



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/005

Judgment No.: UNDT/2025/071

Date: 1 October 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:

Sètondji Roland Adjovi, Études Vihodé Ltée
Anthony Kreil Wilson, Études Vihodé Ltée

Counsel for Respondent:

Alister Cumming, UNICEF

Introduction

1. By application filed on 26 February 2024, the Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), contests the decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice, and with termination indemnity pursuant to staff rule 10.2(a)(viii), and the entering of his name in the UN ClearCheck database.
2. In this application, the Applicant also raises issues relating to another decision where the Administration decided not to investigate the leaking of his personal information. The Applicant has challenged this decision in another application, which has been disposed of by judgment UNDT/2025/062. Therefore, in this Judgment, the Tribunal will only address matters relating to the decision in paragraph one above.
3. For the reasons set forth below, the Tribunal decides to dismiss the application.

Facts and procedural history

4. The Applicant joined UNICEF on 12 April 2018 as a Fundraising Specialist at the P-4 level in Geneva, Switzerland. On 19 April 2022, the Applicant was reassigned, at the same level, to the position of Youth and Adolescent Development Manager, based in the UNICEF Sudan Country Office (“SCO”).
5. On 14 June 2022, the Office of Internal Audit and Investigations (“OIAI”) received a report of possible misconduct implicating the Applicant. Specifically, it was reported that:

On 19 May 2022, the Applicant followed V01, a staff member who was working with the SCO on a surge assignment into his office, touched him on his sweaty neck, licked his finger and said, “[Y]um.” When V01 brushed off the comment by indicating that the state of his hygiene was due to recent travel, the Applicant allegedly responded, “[A]h, sweaty men, I like them”.
6. On 1 September 2022, the Applicant was placed on special leave with full pay.

7. Upon receipt of the report, OIAI commenced its investigation. On 17 October 2022, OIAI informed the Applicant that it was investigating the allegations against him.

8. OIAI interviewed the Applicant on 27 October 2022. During the investigations, OIAI interviewed other UNICEF staff members and non-UNICEF personnel as witnesses.

9. On 1 March 2023, the Applicant returned from special leave and was reassigned to the position of Social and Behaviour Change Manager in Private Fundraising and Partnerships, based in Geneva.

10. On 2 June 2023, OIAI issued its investigation report and transmitted it to the Deputy Executive Director, Management (“DED/M”), UNICEF, for appropriate action. In its report, OIAI concluded that:

The established facts constitute reasonable grounds to conclude that [the Applicant] failed to observe the standards of conduct expected of an international civil servant.

11. By letter dated 14 July 2023, the DED/M addressed the allegations of misconduct to the Applicant.

12. The Applicant responded on 11 August 2023, among others, indicating that one of the witnesses, Ms. FN (name anonymized), had not been interviewed.

13. Based on the Applicant’s complaint, Ms. FN was interviewed on 28 August 2023. The Applicant was provided with a copy of her interview transcript on 14 September 2023. He was requested to provide comments on it, which he did on 28 September 2023.

14. By letter dated 28 November 2023 (“sanction letter”), the DED/M informed the Applicant of the contested decision as per paragraph one above.

15. On 26 February 2024, the Applicant filed the present application.

16. On 27 March 2024, the Respondent filed his reply to the application on the merits.

17. In response to Order No. 60 (GVA/2024), the Applicant filed a rejoinder on 23 June 2024.

18. On 29 April 2025, the Tribunal held a Case Management Discussion.

19. By Order No. 66 (GVA/2025) of 17 June 2025, a hearing on the merits of the case was scheduled to take place from 23 to 25 June 2025. However, due to the unavailability of some witnesses, the hearing was rescheduled and took place from 23 to 24 June 2025 and from 2 to 3 July 2025.

