenge against the extension decision as receivable.

39. The Tribunal recalls that under art. 8.1(c) of the Statute of the Dispute Tribunal, an application shall be receivable if the applicant has previously submitted the contested decision for management evaluation, where required. Pursuant to staff rule 11.2(a), a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment is required, as a first step, to submit a request for management evaluation of the administrative decision. Moreover, the Appeals Tribunal has consistently held that the purpose of management evaluation is "to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary" (see *Farzin* 2019-UNAT-917, para. 40; and, similarly, *Applicant* 2013-UNAT-381, para. 37).

40. In the instant case, the question is whether the decision to extend the ALWOP constitutes a separate administrative decision subject to independent judicial review. In the Tribunal's view, the initial decision to place the Applicant on ALWOP and the subsequent decision to extend the ALWOP are separate decisions, each of which is "the subject of consideration or reconsideration of the circumstances then pertaining" (*Okwakol* 2022-UNAT-1293, para. 48). On each occasion, the DDHR reviewed the available information based on the state of the investigation and advised the Applicant accordingly. While the second decision was an extension or renewal of the initial decision in the sense that it created a continuous period of uninterrupted leave, it was also distinct since it resulted from a reassessment of the situation based on further information received by the decision-maker. Each decision was taken at a different stage of the process and on

a fresh assessment of different sets of facts as they existed at the relevant time (*Gisage* 2019-UNAT-973, paras. 30-32). In fact, the DDHR's letter of 31 August 2023 extending the ALWOP explicitly mentions the Applicant's resignation letter as a factor contributing to the extension decision.

41. The Tribunal notes that the Applicant's request for management evaluation of the initial decision to place him on ALWOP was dated 4 August 2023, and that he was notified of the DHC's response upholding the placement on ALWOP on 14 August 2023. There is no indication that after the Applicant learnt of the DDHR's decision of 31 August 2023 to extend the ALWOP until his effective separation from UNHCR, he requested a separate management evaluation as required under staff rule 11.2(a). Accordingly, the Tribunal finds that since the Applicant failed to request management evaluation of the decision to extend his placement on ALWOP until 7 September 2023, his appeal against that decision is also not receivable *ratione materiae*.

42. Thus, the only receivable appeal in this case is the one against the first contested decision—the decision dated 4 July 2023 to place the Applicant on ALWOP until 31 August 2023 or until the completion of the investigation and any disciplinary process. The Tribunal will therefore focus the present judgment on reviewing the lawfulness of that decision.

Legal framework and standard of review

43. The Staff Regulations and Staff Rules of the United Nations are promulgated through the Secretary-General's Bulletins ("ST/SBGs"). The Applicant submits that the rules that should have been applied in this case were those in force in 2014 rather than those in force in 2023 when the contested decisions were made. He asserts that "at the time of the alleged misconduct, ST/SGB/2014/1 was the applicable law, which stipulated that ALWOP could be imposed only in exceptional circumstances".

44. Former staff rule 10.4(c) in ST/SGB/2014/1 provided that "[a]dministrative leave shall be with full pay except when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on

administrative leave with partial pay or without pay”. In the Applicant’s view, this means that the conditions for imposing administrative leave with pay (“ALWP”) should first be met, “and only if exceptional circumstances justified it, could the Secretary-General, at [his] discretion, decide to impose leave with partial or no pay”.

45. The Tribunal notes that at the time of the adoption of the first contested decision, ST/SGB/2023/1/Rev.1, which promulgates the current Staff Regulations and Staff Rules of the United Nations, was in force. The Tribunal further recalls that in the sanction letter dated 4 July 2023, the DDHR stated that the decision to place the Applicant on ALWOP was based on staff rule 10.4(c) in ST/SGB/2023/1/Rev.1 and paras. 4.3 and 4.4 of UNHCR AI/2018/18/Rev.1. The DDHR also stated that “[t]he exceptional circumstances that warrant this decision are that there is probable cause that [the Applicant has] engaged in sexual abuse”.

46. The current staff rule 10.4(c) provides that administrative leave shall be with full pay “except (i) in cases where there are reasonable grounds to believe that a staff member engaged in sexual exploitation and/or sexual abuse, in which case the placement of the staff member on administrative leave shall be without pay, or (ii) when the Secretary-General decides that exceptional circumstances exist which warrant the placement of a staff member on administrative leave with partial pay or without pay”.

