



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/007/T
Judgment No.: UNDT/2025/060
Date: 2 September 2025
Original: English

Before: Judge Margaret Tibulya

Registry: Geneva

Registrar: Liliana López Bello

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George Irving

Counsel for Respondent:

Miryoungh An, DAS/ALD/OHR/UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Mission in Kosovo (“UNMIK”), contests the decision to impose on her the disciplinary measure of separation from service with compensation in lieu of notice, and without termination indemnity.

2. For the reasons set forth below, the application is rejected.

Facts

3. On 12 May 2022, the Applicant was involved in a domestic dispute with a former partner (“V01”) over the disposal of a New York apartment which they jointly owned.

4. On 14 May 2022, V01 filed a domestic incident report with the New York City Police Department against the Applicant. The domestic incident report indicated, *inter alia*, that a verbal exchange between V01 and the Applicant had escalated into a physical altercation. It was alleged that the Applicant grabbed V01’s hair, pushed her against a wall, and slapped her on the face. V01 also stated that she slapped the Applicant back in self-defense.

5. On 16 May 2022, the police contacted the Applicant and informed her about the incident report. The Applicant retained a lawyer, who was in contact with the police and arranged her voluntary surrender.

6. On 23 May 2022, the Applicant was arrested by appointment for a misdemeanor assault and arraigned in court on the same day. She accepted, before a Judge, an “Adjournment in Contemplation of Dismissal”, pursuant to the New York Criminal Procedure Law section 170.55, and a one-year temporary Order of Protection. The Order of Protection required, *inter alia*, that the Applicant stay away and refrain from communicating with V01 in any capacity.

7. On 1 February 2023, the Office of Internal Oversight Services (“OIOS”) received an anonymous report of possible misconduct implicating the Applicant for an alleged assault and for not reporting the assault to the Organization.

8. On 23 May 2023, the temporary Order of Protection ended, and the Applicant did not retain a criminal record from this matter.

9. On 5 June 2023, the Applicant voluntarily submitted to OIOS a letter signed by her Counsel in which the core aspects of the dispute and criminal procedure that had taken place in the preceding year.

10. On 14 August 2023, OIOS compiled its investigation report into the possible misconduct implicating the Applicant and referred it to the Office of Human Resources (“OHR”) for appropriate action.

11. On 25 September 2023, the Applicant received formal allegations of misconduct based on the evidence contained in the investigation report and supporting documentation. She was requested to provide a written statement or explanation in response to the allegations and was informed that if established, her conduct would constitute a violation of staff regulations 1.2(a), (b), and (f), and staff rule 1.5(d).

12. On 8 November 2023, the Applicant provided her written statement in response to the allegations of misconduct against her.

13. On 8 December 2023, the Under Secretary General for Management Strategy, Policy and Compliance (“USG/DMSPC”) concluded that the allegations against the Applicant were established by clear and convincing evidence, that her conduct amounted to serious misconduct in violation of staff regulations 1.2(a), (b), and (f), and staff rule 1.5(d). On this basis, the Applicant received 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). This is the “contested decision”.

Procedural background

14. On 6 March 2024, the Applicant filed the instant application against the contested decision.

15. On 9 April 2024, the Respondent filed his reply.

16. On 3 July 2024, the Applicant filed her rejoinder.

17. On 2 April 2025, the Tribunal invited the parties to a Case Management Discussion (“CMD”), which was held virtually on MS Teams on 9 April 2025.

18. Following the CMD, the Tribunal directed the parties to confirm the availability of the parties and the proposed witnesses, which were discussed during the CMD, to virtually attend a hearing on the merits at some point between 21 April and 16 May 2025.

19. By email dated 17 April 2025, the Respondent submitted that V01 is traumatized and unwilling to testify before the Tribunal in person. He then requested that V01 be examined through written questions.

20. On the same day, Counsel for the Applicant submitted that he was available between 28 April and 6 May 2025 and objected to V01 being examined through written questions.