20. At the hearing, four witnesses, including the Applicant and the complainant (“V01”), testified.

21. The parties filed their respective closing submissions on 8 August 2025.

Consideration

22. The issues for determination are:

- a. Whether allegations that the Applicant touched V01 on his sweaty neck, licked his fingers and said, “[Y]um.”, and that he told V01 that “[M]hmm,, sexy man mhmm, yum, I like them” were established by clear and convincing evidence;
- b. Whether the established facts qualify as misconduct;
- c. Whether the Applicant’s due process rights were observed throughout the entire process; and
- d. Whether the sanction was proportionate to the offence.

Standard of review in disciplinary cases.

23. Under art. 9.4 of the Tribunal's Statute, in reviewing disciplinary cases,

the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant's due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence.

24. The Statute generally reflects the jurisprudence of the United Nations Appeals Tribunal ("UNAT"), see *e.g.*, *AAC* 2023-UNAT-1370, para. 38; *Mizyed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024, para. 48.

25. In *Sanwidi* 2010-UNAT-084, para. 40, UNAT clarified that:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered and also examine whether the decision is absurd or perverse.

26. UNAT emphasised that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him", or otherwise "substitute its own decision for that of the Secretary-General" (*Sanwidi*, para. 40). In this regard, "the Tribunal is not conducting a "merit based review, but a judicial review", explaining that a "judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (*Sanwidi*, para. 42).

27. It is also established that in disciplinary cases, "when termination is a possible outcome", the evidentiary standard is that the Administration must establish the alleged misconduct by "clear and convincing evidence", which "means that the truth of the facts asserted is highly probable". UNAT clarified that clear and convincing evidence can either be "direct evidence of events" or may "be of

evidential inferences that can be properly drawn from other direct evidence” (*Negussie* 2020-UNAT-1033, para. 45).

28. Regarding the examination of evidence of sexual misconduct, the Dispute Tribunal held in *Hallal* UNDT/2011/046, para. 55, affirmed by the Appeals Tribunal in *Hallal* 2012-UNAT-207, that:

in sexual harassment cases, credible oral victim testimony alone may be fully sufficient to support a finding of serious misconduct, without further corroboration being required”, because “[i]t is not always the situation in sexual harassment cases that corroboration exists in the form of notebook entries, email communications, or other similar documentary evidence, and the absence of such documents should not automatically render a complaining victim’s version as being weak or meaningless.

29. In *Hallal*, the Dispute Tribunal also held that “[a]s is always the case, any witness testimony should be evaluated to determine whether it is believable and should be credited as establishing the true facts in a case”.

Whether allegations that the Applicant touched V01 on his sweaty neck, licked his fingers and said, “[Y]um.,” and that he told V01 that “[M]hmm,, sexy man mhmm, yum, I like them” were established by clear and convincing evidence.

Applicant’s submissions

30. The Applicant maintains that the facts were not established with clear and convincing evidence. He argues that the allegation is not corroborated by any independent evidence, and that the OIAI only relied on hearsay repetitions by other people who had only been informed by V01. He emphasises that no independent witness saw him engage in the alleged inappropriate behaviour with V01. Further, no inappropriate texts or WhatsApp messages were ever exchanged between him and V01, and no apologies were ever requested or provided.

Respondent’s submissions

31. The Respondent maintains that the facts were established by clear and convincing evidence. He refutes the assertion that there was no corroborating evidence. He argues that, contrary to the Applicant’s assertions, the contested decision is not premised on OIAI’s evidence but instead on witness evidence which

OIAI obtained during the investigation. While it is conceded that the evidence is partially hearsay, it is argued that such evidence is not inherently inadmissible. The Respondent invites the Tribunal to carefully assess the available evidence and accord it its due weight.

32. The Respondent also accepts that the impugned decision was mainly based on V01's evidence, and that V01's credibility and reliability were of critical importance. It is, however, argued that in assessing V01's evidence, and all other evidence, the DED/M carefully considered several factors, including whether V01's evidence was clear, detailed, and consistent; whether there was a likelihood that V01 fabricated the evidence, i.e., whether he is a credible witness, and whether V01's evidence was corroborated by other evidence. The Respondent maintains that V01's evidence was clear, detailed, and consistent, and that the DED/M rightly took into account the evidence of other witnesses to whom V01 reported this incident, in addition to documentary evidence in which he repeated the allegations.