47. Further, as stated in sec. 3 of UNHCR AI/2018/18/Rev.1, the rationale of the Administrative Instruction is to implement Chapter X of the Staff Rules. Pursuant to para. 10.3 of UNHCR AI/2018/18/Rev.1, which relates to staff rule 10.4(c), the DDHR “shall place a staff member on administrative leave without pay in cases in which there is probable cause that a staff member has engaged in sexual exploitation and sexual abuse. ‘Probable cause’ means that there are reasonable grounds to believe that the misconduct occurred”.

48. It follows from both provisions that where there are reasonable grounds to believe that a staff member has engaged in sexual exploitation or sexual abuse, the Administration has no option but to place the concerned staff member on ALWOP. This is different from the former staff rule 10.4(c) which required the administrative

leave to be with full pay except where exceptional circumstances exist. At the same time, it is clear that even under the former staff rule 10.4(c), where there were reasonable grounds to believe that sexual misconduct had occurred, the Administration, in the exercise of its discretion, could consider it as an exceptional circumstance warranting the placement of the concerned staff member on ALWOP (*Gisage*, para. 34).

49. The Tribunal finds no merit in the Applicant's claim that the placement on administrative leave should have been based on the version of the staff rules in force in 2014. There is no basis for the Applicant's assertion that, as a staff member, he had an acquired right to the application of rules governing administrative leave at the time when the alleged misconduct was committed. As the Appeals Tribunal has stated, "[t]he basic conditions of employment of staff members as set out in their letters of appointment may and often do change throughout the duration of their service" (*Lloret Alcaniz et al* 2018-UNAT-840, para. 93). The General Assembly always retains the ability to exercise its legislative powers as it sees fit and a staff member's employment relationship with the United Nations is statutory in nature and subject to change through the amendment of regulations and rules. Accordingly, the Applicant does not have a right, acquired or otherwise, to the continued application of the Staff Regulations and Rules concerning ALWOP in force at the time of the alleged sexual abuse. Moreover, administrative leave is not a benefit or entitlement but an administrative measure that the Organization may adopt to protect its interests during the pendency of an investigation or disciplinary process for misconduct.

50. The Tribunal must also address the claim contained in the Applicant's application to the effect that in *Muteeganda* 2018-UNAT-869, the Appeals Tribunal "declared that the new rules (adopted in the context of the [sexual exploitation and abuse]—'SEA' amendments) could not have been applied, as the alleged misconduct had occurred before the amendments were enacted and promulgated". The correct interpretation is that in *Muteeganda*, the alleged sexual misconduct occurred in 2014 or 2015 and the decision to place the applicant in that case on ALWOP was made in July 2017. Thus, at the time when the contested decision was made, staff rule 10.4(c) in ST/SGB/2014/1 was still in force and the

2018 amendments had not yet been promulgated (para. 33). The present case is clearly distinguishable from *Muteeganda* since the contested decision here was made in July 2023 when staff rule 10.4(c) in ST/SGB/2023/1/Rev.1 was already in force.

51. Furthermore, accepting the legitimate policy aimed at protecting the Organization's reputation and credibility in relation to sexual misconduct cases, the Appeals Tribunal has held that reasonable grounds to believe that sexual misconduct had occurred is a circumstance that may reasonably be considered as exceptional (*Muteeganda*, para. 40).

52. The Appeals Tribunal has also stated that the "standard of proof is the central methodological premise in any fact-finding exercise", and "[t]he four standards applied in all legal systems are: i) reasonable grounds to believe – probable cause; ii) balance of probabilities (sufficient evidence); iii) clear and convincing evidence; and iv) beyond a reasonable doubt – overwhelming evidence. The standard to be followed in a particular case is invariably influenced by the nature of the tribunal, the process followed and by specific sensitivities relating to the applicable norms" (*Applicant* 2022-UNAT-1187, paras. 60-61).

