UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/015
Judgment No.: UNDT/2025/084
Date: 6 November 2025
Original: English

Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

SAITO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
George G. Irving

Counsel for Respondent:
Miryoung An, DAS/ALD/OHR/UN Secretariat
Halil Göksan, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 22 March 2024, the Applicant, a former Senior Investment Officer, Office of Investment Management ("OIM"), United Nations Joint Staff Pension Fund ("UNJSPF" or "the Pension Fund"), filed an application contesting the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity dated 13 February 2024. The Applicant contends that the contested decision was unlawful, retaliatory, and unsupported by sufficient evidence.

2. On 24 April 2024, the Respondent filed his reply contending that the disciplinary measure imposed on the Applicant was lawful.

3. For the reasons set out below, the application is granted in part.

Facts

4. In response to Order No. 069 (NY/2024) dated 20 June 2024, the parties submitted the following joint statement of agreed facts (emphasis in original and footnotes omitted):

> … **In 2009**, the Applicant joined the Organization. At the time of the contested decision, she was serving at the P-5 level as Senior Investment Officer, Asia Pacific with a fixed-term appointment in the [OIM] of the [UNJSPF].
>
> … **Effective 1 January 2018**, [SR, name redacted for privacy reasons] was appointed as Representative of the Secretary-General ["the former RSG'] for the investment of the UNJSPF assets.
>
> … **On 19 July 2019**, [EH, name redacted for privacy reasons], then Senior Investment Officer, filed with Office of Internal Oversight Services ["OIOS"] on behalf of the Applicant as well as on behalf of [TH, name redacted for privacy reasons], Senior Investment Officer, Private Equity; [TW, name redacted for privacy reasons], Senior Investment Officer, Fixed Income; [EC, name redacted for privacy reasons] , Investment Officer, Private Equity; [TB, name redacted for privacy reasons], then Senior Investment Officer; and [AR, name

> redacted for privacy reasons], then Deputy Director, Investment Management, a complaint against [SR], then RSG, and [HB, name redacted for privacy reasons], then OIM Director, (D-2). [EH] referred to it as "the first of many steps [OIM senior investment officers ("the Group"] will need to take to try to save [the] pension fund from a meglo-maniac. (sic)" In response, [AR] thanked "everyone for all the hard work", referring to the Group as "the Magnificent 7".
>
> … On 13 March 2020, [EH] on behalf of the Applicant and on behalf of [TS, name redacted for privacy reasons], Deputy Director, Equities; [WW, name redacted for privacy reasons], Chief Operating Officer; [AR, TH, the Applicant, and EC], filed a written complaint to the Secretary-General about "concerns regarding actions taken by [SR] over the past two years" and in the context of issues at that time in financial markets. [EH] referred to a "toxic culture… created by the OIM leadership," and the absence of professional collaboration and retaliation. This led to a second review by Internal Audit Division, OIOS ["IAD/OIOS"].
>
> … On 30 March 2020, [SR] resigned, and the Secretary-General appointed ["the new RSG", name redacted for privacy reasons] as the Acting RSG.
>
> … On 23 August 2023, the Applicant was requested to respond to formal allegations of misconduct.
>
> … On 30 October 2023, the Applicant responded with comments.
>
> … On 13 February 2024, the Applicant received the contested decision.

Procedural Background

5. On 17 July 2023, OIOS transmitted an investigation report concerning the Applicant to the Office of Human Resources ("OHR"). In the report, OIOS stated that the Investigations Division of OIOS identified emails indicating that the Applicant had engaged in possible misconduct.

6. Following a review of the investigation report, and by memorandum dated 23 August 2023 ("Allegations Memorandum"), OHR informed the Applicant that in accordance with sec. 8 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) and Chapter X of the Staff Rules, it had been decided to issue formal allegations of misconduct against her. The Applicant was further informed that,

should the allegations against her be established, her conduct would constitute a violation of the Staff Regulations and Rules.