Analysis

33. While both the Applicant and V01 agree that on the material day and time they interacted in V01's office, they give conflicting accounts of the nature of that interaction.

34. According to the Applicant, the background to their interaction was that V01's return to Denmark was imminent, but that he had consistently indicated that he did not want to go back there. As he got closer to going back, V01 mentioned that he was a little upset because his boss was not releasing him so that he could stay in Sudan longer. The Applicant advised him to speak to FN or MO (name anonymized) or to someone who could discuss his situation with his boss, to have his stay in Sudan extended. During the days close to 19 May 2022, V01 seemed to be very unhappy about anything related to Denmark.

35. In the first week of May 2022, MLE (name anonymized) spoke to the Applicant about the plan to appoint him as the Officer-in-Charge of Communication. The Applicant was advised to discuss the plan with V01, as V01 was on the ground.

36. At the oral hearing, the Applicant testified that on 19 May 2022, he walked into V01's office and said, "Hey, I hope you had a good trip. Sounds like, you know, there's a lot going on". V01 then mentioned leaving for Denmark, to which the Applicant commented that he (V01) was at least going to see his partner, and that he (the Applicant) hoped that would help. The Applicant then told V01 that he just wanted to talk to him (V01) about something a bit sensitive and asked him whether he was willing to listen. V01 indicated that he was ready to listen. The Applicant then informed him that he had been asked to consider being the OIC of Communication.

37. According to the Applicant, V01's reaction to that information was as if "he had told him that he was going to burn his children alive". The Applicant claimed that "V01 went off on him, wondering how that (i.e., the Applicant's being appointed OIC) could happen". V01 is said to have wondered why they were treating FN like that again, and said that the management of the Organization, and of the Office, was just awful to her (FN).

38. The Applicant apologized to V01 and told him that he had not intended to "activate him" like that. The Applicant explained to V01 that he had been advised to consult him and establish whether V01 could be a resource. V01 was, however, just mad. And at some point, he became so upset that the Applicant suggested they could perhaps have another moment to discuss the issue. The Applicant indicated to V01 that he considered him "a resource" before he left his office. The Applicant never saw V01 again until they talked in Jordan.

39. The Applicant maintains that V01 invented the allegation in issue with a view to blocking his appointment as the OIC, which would have made him V01's supervisor.

40. V01, on the other hand, testified that on 19 May 2022, as soon as he entered his office, but before he got to his desk, the Applicant entered the office. V01 suddenly felt a hand on his "Adam's apple". The hand traced back all the way to his ear, turning him around with it. The Applicant then put his hand, which had been on V01's neck, in front of his face. He stuck out his tongue, licked V01's sweat,

and said “yum”. The Applicant then allegedly stated that he likes sweaty men. The day was extremely hot with temperatures close to 45°C. And so V01 was very sweaty.

41. The Applicant denies the allegations and points out that this is a case of V01’s word against his. The Respondent, however, argues that there is sufficient evidence that corroborates V01’s account of events.

42. In determining which account of events to believe, the Tribunal considered that the Applicant admits that he went to V01’s office on 19 May 2022. The admission, therefore, places him on the scene of alleged events, thereby ruling out any possibility of mistaken identity.

43. The Applicant sought to impeach V01’s credibility by adducing evidence about instances when V01 walked naked in public spaces, which allegation was put to V01. V01, however, explained that he had not been completely naked on the alleged occasion, and that he only did not have a shirt on when he unknowingly exited a tiny shower to his room. Further, when he was informed about the issue, he apologized.

44. Testifying about that incident, Ms. MLE, stated that she got a report that on two occasions, V01 came from field visits, and he walked out of his bedroom while he was naked. Furthermore, he walked across the room, picked up a book from the shelf, and returned to his room, while a young woman was sitting on the couch. Additionally, on another occasion, his colleagues were upset that V01 was often seen walking around the guest house without his shirt on, which they deemed inappropriate.