21. By email dated 22 April 2025, the Registry informed the parties that, pursuant to Practice Direction No. 5, all requests to the Tribunal should be made by motion. The Registry further clarified that the request regarding the oral hearing and V01 testimony was rejected by the Registry, and that they should submit their respective positions vis-à-vis the oral hearing and attendance of witnesses through a motion.

22. On 23 April 2025, Counsel for the Applicant filed a motion proposing that the hearing be held on 7 May 2025. He further stated that the Respondent had agreed to such a date.

23. By Order No. 47 (GVA/2025) of 7 May 2025, the Tribunal directed the parties to file written submissions substantiating their respective proposed witnesses for a hearing on the merits, the accommodations required for the examination and cross examination of said witnesses, and the parties’ availability, including that of their witnesses, to virtually attend a hearing on the merits between 19 and 30 May 2025, starting at 3 p.m. (Geneva time). The Respondent was further instructed to confirm the availability of V01.

24. On 9 May 2025, Counsel for the Applicant proposed that the Applicant and V01 be heard as witnesses in a hearing on the merits. Counsel for the Applicant further informed that the Applicant and he were only available for a hearing after 1 June 2025, and that Counsel for the Respondent had been consulted and was also available in early June.

25. On the same day, the Respondent submitted that a hearing on the merits was not needed and that he had no witnesses to propose. The Respondent further submitted that V01 was severely distressed about the possibility of an oral hearing. V01 informed the Respondent that she had been traumatized by the incident in issue and was concerned about the negative impact of her being questioned about the incident again on her mental and physical well-being. The Respondent thus requested that V01 be allowed to respond to written questions instead of an oral hearing.

26. By notification dated 12 May 2025, the Tribunal determined the following:

The Tribunal is mindful of V01's wellbeing and does not wish to distress [her] in any way. However, in the interest of affording a fair hearing, and ensuring that all issues raised in the application are comprehensively determined, it is proposed that V01 be requested to reconsider her position on condition that her concerns are specially accommodated, to ensure that she will feel safe to testify.

It is proposed that V01 be requested to testify on condition that: (i) the Applicant will either not be present during her testimony or will be off camera; (ii) V01 will remain anonymized throughout the proceedings; and (iii) V01 will be allowed to testify off-camera.

The Respondent is hereby instructed [to] communicate these proposals to V01 and revert to the Tribunal by Friday, 16 May 2025.

27. On 16 May 2025, the Respondent reverted to the Tribunal, stating that, while deeply appreciative of the Tribunal's consideration of her concerns, V01 had carefully considered the proposed conditions and informed the Respondent that she was not able to testify in an oral hearing. In addition to the concerns already conveyed, the Respondent informed the Tribunal that V01 is currently undergoing medical treatment and considers that testifying in an oral hearing about the traumatic experience she went through would cause "unbearable harm to her

well-being.” V01 further submitted that she is willing to provide a generic note confirming the medical treatment.

28. By Order No. 56 (GVA/2025) of 21 May 2025, the Tribunal, *inter alia*, acknowledged V01’s continued refusal to testify in a hearing, and found that it had no alternative but to exclude her from the potential list of witnesses. The Tribunal then granted the Respondent’s prior request to obtain V01’s testimony through written questions and instructed the parties to file their respective written questions to V01 by 27 May 2025. The hearing was scheduled to be virtually held on 4 June 2025.

29. On 27 May 2025, the Respondent submitted that weight must be given to V01’s interview statements with OIOS, which are corroborated by other evidence on record, as well as multiple witness statements. The Respondent further submits that V01’s sworn interview statements are clear and detailed in describing all relevant facts of the case. In this regard, the Respondent indicated that he has no additional questions regarding the facts beyond those already asked to V01 during the OIOS interview, which she answered under oath. He proposed that V01 be asked to reaffirm the truthfulness of her interview statements.

30. On the same day, the Applicant submitted that it found futile the exercise of submitting written questions to V01 and strongly urged the Tribunal to abandon it. In lieu of presenting questions, the Applicant requested leave to submit comments with documentation that explicitly addresses V01’s prior statements and specific issues of fact that are in contention. In the interest of expediting proceedings, the Applicant filed said comments in the record.