7. On 30 October 2023, the Applicant submitted comments on the allegations of misconduct.

8. By letter dated 13 February 2024 ("the Sanction Letter"), the Applicant was informed by the Assistant Secretary-General for Human Resources ("the ASG/HR") that the Under-Secretary-General for Management Strategy, Policy and Compliance ("the USG/DMSPC") concluded that the allegations of misconduct had been established by clear and convincing evidence. Rather than setting out the findings of misconduct in the Sanction Letter, the ASG referred to contents of the Allegations Memorandum. From the Tribunal's review of the Sanction Letter, the misconduct findings can be summarized as follows:

a. The Applicant participated in discussions suggestive of collaborative efforts to disclose without authorisation sensitive information relating to the OIM to the media, blogs and/or Permanent Missions;

b. The Applicant had been in communication, via personal emails, with an auditor from IAD/OIOS who had been assigned to UNJSPF audits;

c. The Applicant made derogatory comments about and seeking to impede the career opportunities of an OIM staff member, AA; and

d. The Applicant participated in prohibited conduct towards an OIM manager, BB.

9. The Sanction Letter stated that through the Applicant's established conduct, she had violated staff regulations 1.2(a), 1.2(b), 1.2(e), 1.2(f), 1.2(g), 1.2(i), and 1.2(q); Staff Rules 1.2(c), 1.2(f), and 1.2(j); sections 4.1 and 5.1 of ST/SGB/2004/15 (Use of information and communication technology resources and data); and the OIM "Information sensitivity, Classification of Documents and Records Management

Policy". The Applicant was further informed of the decision by the USG/DMSPC that her conduct amounted to "serious misconduct" warranting the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.

10. On 22 March 2024, the Applicant filed the present application challenging the contested decision.

Consideration

Judicial review of the disciplinary measure of separation from service

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

12. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. (In line herewith, see the Appeals Tribunal in para. 51 of *Karkara* 2021-UNAT-1172, and similarly in, for instance, *Bamba* 2022-UNAT-1259, para. 37). The Appeals Tribunal has further explained that clear and convincing evidence "requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable" (see para. 30 of *Molari* 2011-UNAT-164). In this regard, "the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred" (see para. 32 of *Turkey* 2019-UNAT-955).

13. The Appeals Tribunal stated 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" (see *Sanwidi* 2010-UNAT-084, para. 40). In this regard, "the Dispute Tribunal is not conducting a 'merit-based review, but a judicial review'" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (see *Sanwidi*, para. 42).

14. In regard to the circumstances to consider when assessing the Administration's exercise of its discretion, the Appeals Tribunal stated "[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion" (see *Sanwidi*, para. 38).

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

15. The Tribunal will examine below in detail whether the underlying facts of each of the allegations set out in the Sanction Letter are established by clear and convincing evidence.

Allegation 1—Participating in collaborative efforts to disclose sensitive information

16. The Sanction Letter states:

> …
>
> In the period between July 2019 and October 2020
>
> a. [The Applicant], together with other staff members in [OIM] of [UNJSPF], and in opposition to the [former RSG] for the investment of the UNJSPF assets, [SR] and OIM senior managers, participated in discussions suggestive of collaborative efforts to disclose without authorization sensitive information relating to the OIM to the media, blogs and/or Permanent Missions;
>
> b. [The Applicant] volunteered and agreed to talk with a journalist with respect to sensitive, internal information relating to the OIM;

> c. In doing so, [the Applicant] used [her] personal e-mail address in violation of the OIM policy "Information sensitivity, classification of documents and records management policy", which [the Applicant] had undertaken to comply with;
>
> d. [The Applicant] engaged with other OIM staff members and/or external parties, including [MR, name redacted for privacy reasons], former UNJSPF staff member and [United Nations] Staff Union/New York UNJSPF Alternate/Staff Representative, in building opposition to the instructions and/or directives of the OIM leadership, including disclosing, without authorisation, sensitive information, or drafting possible questions to be asked of the OIM leadership in an attempt to further [the Applicant's] or [her] colleagues' position on official OIM matters; and
>
> e. In doing so, [the Applicant] supported and/or contributed to possible violation of the Staff Regulations and Rules and the Organization's policies arising from unauthorized disclosure of sensitive information concerning the OIM to external parties, including the media, a blog and/or Permanent Missions; and failed to report the possible misconduct of the staff members.
>
> …

17. The Tribunal notes the following evidence on file in relation to the Applicant's involvement in "discussions suggestive of collaborative efforts to disclose sensitive information to the media":