53. In the present case, the DDHR based the contested decision on the probable cause standard, which the Appeals Tribunal has defined as follows (*Applicant*, para. 62):

The probable cause standard is the standard applied in investigations and is the result arrived at usually after an inquisitorial process. A determination of probable cause essentially concludes that there is a reasonable suspicion or reasonable grounds to believe, on the limited evidence available in the investigative process, that the incident in question occurred; but other more probable or certain conclusions could possibly be arrived at after a more rigorous adversarial process in which the available evidence is challenged and subjected to greater scrutiny. A finding of probable cause is usually made in contemplation and expectation of further processes possibly reaching a stronger determination on the probabilities, or with proximate certainty, on the basis of fuller or stronger evidence.

54. The Tribunal recalls that the Administration enjoys broad discretion in administrative matters and that the decision to place a staff member on ALWOP is

an administrative matter. However, this discretion is not unfettered and is subject to judicial review (see, for instance, *Farhadi* 2022-UNAT-1203, para. 33). Under the jurisprudence of the Appeals Tribunal, when judging the validity of the Administration's exercise of its discretion in administrative matters, the Dispute Tribunal is required to determine whether the decision is legal, rational, procedurally correct, and proportionate. It may consider whether relevant matters were ignored and irrelevant matters considered and examine whether the decision is absurd or perverse. However, it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Administration (see, for instance, *Fultang* 2023-UNAT-1403, paras. 100-101; *Yasin* 2019-UNAT-915, para. 44; *Sanwidi* 2010-UNAT-084, para. 40).

55. In light of the foregoing, the Tribunal will examine whether, under the circumstances of this case, it was reasonable for the DDHR to conclude that there was probable cause that the Applicant had engaged in sexual abuse as alleged and, therefore, to place him on ALWOP.

Discussion

56. At the foundation of the discussion of legal issues in this case is the matter of probable cause for imposing ALWOP. The Applicant had not yet been notified of the outcome of the investigation by 12 November 2023 when he filed the present application, but he had received the draft investigation findings. However, he was able to annex the final investigation report to his rejoinder dated 29 April 2024. From a review of both reports, it emerges that there was staff party at UNHCR headquarters in Geneva on the night of 16 December 2014. The Complainant stated that she was intoxicated and that she chatted with the Applicant during the party. She also told the IGO investigators that the Applicant offered to drive her home from the staff party and that he proceeded to sexually abuse her.

57. The Applicant, on his part, maintains that he has no knowledge of the Complainant and has never met her, and suggests that this could be a case of

mistaken identity. The Applicant also asserts that the evidence indicates that none of the Complainant's witnesses had ever observed any direct interaction between the Applicant and the Complainant, and thus all of their testimony is hearsay.

58. The Tribunal notes that several of the witnesses, including the UNHCR Staff Counsellor in Geneva, testified to the IGO that the Complainant had informed them of the incident in December 2014 immediately after it allegedly occurred. They also described the Complainant as being “in a state of shock”, “distressed”, “confused”, “traumatised”, “upset” and “agitated” at the time. The Tribunal also takes note of one of the reasons why the Complainant finally decided to report the alleged sexual abuse in November 2022—almost eight years later. The evidence before the Tribunal indicates that in 2014 when the incident allegedly occurred, the Complainant was still very young and was “dreaming of having a career in [the United Nations]”. She was concerned that if she filed a formal complaint at the time, it might affect her chances of having a good position with the Organization. She also stated that in 2022, she found out that the Applicant's image was being used on the website of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict in a campaign against rape. She said she found this situation to be disturbing and that is what prompted her to report the 2014 incident.

59. As outlined above, the standard required at the stage of imposing the ALWOP is not “clear and convincing evidence” but “reasonable grounds to believe”, which is a lower standard. On balance, the Tribunal is satisfied that the initial phases of the investigation uncovered sufficient evidence to support a reasonable suspicion that the Applicant had engaged in the alleged sexual abuse. Several witnesses testified to the IGO investigators that the Applicant had informed them of the incident immediately after it allegedly occurred in December 2014, and even though there were slight variations in some of the details they provided, these can be attributed to the passage of time. Moreover, there was no process by which the Tribunal could find additional factual grounds to establish or put in doubt whether there were any reasonable grounds to believe that the alleged incident of sexual abuse occurred.