45. Ms. MO’s testimony about the issue was that after V01 had left, there was mention of an occasion when he was on a field visit in a part of Darfur (in Sudan), and having come out of his room, opening his shirt or something to that effect, not knowing that it was a shared space. The issue was not brought to Ms. MO’s attention by any of V01’s colleagues who were in Darfur at the time.

46. What is clear is that at one time, V01 conducted himself in the alleged manner. However, his explanation and apology appear to have been accepted by those affected by his conduct. Therefore, the issue cannot be used to impeach his credibility. Moreover, the alleged conduct, even if it was proved, would have no bearing on the credibility of V01's report, since the two matters are different.

47. The Tribunal has also considered the suggestion that V01's report was made with ill motive since V01 did not want the Applicant to be appointed as OIC of Communication, a position he wanted for himself. This assertion is, however, not supported, and it remains pure speculation for the following reasons:

a. It is common cause that V01's assignment was due to come to an end. V01 was clear that he was not looking forward to staying in Sudan beyond his assigned period. V01 also testified that when the OIC was leaving, he thought that the Chief of Partnerships, who had held the position, would take it up. Furthermore, he only learned that the Applicant might become OIC after the incident, and that it was the Applicant who called him on the 22nd or 23rd of May and informed him that things were about to change, and that he should not tell his manager. V01's testimony is supported by that of Ms. MO, who stated that when V01 was completing his assignment, he was very clear that he did not want to extend his stay in Sudan and that he was heading back to Copenhagen. According to Ms. MO, she did not get any indication that V01 wished to stay on or get an extension.

b. The Tribunal notes Ms. MLE's testimony that neither the Applicant nor V01 were asked to take on the position of OIC of Communication. She further stated that there was no conversation or any hope that V01 could get a promotion, since there were no roles at the P-2 level that he could fit in. Ms. MLE, however, contradicts herself when she later testifies that it seemed like V01 had thought that he could have been doing more at a higher level in the Office. Additionally, the fact that V01 had not been considered, the inability to figure out a way to keep him in Sudan, and the fact that Copenhagen was not allowing him to stay longer upset him. She testified that V01 seemed quite distressed about having to return to his old position in

Copenhagen and his old team, whom he had spoken quite badly about, and really wanted to stay in Sudan. Furthermore, V01 became quite negative and somewhat toxic towards the end.

c. As already noted above, Ms. MLE's testimony is contradictory. Moreover, she does not state the basis for her assertion that it "seemed" like V01 had thought that he could have been doing more at a higher level in the Office, given her evidence that there was no conversation or any hope that V01 could get a promotion, since there were no roles at the P-2 level that he could fit in. Based on the foregoing considerations, the Tribunal rejects her evidence as being unsafe to base any findings on.

d. The Tribunal accepts V01's testimony as supported by that of Ms. MO that he did not want to extend his stay in Sudan. This renders the suggestion that V01's report was made with an ill motive unsupported. The assertion is, therefore, rejected.

48. The other relevant evidence which the Tribunal considered is that relating to the Applicant's conduct before and after the report was made. Both the Applicant and Ms. MLE testified that he is a "touchy" or expressive individual. Ms. MLE specifically mentioned that the Applicant is a very vivacious and expressive person, and that she observed him exhibiting these qualities in Geneva, which is a much more accepting environment.

49. In the Tribunal's view, the uncontroverted evidence about the Applicant's ordinary conduct perfectly aligns with the central aspect of the complaint, that he "touched [V01] on his sweaty neck". This position is galvanised by the Applicant's testimony regarding his reaction after he learnt about the report.