31. By Order No. 58 (GVA/2025) of 28 May 2025, the Tribunal accepted the parties’ objections to written questions to V01 and partially revoked Order No. 56 (GVA/2025). It further instructed the Respondent to respond to the Applicant’s comments of 27 May 2025, which he did on 2 June 2025.

32. On 4 June 2025, the Tribunal held a virtual hearing on the merits in which only the Applicant gave testimony, and, on 11 June 2025, the parties filed their respective closing submissions.

Consideration

33. The Applicant contests the decision to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity. The contested decision was based on two allegations:

- a. that the Applicant physically assaulted V01 by grabbing her hair, slapping her, pushing her on the floor, grabbing her again, throwing her on the bed, and/or attempting to hit her with the Applicant's hand and arms,
- b. that the Applicant did not immediately notify the Secretary-General of her arrest on 23 May 2022, and arraignment before a Criminal Court of the County of New York.

34. It is now settled that when reviewing disciplinary decisions, the role of the Dispute Tribunal is to examine:

- a. whether the facts on which the disciplinary measure was based have been established,
- b. whether the established facts amount to misconduct under the Regulations and Rules,
- c. whether the sanction is proportionate to the offence, and
- d. whether the staff member's due process rights were respected.

Whether the facts have been established

35. The Administration bears the burden of establishing that misconduct has occurred (*Diabagate* 2014-UNAT-403, para. 30). The applicable standard of proof is that misconduct must be shown by clear and convincing evidence, which has been interpreted to mean that the truth of the facts asserted is highly probable (*Appellant* 2013-UNAT-302, para. 29).

The alleged assault

36. The impugned decision was based on evidence that on 2 May 2022, the Applicant arrived unannounced at the apartment she co-owned with V01, in her absence. The Applicant and the building superintendent could not open the door to the apartment. The Applicant texted V01 saying, “Well fuck it, I’m calling a locksmith”, which she did.

37. V01 and the Applicant uneasily shared the apartment for the days which followed. According to V01, by 12 May 2022, she had had enough of the arguing, and began reacting to the Applicant’s comments.

38. On the morning of the 12 May 2022, V01 told the Applicant that “This is why you have an investigation against you about abuse of authority and sexual exploitation. Look at you”. This exchange allegedly got the Applicant very upset and angry, and resulted in her shouting insults at V01 in English and Turkish. It was at this stage that the Applicant allegedly grabbed V01’s hair and pushed her. As a reflex, V01 tried to slap her back, but fell into the door frame instead, injuring her left hand. The Applicant then grabbed her and threw her on the bed. According to V01, the Applicant “would charge [V01] like a bull”, trying to hit her, and V01 would “push kick” her away. The Applicant only stopped attacking V01 when she yelled. She, however, continued to swear at her.

39. V01’s colleague advised her to take a picture of the bruise she sustained during the altercation before it disappeared, which she did. V01 later gave that picture to the police.

40. The Applicant denies that she assaulted V01. Testifying about the events of the morning of 12 May 2022, the Applicant stated that she went to take a shower. While she was in the bathroom, V01, who “was not in a good mood” went in to put on her makeup, and the Applicant exited the shower.

41. V01 then allegedly told her that she hoped the Applicant would get fired from the United Nations, that she thought those who were accusing her were right, and that she (the Applicant) was a horrible person.

42. The Applicant responded that V01's late father and brother were in heaven seeing her behavior and wondered whether that was how V01 was representing the good name of her family.

43. V01 got agitated and ordered the Applicant not to mention her late father's name, before asking her whereabouts during the previous weekend, and accused the Applicant of having had affairs during their relationship. According to the Applicant, it was at this point that V01 hit her. The Applicant backed off and immediately hit the bed. V01 went after her and they ended up on the bed. The Applicant pushed V01 away.