> a. By e-mail dated 6 December 2019, EH forwarded an email to the Applicant and others that he had sent to MR, in which he conveyed "supplemental information" for her "to forward to [a news media entity]". EH wrote:
>
> This is from the minutes of the meeting he [SR] approved: RSG sourced the deal through conversations with [AO, name redacted for privacy] which started in November 2018 during the G20 Buenos Aires Summit. At that point in time, there was no plan for [JK, name redacted for privacy], former president of [an international institution] to join [Global Infrastructure Partners "GIP"], but he has subsequently joined the firm in February of 2019. The RSG, would like to avoid anything that could potentially be perceived as a conflict of interest, given his former employment at the [international institution] […]. Therefore, the RSG recused himself from making a decision on [GIP] and handed over

the ["Private Markets Committee "PMC"] chair role to [HA, name redacted for privacy](Director of Investments) and left the meeting.

b. Six days later, on 12 December 2019, an article on GIP was posted on [a news media entity's website] authored by FF (name redacted for privacy). The [news media entity] article referred to EH.

c. By email dated 12 December 2019, EH shared with the Group, including the Applicant, an article on GIP posted on a news media entity's website authored by FF. In response, AR wrote: "Thanks for this. The article mentions in numerous places 'investing in more external managers' which sounds like outsourcing the fund". EH replied: "Yes—[MR] picked up on this too. Very useful for the staff union. Little by little things are coming out. The reporter is very interested in doing more profiles on us. […] She will work off the record as she did with me […]."

d. On 13 December 2019, the Applicant responded to the exchange of emails and wrote: "I'm happy to speak to her".

e. On 16 December 2019, EH wrote to FF: "One of my colleagues, [the Applicant] […] would like to talk to you about the new asset allocation. If you would like to speak with her I can have her call you directly". Later, in response to a time suggested by FF, on 18 December 2019, the Applicant responded to EH: "Friday would be good", "Or sometime next week if [FF] is available." "Or the first week of [January] when I'm taking a whole week off so I can talk to her from home without being heard by our colleagues".

18. The Tribunal finds that the above emails establish that the Applicant was copied in on an exchange of emails regarding EH's "off the record" conversations with a journalist, FF, about OIM's business. The Applicant by her email dated 18 December 2019 agreed to talk to FF about "new asset allocation" and was cognizant of being able to talk discreetly at home so she would not be overheard by colleagues.

19. In terms of the information allegedly leaked to the media, the Respondent asserts that the excerpt from the minutes of the 10 May 2019 meeting of the Private Markets Committees are confidential and not public and FF referred to the minutes in her article as "confidential minutes obtained by [a news media entity]". The Applicant, however, asserts that not only were the minutes not marked as confidential, but the meeting was also open to external parties, suggesting the document was far from private. In any case, the Tribunal finds no indication that the Applicant disclosed the minutes, even if they were found to be sensitive and confidential. In fact, the Applicant denies that she had any contact with FF or disclosed sensitive unauthorized information to FF. The Tribunal notes that the Respondent has not provided any evidence to suggest otherwise.

20. Based on the above, the Tribunal finds that it is established that the Applicant responded positively to EH's request for her to talk to a journalist about "new asset allocation" at OIM. The Tribunal also finds that the Respondent has not demonstrated that any sensitive information was disclosed as a result of the Applicant's conduct.

21. Regarding the Applicant's participation in discussions suggestive of collaborative efforts to disclose sensitive information to blogs, the Tribunal notes the following evidence on file:

a. On 3 July 2019, EH started an email exchange involving the Applicant and the rest of the Group and asked for comments about official OIM matters so that he "can put together a list of questions for [MR]."

b. On 21 July 2019, EH started an email exchange involving the Applicant, the rest of the Group and MR, in which he complained in detail to MR about the former RSG, noting "we have a very dangerous man in office as RSG", "[he] needs to leave as soon as possible before he causes irreparable damage to the fund by flooding it with unqualified people".

c. On 26 July 2019, AR started an email exchange involving the Applicant and the rest of the Group, by writing: "Lots of updates today—lengthy article". In response, EC attached a link to the blog […] saying that she had found it in one of EH's previous emails.

d. On 26 July 2019, the Applicant responded and emailed to the Group: "we should (or have someone) write in the blog in details" and "Do you know how to contribute to the blog? Do we use email? Maybe we can create a new account so no one can guess who the writer is (most of us use our names in our email address now). And a better writer among us should represent us?" MR replied: "Maybe a retiree can ask some of the questions. The blogger already identified concerns about the website and how much staff is/isn't involved in some decision making. I [MR] was happy to see reminder that this is a conservative fund, and the approach has served beneficiaries well for 70 years". EH suggested: "Lets work through the staff union on the blog issue. They might set up a meeting between us and the blogger" (sic).