50. The Applicant testified in this regard that for three days, he:

... went over every interaction that I had with everyone I could think of in that office. And I said there are only three people in this office that could potentially have thought that I did something inappropriate... So I did something that I probably shouldn't have done. I called them into a meeting. And the three internationals were [F, L and R] [names anonymized] and [L] [name anonymized] came

to the meeting and I said, hey guys, I'm so glad two of you came here so that you can be witnesses of each other, right? But I just want to know if I've ever done anything that was inappropriate in relationship to you. And they said no, not at all. Why are you even asking us that? Well, because, you know, I think apparently I was inappropriate with someone and you are two of the three people that I've been sort of closest to. No, closest would be the wrong word **that I had like interactions that could have been foreseen as inappropriate.** Then I went to [L] first. I said [L] I remember one time we're all here working really late and I went behind you and I like **a massage your back.** I said, yes, we can. Come on, come on, come on. One more hour of work and we're going to get there, you know. So I don't know, maybe you consider that to be inappropriate. And I'm sorry if it was. And I said in [R] you and I were at a staff party with all internationals. And both of us were looking at a guy and you know we were both sort of commenting on how good looking he was and maybe you thought that that was **inappropriate.**

51. The testimony that the Applicant invited three staff members for a meeting, including V01, because he had had interactions with them “that could have been [perceived] as inappropriate” is crucial. The Applicant cites an incident with [L] in which he massaged his back to encourage him to put in an extra hour on a day they stayed long in the Office. He also recalled an incident when, at a staff party with all international staff members, he commented on the good looks of a guy. The admission that the Applicant massaged the back of a colleague in the office, an act he apparently still considers to be inoffensive, is revealing.

52. The Applicant’s conduct of arranging a meeting with V01 at that specific time, and the admission that V01 was among those he had interactions with that could have been viewed as inappropriate without mentioning the interaction he had had with V01, which fell in that category, lends credence to the complaint as laid. This is because the interaction that V01 reported is the only known instance of conduct involving the two of them.

53. The above considerations, coupled with evidence relating to V01’s demeanour after the interaction with the Applicant, provide the requisite corroboration to V01’s evidence. T.W. (name anonymized), to whom V01 described the Applicant’s conduct towards him, stated that V01 was visibly upset. Ms. MO testified that when she spoke to him, V01 appeared very disturbed and was

quite emotional in narrating the whole incident. Evidence about V01's demeanour is not hearsay. That evidence provides corroboration that something distressing happened to V01.

54. Without adducing supporting evidence, the Applicant questions V01's credibility. In addition to the foregoing considerations, the Tribunal has considered V01's clarity and consistency of complaint. In his interview with OIAI, V01 described the incident in clear and detailed terms, and at the oral hearing, he repeated his account in a clear and consistent manner. In the absence of evidence that could throw doubt on V01's evidence, the Tribunal finds that his evidence is credible.

55. All evidence and circumstances considered, the Tribunal finds that it is established by clear and convincing evidence that on 19 May 2022, the Applicant touched V01 on his neck, licked sweat off his fingers, and said, "Yum" and "[M]hmm, sexy man mhmm, yum, I like them."

Whether the established facts qualify as misconduct.

56. The Applicant contends that since the facts on which the sanction was based were not established by clear and convincing evidence, there is no evidence of misconduct.

57. On his part, the Respondent observes that the Applicant does not contest that if established, the facts would amount to misconduct. The Respondent, therefore, seeks to rely on the reasoning that forms part of the sanction letter.

58. The Tribunal's finding at paragraph 55 above (that the facts on which the decision was based were established by clear and convincing evidence) nullifies the Applicant's argument at paragraph 56 above.

59. As the Respondent observes, the Applicant does not contest that if established, the facts would amount to misconduct. Indeed, the act of touching another person on his neck, licking sweat off the fingers, and saying, "Yum" and "[M]hmm, sexy man mhmm, yum, I like them", constitutes sexual harassment in terms of section 7 of the UNICEF Policy on the Prohibition of Discrimination,

Harassment, Sexual Harassment and Abuse of Authority (POLICY/DHR/2020/002), which defines sexual harassment as follows:

[A]ny unwelcome and improper conduct of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.

60. That act violates staff regulation 1.2(a) which 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.

61. It violates staff rule 1.2 (f) which provides as follows:

Any 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.

62. It also violates section 2 of POLICY/DHR/2020/002, which provides as follows:

The prohibition to engage in discrimination, harassment, sexual harassment and abuse of authority (hereinafter collectively referred to as “prohibited conduct”) applies to all UNICEF personnel.