60. The Tribunal is mindful of the Organization’s “zero-tolerance” policy against sexual harassment and abuse as well as of the need for the Organization to protect its reputation and the integrity of the workplace. As the Appeals Tribunal stated in *Szvetko* 2023-UNAT-1311, para. 47, sexual harassment is “a scourge in the workplace which undermines the morale and well-being of staff members subjected to it. As such, it impacts negatively upon the efficiency of the Organization and impedes its capacity to ensure a safe, healthy and productive work environment. The Organization is entitled and obliged to pursue a severe approach to sexual harassment and to implement a policy of zero tolerance”. Moreover, even though the Complainant had already separated from UNHCR long before she reported the alleged incident, the Organization still has a legitimate interest in imposing ALWOP as a deterrent for other staff members who might behave similarly (*Kavosh* UNDT-2022-032, para. 25; *Muteeganda*, para. 41). Thus, the contested decision advances the legitimate policy of zero tolerance in sexual misconduct cases and is a rational means of achieving that policy.

61. The Tribunal is therefore satisfied, based on the evidence before it, that the Administration had sufficient cause to impose the ALWOP measure and although such cause could be challenged, the challenge would have to be sufficient to establish that the grounds for making the decision to impose ALWOP were not reasonable. In the context of the legal framework, which aims to provide a deterrent to sexual abuse and exploitation and to protect the Organization from the ill effects of such behavior, the Tribunal is satisfied that the Administration did not overstep its discretionary authority by imposing the ALWOP based on the “reasonable suspicion” that the Applicant had engaged in the alleged misconduct. Accordingly, the Tribunal considers that the contested decision was legal, rational, procedurally correct and proportionate (see *Sanwidi*, para. 40).

62. The Tribunal recalls that the DDHR stated in the letter to the Applicant dated 4 July 2023 that the available information and evidence regarding the alleged incident made it “more likely than not” (preponderance of the evidence) that the Applicant had engaged in the misconduct. The DDHR also noted that the alleged misconduct was of such gravity that it would, if established, warrant separation or dismissal under staff rule 10.2(a)(viii) or (ix). Thus, in the Tribunal’s view, in

issuing the contested decision the DDHR sought not only to meet the reasonable suspicion standard and to satisfy the criteria for a finding of probable cause, but also to meet “a higher standard of evidence, namely that of the preponderance of evidence” (*Loto*, para. 77).

63. The Tribunal notes that the Applicant resigned from his employment with UNHCR before the process following the investigation moved to the stage where formal charges of misconduct could be laid against him and disciplinary action recommended. Indeed, within two months of being informed of the ALWOP decision, the Applicant submitted his resignation letter, claiming that the contested decision was “abusive and seriously detrimental” resulting in a “coercive environment” and causing “financial and moral damages”. The Tribunal recognizes that ALWOP is an extraordinary administrative measure designed to be of short duration and that while it might seem like a harsh decision to make, it is not disproportionate in cases of sexual misconduct (*Muteeganda*, para. 41). In the case at bar, the ALWOP was set to run from 4 July 2023 until 31 August 2023, and then, following the Applicant’s resignation, it was extended by seven days until his effective date of separation on 7 September 2023. Moreover, although being put on ALWOP places a considerable financial burden on a staff member, the situation can be promptly remedied by reinstating the staff member’s payments and entitlements if at the conclusion of the investigation the allegations of sexual misconduct are found not to be supported by the evidence. Under these circumstances, the Tribunal does not find that the Applicant has any grounds for seeking moral damages, since no damage has been alleged or proved and in any event the Applicant has not been the subject of an illegal act since the imposition of ALWOP was lawful.

64. The Tribunal therefore is unable to find any basis to overturn the decision to place the Applicant on AWLOP, nor to order the payment of compensation or moral damages.

65. Finally, the Tribunal recalls that in the course of these proceedings, it was made aware of other unrelated evidence calling into the question the credibility of the Complainant. The said evidence was presented in the context of an application

for suspension of action filed by the same Applicant, registered as Case No. UNDT/NY/2024/048, and included information already in the public domain regarding the Complainant's past actions long before she joined UNHCR. However, the Tribunal did not find any of that information relevant to the present case and did not take it into consideration in reaching its judgment on the lawfulness of the contested decision on ALWOP.

Conclusion

66. In light of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Francis Belle

Dated this 14th day of February 2025

Entered in the Register on this 14th day of February 2025

(Signed)

Isaac Endeley, Registrar, New York