22. The Tribunal finds that the above correspondence establishes that the Applicant was copied in on an exchange of emails regarding blogs and that she supported the Group's idea to contribute to blogs against the OIM leadership. For instance, she wrote to the Group: "we should (or have someone) write in the blog in details […] Do we use email? Maybe we can create a new account so no one can guess who the writer is […]. And a better writer among us should represent us?" Beyond her support and questions there is no evidence on file that the Applicant actually disclosed or facilitated the disclosure of sensitive information to blogs.

23. Based on the above, the Tribunal finds that it is established that the Applicant supported the Group's idea to contribute to blogs against the OIM leadership. However, the Tribunal also finds that the Respondent has not demonstrated that any sensitive information was disclosed as a result of the Applicant's conduct.

24. Regarding using her personal email address, the Applicant does not dispute that she used her personal email to send correspondence related to OIM matters. It is therefore established that the Applicant used her personal email for that purpose.

25. Regarding the Applicant's participation in the Group's efforts to engage Permanent Missions in pursuing their opposition to the OIM leadership, the Tribunal takes note of the following evidence on file:

a. By email dated 13 September 2019, EH informed the Group, including the Applicant, "I will continue working on the general writeup I sent around last week. I would like to send the next version to [MR] and eventually to [WW] and [TS]. If we can all agree on the same text it will be be ou[r] script for going to our [Permanent Missions of Member States] in a few weeks." I had lunch with [TS] today and he was on board with going to the [Permanent Mission of a Member State] with the script". EH also attached a "long list of harassment issues" against the former RSG and asked the recipients to add to the list any "harassment items". EH indicated that the list would form the basis of an "eventual Harassment filing with the [United Nations] Tribunal".

b. By email dated 21 October 2019, EH informed the Group, including the Applicant, that he and WW had received a response from the Permanent Mission of a Member State agreeing to "set up a meeting in the next few days". In his email, EH added that TB may be required to attend and referred to colleagues possibly visiting their respective Permanent Missions.

c. By email dated 12 November 2019, EH informed the Group, including the Applicant, that he had had a "long talk with [WS, name redacted for privacy]" who was reportedly shocked at "the staffing table" that EH had shared. WS said that "if the [Advisory Committee on Administrative and Budgetary Questions, "ACABQ"] had it, it would greatly affected (sic) their report. He said that the attached staff table should be given to our missions

ASAP". EH asked the recipients to "make arrangements to meet with your missions ASAP and get this report to them".

d. By email dated 20 November 2019, EH informed the Group, including the Applicant, that he and WW had been "warmly received" at the meeting and [the Permanent Mission of a Member State] staff were "supportive of [WW] staying in his post, and that he had shared "the staff table and the summary of 13 ways to improve OIM". EH added that he had been asked and would send a "copy of the OIOS filing" to [the Permanent Mission of a Member State] and would "mention our other documentation of (sic) they would like to see it". EH also wrote: "I think that now that we have been to [the Permanent Mission of a Member State] [it is good for [TH], [the Applicant] and [TW] to make appointments at [your] missions to help explain the situation at OIM (sic)".

e. On 16 February 2020, EH informed the Group, including the Applicant, that he "sent [to the Permanent Mission of a Member State] Ambassador's assistant yesterday information on the new equity benchmark, the $1bn in China in the last quarter, the EM debt and China equity losses this year, and the fact that we have four junk bonds—BB and lower we are investing in despite what [the former RSG] says".