63. The Tribunal, therefore, finds that the established facts qualify as misconduct.

Whether the Applicant’s due process rights were observed during the entire process.

Applicant’s submissions

64. The Applicant submits that his due process rights were violated. He submits that the DED/M did not have authority from the UNICEF Executive Director to issue the contested decision. And, that the lack of a formal written delegation of authority to make decisions on disciplinary sanctions renders the contested decision

unlawful. The Applicant argues that there is no reference to UNICEF Executive Director anywhere in the sanction letter, and that even the Executive Director is not copied in the letter. Therefore, he argues that the Executive Director was not involved in the decision made by the DED/M.

65. The Applicant further argues that the presumption of innocence principle was violated. He asserts that the investigation report had already improperly concluded that he was guilty of sexual harassment even before he was interviewed, and before he received the charge letter from the Administration. OIAI did not establish the facts but unlawfully attempted to influence the decision-makers and was not acting as an operationally independent entity. He argues that the annex to the sanction letter focuses solely on painting V01 as credible to support the sanction without conducting any assessment of the Applicant's credibility whatsoever.

66. The Applicant also seeks to attack the approach used by the investigators as being "victim centric". He argues that investigators tend to "believe all victims." Thus, there is a reversal of the presumption of innocence, expecting accused staff members to produce evidence and forcing them to speculate about the motive behind the complaint. This, it is argued, is a substantial systemic violation of the due process rights.

Respondent's submissions

67. In response to the Applicant's contention on the issue of delegated authority, the Respondent asserts that the DED/M had the authority to take the contested decision based on para. 6.1 of CF/EXD/2012-005 on Disciplinary Process and Measures and section 11 of POLICY/DHR/2020/001 v. 7 May 2020 UNICEF Policy on the Disciplinary Process and Measures.

68. In response to the Applicant's allegation relating to the presumption of innocence, the Respondent submits that this allegation is without merit. OIAI's role is to investigate matters neutrally and fairly, and to report matters to DED/M, for possible disciplinary action. OIAI establishes facts during the investigation, but it is not the decision-maker. Instead, it is the decision-maker's role to decide if the facts were established by clear and convincing evidence. As part of that process,

the entire evidence is reviewed, not just OIAI's report. As a result, any complaints about OIAI's report or whether they may have misrepresented the evidence are not relevant.

69. Regarding the Applicant's averment that the approach used by the investigators is victim-centric, the Respondent submits that this is a misunderstanding of what a victim-centred approach means. Relying on para. 1 (b) of the Document on Advancing a Common Understanding of a Victim-centred Approach to Sexual Harassment Within the Organizations of the United Nations System, the Respondent argues that the victim-centred approach requires all United Nations entities to treat victims of sexual harassment "in a way that respects their rights, needs, wishes and dignity, protects them from retaliation, re-traumatization and discrimination, keeps them informed, and supported".

70. The Respondent further submits that in the Charge-Letter, the Applicant was informed of the allegations against him, his right to seek the assistance of counsel, and he was given the opportunity to respond to the allegations. The Applicant was provided with the OIAI investigation report and all relevant supporting material. At his request, Ms. FN was interviewed, and he was provided with a transcript of her interview. He provided his response, which was duly considered.

71. The Tribunal finds no merit in the Applicant's assertion that the DED/M lacked authority to issue the contested decision. The Respondent has demonstrated that the authority existed. He cited. CF/EXD/2012-005 on Disciplinary Process and Measures, issued on 30 November 2012, which provides as follows:

6.1 The Executive Director has the authority to impose disciplinary measures regarding UNICEF staff members in accordance with Chapter X of the UN Staff Rules. The Executive Director has delegated this authority to the Deputy Executive Director, Management. The Deputy Executive Director, Management has the authority to impose disciplinary measures on a staff member for misconduct.