44. Based on the foregoing, there are clearly two conflicting versions of the events that unfolded on 12 May 2022. In determining which version to believe, the Tribunal has considered the following factors.

45. The person who filed the police report and reported the alleged assault was V01. The Applicant never reported the alleged assault by V01; not to a third person, not to the Organization, not to the police. Even after being arrested and arraigned, the Applicant still did not communicate her version of events to the police, or to the Judge assigned to her criminal case. When asked at the hearing about not having informed the police that V01 had been the one to physically assault her, the Applicant admitted that she never gave the police her version of events.

46. The order of protection that the Applicant signed on 23 May 2022 was premised on a conclusion that she was the aggressor. Under that order, she was required to stay away from V01, and she had to move out of their co-owned apartment.

47. Therefore, there is no documentary, testimonial, or circumstantial evidence to support the Applicant's allegation that V01 was the one who assaulted her, and that she only acted in self-defense.

48. On the other side, there is plenty of evidence supporting V01's allegation that the Applicant physically assaulted her, as follows.

49. As a result of the assault, V01 sustained an injury. Her colleagues saw the injury, whose picture V01 later showed to the police.

50. During the investigation, four colleagues of V01 testified about her distressed condition following the assault. The Applicant never questioned their testimonies and did not request that they be cross-examined at the hearing. Their testimony, therefore, is considered by this Tribunal as undisputed.

51. The Tribunal also notes that V01's account is consistent throughout. The content of her statement to the police tallies with that in her witness statement. On the other hand, the Tribunal noted major contradictions in the Applicant's testimony in the following three particulars.

a. The Applicant initially stated that, acting on her lawyer's advice, she arrived in New York without prior notice. However, she later testified that her attorney had informed V01's attorney of her arrival, directly contradicting her earlier statement. This second account is further undermined by subsequent testimony indicating that her attorney only contacted V01's attorney after the Applicant was unable to gain access to the apartment. These inconsistencies raise concerns regarding the reliability and coherence of the Applicant's narrative;

b. In her evidence-in-chief, the Applicant stated that she was unaware of the contents of V01's domestic incident report. However, this assertion was later contradicted by her own testimony, in which she acknowledged that a police officer had read the contents of the report to her; and

c. The Applicant initially asserted that the protection order was mutual, prohibiting both parties from contacting each other. However, in her oral testimony, she maintained with certainty that the order solely required her to stay away from V01.

52. The Tribunal has considered the fact that V01 declined to give oral evidence. However, no adverse inference has been drawn from that fact alone, given the

weight of the evidence outlined in the paragraphs above. Said evidence leaves no doubt that V01 was not the aggressor.

53. In light of the foregoing considerations, the Tribunal rejects the Applicant's claim that she was the victim of an attack by V01 and instead accepts V01's account of the events. The evidence presented establishes, by clear and convincing standards, that the Applicant physically assaulted V01 by grabbing her hair, slapping her, pushing her to the floor, grabbing her again, throwing her onto the bed, and/or attempting to strike her with her hands and arms. There is no evidence to support the claim that the Applicant's actions were carried out in self-defense.

The absence of notification to the Secretary-General

54. Staff rule 1.5(d) provides that:

A staff member who has been arrested, charged with an offence other than a minor traffic violation or summoned before a court as a defendant in a criminal proceeding, or who has been convicted, fined or imprisoned for any offence other than a minor traffic violation shall immediately report the fact to the Secretary-General.

55. The Applicant admits that she was arrested and charged with assault, as provided by her Attorney in the 5 June 2023 letter, which reads as follows:

To whom it may concern:

I am an attorney and I represent [the Applicant] in a criminal allegation against her. On May 23, 2022 [the Applicant] voluntarily surrendered herself to the New York City Police Department upon learning that her ex-girlfriend had made a claim regarding a dispute that had occurred between them in their mutual home. [The Applicant] was arrested and arraigned on that same day and the case was resolved with a dismissal. [The Applicant] pleaded not guilty and the prosecutor offered her a resolution called an "Adjournment in Contemplation of Dismissal" pursuant to Criminal Procedure Law section 170.55. A one-year Order of Protection was also issued. The Order of Protection required the two people to stay away from and have no contact with one another, other than incidental contact. The entire matter as not been fully dismissed as sealed as of May 23, 2023. [The Applicant] has no criminal record from this matter.