26. The Tribunal finds that the above correspondence establishes that the Applicant was copied in on a series of emails from EH about his meeting with representatives of the Permanent Mission of a Member State. In particular, EH's 13 September 2019 email sharing "our [the Group's] script" to go to the Permanent Mission and EH's 21 October 2019 email reporting on the Permanent Mission's agreement to meet. The Tribunal notes that EH had attended a meeting at the Permanent Mission on 19 November 2019. The Respondent asserts that EH kept the Group updated about that meeting. On 20 November 2019, EH sent an email conveying the outcome of the meeting and further informed the Group members that he had shared "the staff table and the summary of 13 ways to improve OIM". The Respondent states that the staff

table was a sensitive document as it lists the names, recruitment dates, department, nationality, grade and title of numerous OIM staff and that the document also contained additional notes against some of the names, referring mostly to the duration of employment with OIM. On this basis, the Respondent asserts that the information was not public and was sensitive. The Respondent adds that EH's write-up was prepared as the Group's "script" for unauthorized meetings that the Group was planning and scheduling with other Permanent Missions. The Respondent asserts that if such information was already public and not sensitive, there would have been no reason for "working" on such materials and "agreeing" on the text. Finally, in relation to EH's 16 February 2020 email the Respondent states that the fact that the information EH provided to the Permanent Mission contradicts what the former RSG was publicly saying, shows that the information disclosed to the Permanent Mission was sensitive and non-public. The Applicant states that while she was aware of this chain of correspondence, she herself was never in contact with the Permanent Mission of any Member State.

27. The Tribunal finds no evidence on file to indicate that the Applicant had any role in the disclosure of the staffing table, script prepared by EH, or information provided by EH to the Permanent Mission of a Member State, even if the material would amount to "sensitive information". In this regard, the Applicant disputes that the staffing table was sensitive as it is usually submitted to the General Assembly, in consistency with the Pension Fund's policy of transparency in its management of the participants' money. The Applicant states that the staffing table was publicly shared.

28. The Tribunal notes that the Respondent repeatedly cites the conduct of other staff members rather than the conduct of the Applicant herself, such as the documents authored and circulated by EH. There is also no evidence that the Applicant disclosed or facilitated the disclosure of EH's documents to external parties. In this respect, the Tribunal notes that OIOS's investigation report emphasized that "[n]o evidence was found that [the Applicant] personally divulged confidential information". Finally, there

is no evidence proving that the Applicant planned, scheduled or attended any meetings with the Permanent Missions of Member States.

29. Based on the above, the Tribunal finds that it is established that the Applicant was copied in on emails discussing meetings with the Permanent Missions of Member States on the issue of OIM management. However, the Tribunal also finds that the Respondent has not demonstrated that any sensitive information was disclosed as a result of the Applicant's conduct. The Respondent has failed to present clear and convincing evidence to substantiate the claim.

30. Regarding the Applicant's engagement with other OIM staff members and/or external parties including MR, in building opposition to the instructions and directives of the OIM leadership, including disclosing, without authorization, sensitive information and drafting possible questions to be asked of the OIM leadership in an attempt to further her and her colleagues' position on official OIM matters, the Tribunal notes the following evidence on file:

a. On 21 July 2019, MR asked for input and guidance from the Applicant and the rest of the Group about other UNJSPF Committee members' comments related to official OIM matters.

b. By interoffice memorandum to MR dated 4 November 2019, the former RSG responded to MR's concerns—sent on behalf of the United Nations Participants' Representatives—regarding the UNJSPF's investments.

c. By email dated 10 November 2019, EH wrote to MR and the rest of the Group, including the Applicant, that he "can help write a response", made comments to help MR "formulate a response for [the Applicant's] input". MR replied: "We should bury him [the former RSG] in questions and create doubts about his proposed budget".

d. On 18 November 2019, EH shared with the Applicant, MR and TH his "list for items recommended for the upcoming GA resolution on the pension

fund to be proposed by the staff union/participants" and one of the items was that the Secretary-General "should immediately conduct a performance evaluation for [the former RSG]".

e. On 16 February 2020, EH wrote to the Applicant and copied the rest of the Group: "[the former RSG] arranged a call this morning with […] asking […] to investigate the same things he unsuccessfully asked OIOS to investigate about me and the real estate portfolio". EH added: "I am reporting this all [to] the appropriate parties. [The former RSG's] obsession with discrediting me will be his downfall. It is so hard to get work done under these circumstances". The Applicant responded: "I'm speechless. Every week, there is a new development that we cannot believe. This psycho needs to be removed a.s.a.p.; [the former RSG] cannot think of and do anything else night and day and on weekends".

f. On 10 March 2020, MR wrote to the Group, including the Applicant (except TB), "I heard [the former RSG] is planning to continue forcing his poor investments today. Yesterday I spoke with [the USG/DMSPC] told her he has to be stopped! Today when you get the directions let me know and I will immediately write to all concerned in [Secretary-General's] office and request that [the former RSG and HB] be prevented from making any further moves without the agreement of all the investments officers […]".

g. By an email dated 26 October 2020, EH asked for suggestions from the Applicant, AR and TW regarding MR's request for "questions to ask [the new RSG] through the [S]taff Union".