72. The Respondent further cited the current version of UNICEF's disciplinary policy on the Disciplinary Process and Measures (POLICY/DHR/2020/001 v. 7 May 2020), section 11, which provides as follows: "The Executive Director has

delegated the authority to impose disciplinary measures to the Deputy Executive Director, Management”.

73. The above-cited instruments clearly demonstrate that the DED/M possessed the requisite authority to issue the contested decision.

74. The Tribunal finds no merit in the argument that the presumption of innocence principle was violated. As is argued by the Respondent, OIAI’s role is to investigate matters neutrally and fairly, and to report matters to DED/M for possible disciplinary action. While OIAI establishes facts during the investigation, it is not the decision-maker. The decision-maker is the one who determines whether the facts were established by clear and convincing evidence. As part of that process, all the evidence is reviewed, not just OIAI’s report. Therefore, complaints about OIAI’s report or whether they may have misrepresented the evidence are irrelevant.

75. There is, therefore, no basis for the assertion that the investigation report had already improperly concluded that the Applicant was guilty of sexual harassment even before he was interviewed, and before he received the charge letter from the Administration. There is no basis for the assertion that OIAI did not establish the facts, but that it unlawfully attempted to influence the decision-makers and was not acting as an operationally independent entity. The assertion that the annex to the sanction letter focuses solely on painting V01 as credible to support the sanction without conducting any assessment of the Applicant’s credibility is rejected for lack of merit.

76. The Respondent’s submission that the Applicant’s attack on the approach used by the investigators as being “victim centric” represents a misunderstanding of what a victim-centred approach means is to the point. Para. 1 (b) of the Document on Advancing a Common Understanding of a Victim-centred Approach to Sexual Harassment Within the Organizations of the United Nations System of May 2021 indicates that the victim-centred approach requires all United Nations entities to treat victims of sexual harassment “in a way that respects their rights, needs, wishes and dignity, protects them from retaliation, re-traumatization and discrimination, keeps them informed, and supported”.

77. The victim-centred approach does not require the OIAI to “believe all victims” and that they should reverse the presumption of innocence. The approach does not require accused staff members to present evidence or speculate about the motive behind the complaint.

78. The Applicant has neither proved that there is a policy that investigators must believe all victims, nor demonstrated that OIAI blindly believed the victim and reversed the presumption of innocence. He has not shown that he was required to adduce evidence and advance speculations about the motive behind the complaint.

79. That the Applicant was informed of the allegations against him, and that his right to seek the assistance of counsel was communicated to him, is not contested. That he was given the opportunity to respond to the allegations and that he was provided with the OIAI investigation report, and all relevant supporting material, is also not contested. At his request, Ms. FN was interviewed, and he was provided with a transcript of her interview, to which he responded. His response was duly considered.

80. Based on the foregoing considerations, the Tribunal finds that the Applicant’s due process rights were observed throughout the investigation process.

Whether the sanction was proportionate to the offence.

81. The Applicant contends that the sanction was wholly inappropriate and unlawful because V01’s allegations were not established to the standard of clear and convincing evidence. In fact, he claims that the allegations were not established at all.

82. The Respondent observes that the Applicant does not submit that the sanction, if based on established facts, would be disproportionate. The Respondent, therefore, relies on the reasoning that forms part of the sanction letter.

83. The assertion that the sanction was disproportionate and unlawful is solely premised on the argument that the allegations were not established at all.

84. Since the Tribunal has found that the facts on which the sanction was based were proved by clear and convincing evidence, the Applicant's argument must fail.

85. The Tribunal has established that all the relevant factors were considered in determining the sanction. In this regard, the decision-maker took into account the nature of the Applicant's actions, the past practice of UNICEF in matters of comparable misconduct, and whether any aggravating or mitigating factors applied to his case. The Tribunal finds that the sanction was proportionate to the offence.

Conclusion

86. In light of the foregoing, the Tribunal finds that the contested decision is lawful. The application is, therefore, dismissed for lack of merit.

(Signed)

Judge Margaret Tibulya

Dated this 1st day of October 2025

Entered in the Register on this 1st day of October 2025

(Signed)

Liliana López Bello, Registrar, Geneva