56. The Applicant admitted not having notified the United Nations before the above letter dated 5 June 2023. She, however, submits that she did not advise the Secretary-General of the issue sooner because it was a private matter which was not UN-related.

57. The Tribunal highlights, however, that staff rule 1.5(d) does not exempt private matters from the reporting requirement, and that said rule requires that the reporting be immediate.

58. In this case, the Applicant's arrest took place on 23 May 2022, but she only reported the incident to the Organization on 6 June 2023 through the 5 June 2023 letter referenced above. Thus, long after the arrest. This clearly contravened the terms of staff rule 1.5(d), as the Applicant undoubtedly did not immediately notify the Secretary-General of her arrest and arraignment.

59. In light of the above, the Tribunal finds that the facts on which the disciplinary measure was based have been established by clear and convincing evidence.

Whether the established facts amount to misconduct under the Regulations and Rules

60. The impugned decision was premised on the determination that the Applicant's conduct violated staff regulations 1.2(a), 1.2(b), and 1.2(f), as well as staff rule 1.5(d).

61. Staff regulation 1.2(a) provides as follows.

Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them;

62. Staff regulation 1.2(b) provides as follows.

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is

not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status;

63. Staff regulation 1.2(f) provides as follows.

While staff members' personal views and convictions, including their political and religious convictions, remain inviolable, staff members shall ensure that those views and convictions do not adversely affect their official duties or the interests of the United Nations. They shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status;

64. Staff rule 1.5(d) provides as follows.

A staff member who has been arrested, charged with an offence other than a minor traffic violation or summoned before a court as a defendant in a criminal proceeding, or who has been convicted, fined or imprisoned for any offence other than a minor traffic violation shall immediately report the fact to the Secretary-General.

65. The Applicant argues that her alleged violation of staff regulations on the pretext that her behavior caused reputational damage to the Organization ignores the fact that her arraignment in court did not mean that the charge was proved against her. She asserts that the New York judicial process is aimed at influencing future behavior rather than assigning guilt for past conduct, and that the dismissal of the charges confirms there was no finding of guilt.

66. The Tribunal finds no merit in the above arguments, given its finding that the Applicant indeed assaulted V01. The Applicant's physical violence towards V01 is a serious breach of staff regulations 1.2(a), 1.2(b), and 1.2(f). The Applicant's conduct is not a private matter outside the purview of the Organization. As an international civil servant, she was required to uphold the highest standards of integrity and regulate her conduct "at all times" in a manner befitting her status.

67. The Applicant admits that she failed to report her arrest to the Organization as required under staff rule 1.5(d). An arrest of a staff member, leading to the initiation of criminal proceedings, is a serious concern to the Organization. The Applicant's explanation that she had received "conflicting" advice from her private counsel about the import of staff rule 1.5(d) is without merit, since staff members are expected to be aware of their legal obligations. Ignorance of the law cannot, therefore, be invoked as an excuse for a violation. The explanations she offers do not nullify the fact that she violated the staff rule.

68. Based on the foregoing considerations, the issue of whether the established facts amount to misconduct under the Regulations and Rules, which is a legal issue, must be answered in the affirmative.

Whether the sanction is proportionate to the offence.

69. Citing *Szvetko* 2023-UNAT-1311 at para. 44, the Applicant argues that the Secretary-General does not have an unfettered discretion on the question of sanction and maintains that there is no justification for imposing the harshest penalty possible in this case. She further notes that isolated cases of failure to report as required are generally addressed through a written reprimand or a censure. Without a clear and convincing determination of whether an intentional assault occurred or whether it was self-defense, the imposition of a more severe penalty is not warranted.