31. The Tribunal finds that the above correspondence establishes that the Applicant was copied in on a series of emails from EH and MR. MR was a Staff Union and Pension Board representative. The Applicant does not dispute that she spoke about OIM internal concerns to MR in her role as a staff representative.

32. The Tribunal finds no evidence to suggest that the Applicant disclosed or facilitated disclosure of any confidential material to external parties. The email exchanges cited by the Respondent consist of internal communications among the Group regarding concerns about the former RSG's leadership and investment decisions. For example, in a message dated 10 March 2020, MR wrote: "I heard [SR] is planning to continue forcing his poor investments today. Yesterday I spoke with [USG/DMSPC] told her he has to be stopped! Today when you get the directions let me know and I will immediately write to all concerned in SG's office and request that [SR and HB] be prevented from making any further moves without the agreement of all the investments officers." In the Tribunal's assessment, this communication illustrates the Group's ongoing efforts to escalate their concerns through legitimate internal mechanisms. It does not involve the disclosure of sensitive information. The Tribunal will again note that the Respondent continues to cite emails authored by other staff members as its body of evidence and fails to produce any relevant emails authored by the Applicant herself.

33. Based on the above, the Tribunal finds that it is established that the Applicant was copied in on a series of emails from EH and MR, and that she spoke about OIM internal concerns to MR in her role as a staff representative. The Tribunal also finds that the Respondent has not demonstrated that any sensitive information was disclosed as a result of the Applicant's conduct.

34. Consequently, based on the evidence on record, the Tribunal finds that the following has been established by the evidence:

a. The Applicant responded positively to EH's request for her to talk to a journalist about "new asset allocation" at OIM.

b. The Applicant supported the Group's idea to contribute to blogs against the OIM leadership.

c. The Applicant used her personal email for OIM related matters.

d. The Applicant was copied in on emails discussing meetings with Permanent Missions of Member States on the issue of OIM management.

e. The Applicant was copied in on a series of emails from EH and MR, and she spoke about OIM internal concerns to MR in her role as a staff representative.

35. In light of the foregoing, the Tribunal concludes that the Respondent has not established, by clear and convincing evidence, that any sensitive information was disclosed as a result of the Applicant's conduct.

Allegation 2—Engaging in efforts to influence IAD/OIOS audits into OIM

36. The Sanction Letter states:

> …
>
> In the period between July 2019 and June 2021:
>
> a. Together with other OIM staff members, and in opposition to [the former RSG] and OIM senior managers, [the Applicant] engaged in collaborative efforts to influence the [IAD/OIOS] audits into OIM through private communications and information sharing with [NY, name redacted for privacy reasons], Auditor, IAD/OIOS, who was one of the auditors responsible [for] conducting the said audits into OIM;
>
> b. [The Applicant] disseminated without authorization to other OIM staff members sensitive and/or confidential information that [she] received from NY as part of [the Applicant's] collaborative efforts to influence IAD/OIOS' audits into OIM as well as in opposition to [the former RSG] and OIM senior managers;
>
> c. In doing so, [the Applicant] supported and/or contributed to possible violation of the Staff Regulations and Rules and the Organization's policies arising from unauthorized disclosure of sensitive and/or confidential information concerning IAD/OIOS' audits into OIM to those who were part of the audits in question; and failed to report the possible misconduct of the staff members involved, despite having knowledge of how to report possible misconduct through OIOS hotline or OIM's Compliance Officer; and
>
> d. [The Applicant] further engaged with other OIM staff members in efforts to ensure that [NY's] unauthorized disclosure of sensitive

> and/or confidential information with [the Applicant] and others remained undisclosed.
>
> …