70. The assertion that there is no clear and convincing determination of whether an intentional assault occurred or whether it was self-defense is no longer valid, in view of the Tribunal's finding that the Applicant indeed committed the two infractions for which she was sanctioned.

71. It is established jurisprudence that "judicial review of decisions of whether or not misconduct has been established dictates that due deference be given to the Secretary-General to hold staff members to the highest standards of integrity and the standard of conduct preferred by the Administration in the exercise of its rule-making discretion. The Administration is best placed to understand the nature of the work, the circumstances of the work environment and what rules are

warranted by its operational requirements” (see *AAD* 2022-UNAT-1267, para. 62, citing *Nadasan* 2019-UNAT-918, para. 41).

72. The Appeals Tribunal has also held that a decision to impose a specific disciplinary measure for established misconduct may only be reviewed by the Tribunal “in cases of obvious absurdity or flagrant arbitrariness” (*Jaffa*, 2015-UNAT-545, para. 22; *Aqel*, 2010-UNAT-040, paras. 35).

73. The Applicant’s arguments regarding the fairness and proportionality of the outcome are primarily based on the position that the only infraction she should have been sanctioned for was the failure to report her arrest to the Organization. However, the finding that she committed two infractions nullifies her arguments.

74. Moreover, the sanction letter indicates that all relevant circumstances were considered in arriving at the impugned decision. Among these were: the past practices of the Organization, ensuring consistency of treatment of similar cases; whether the Applicant’s actions were accidental, careless, reckless or deliberate; the nature of the misconduct; whether the misconduct was minor or technical, or substantive or severe; the fact that the Applicant’s conduct of physical assault resulted in personal injury to V01; and the fact that the Applicant’s conduct resulted in her arrest and arraignment before a criminal court. The Administration also considered the Applicant’s number of years of service, the fact that she received a written censure on 26 August 2022, by which she was advised that any repeated misconduct would result in a more severe sanction, and the fact that she did not show any remorse or commitment to ensure there would be no repetition or continuation of the misconduct.

75. Clearly, the two aggravating factors (i.e., that the Applicant’s conduct resulted in personal injury to V01 and caused intangible reputational damage to the Organization; and that the Applicant’s conduct involved multiple violations of duties and obligations under Staff Regulations and Rule) were balanced against the mitigating factor that the Applicant’s action could be characterized as rash, occurring in the heat of the moment, for which she apologized to V01.

76. The Tribunal finds, therefore, that the administrative sanction was proportionate to the misconduct.

Whether the staff member's due process rights were respected.

77. The Applicant maintains that exculpatory evidence was disregarded, and that this points to clear bias against her, which violates her due process rights. She also points out that her sudden departure was mentioned in a broadcast to all staff. This, she argues, added to the perception of retaliation since she was not consulted before the broadcast. The Applicant further complains that anonymous, malicious emails full of lies were sent and published on Inner Circle Press (bringing the total to 11 as of 2019), and she requested action by OIOS and UNMIK leadership to no avail, which is evidence of bad faith.

78. The assertion that exculpatory evidence was disregarded is without merit. The Tribunal reviewed all available evidence and found no exculpatory evidence to support said claim, and equally found that mitigating circumstances were duly considered, as stated above.

79. Complaints about broadcasting her departure to all staff, and anonymous malicious emails which were published on Inner Circle Press have no bearing on the Applicant's due process rights.

80. The Tribunal finds that all the Applicant's procedural fairness rights were respected throughout the investigation and disciplinary process. The Applicant was accorded a fair procedure in accordance with the Organization's legal framework. In particular, she was interviewed by OIOS and asked about material aspects of the matter. She was provided with all supporting documentation and was informed of her right to seek the assistance of counsel. She was allowed to comment on the allegations and was afforded an extension of time to submit her comments, which were duly considered.

81. The Tribunal, therefore, finds that the Applicant's due process rights were respected.

Conclusion

82. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Margaret Tibulya

Dated this 2nd day of September 2025

Entered in the Register on this 2nd day of September 2025

(Signed)

Liliana López Bello, Registrar, Geneva