37. Regarding the Applicant's engagement with NY, Auditor, IAD/OIOS the Tribunal notes the following evidence on file:

> a. On 29 July 2019, the Applicant emailed NY stating that "the Indian P4 in OIOS and one of [the] TJOs whom [the former RSG] hired […] were spying on [the Group]" and that they must have mentioned the Group's complaint to [the former RSG] because he "dragged [TS] into a room asking him about [the Group's] OIOS filing". In her response, [NY] advised [the Applicant] to be "extremely careful", to which [the Applicant] responded that [the former RSG] "may install a bugging device in [TS's] and [EH's] offices".
>
> b. On 16 November 2019, EH emailed the Group, including the Applicant, alleging that the former RSG had extensively amended the minutes of the "July IC [Investment Committee] meeting".
>
> c. On 18 November 2019, the Applicant informed NY about this matter. The Applicant noted that the amendments were "made in order to make it look like supporting all [the former RSG's] claims" and added: "We [the Group] have more documents to show the lack of governance if [NY] need[s]."
>
> d. On 18 November 2019, NY emailed the Applicant that "OIOS was requested to conduct an audit on the consultant […] by [the former RSG]", that [the former RSG] "wants to use it against [WW]", and that [the former RSG] "has a clear intention not to renew [WW's] contract". NY then asked the Applicant "to convey the information to [WW] without mentioning the source, so that he can prepare for the audit". On the same day, the Applicant then emailed [EH]and conveyed the information and asked him to "warn [WW] without mentioning the information source".

e. On 11 December 2019, NY emailed the Applicant that the former RSG "is trying to finish [EH]", that [NY] and her colleagues "will be contacting [EH] for a meeting", and that [NY] and her colleagues "will be asking about gaps in performance […], the […] contract […] which was cancelled, […] the reason for not having used the benchmark […] etc". NY added that EH "needs to defend himself that there was no concealment in any sorts" and that he "may actually be able to turn things around as a false accusation". NY further asked the Applicant to "secretly convey this message to [EH] so that he can prepare". […] On the same day, the Applicant forwarded NY's email to EH and AR and wrote: "This is exactly what we were expecting but shows [the former RSG] is in haste and desperate and serious. [EH] be careful and [don't] let win win (*sic*). We are all on your side as you know. Let us know what we can do".

f. On 23 January 2020, the Applicant informed NY that she "reported the wrongdoing to [the OIOS] hotline and submitted documents as well as names of witnesses". On 24 January 2020, NY responded that "[MT, name redacted for privacy reasons, Compliance Officer, OIM] … shared similar concerns", that "she is very afraid of retaliations", and that "[she] has a lot to say about gifts and hospitality recently accepted by [the former RSG]".

g. On 22 February 2020, the Applicant wrote to EH that she "spoke to [NY] about the accusation against [TW]". The Applicant added that "[i]f anyone learns that [NY] leaks confidential info to people outside OIOS, she [NY] will be in a deep trouble and OIOS will completely lose its credibility and the image of independence" and told EH "let's never disclose it to anyone".

h. On 26 March 2020, NY emailed the Applicant that "OIOS will be meeting with [the Secretary-General's] office today to discuss the report that [they] are compiling separately from the audit", that "[they] will do [their] best to convey the situation", and that "[they] may need urgent assistance from [Senior Investment Officers] this evening or tomorrow". On the same day, the

Applicant forwarded NY's email to EH, TS, and AR, and wrote: "See [NY's] comment. […] We should all stand by to support them if needed!"

i. On 29 March 2020, the former RSG internally announced his resignation to all OIM staff. The Applicant then forwarded this email to [NY] asking: "Do you know what happened?", "[w]as it triggered by [the Secretary-General]?" NY responded: "The news came to us on Saturday […] [it's] the victory of those who sounded alarms despite potential retribution. I'm very happy for you all".

j. On 1 June 2020, the Applicant wrote to NY: "Now that you guys have finally submitted your report [Governance Audit], are you able to chat with us (different topics) sometime soon?" On 2 June 2020, NY responded that "there was an allegation regarding the OIM staff leaking the information to OIOS", that "[the Applicant and NY] should keep distance to be on the safe side […]."

38. The Tribunal finds that the above correspondence establishes that the Applicant provided information about OIM operations by sharing facts, updates and personal concerns relevant to the audit to NY. For example, the Applicant's 29 July 2019 email informing NY of possible monitoring on the Group's activities by the former RSG and her 23 January 2020 email in which she informs NY that she made a report to the OIOS hotline. The Applicant's 26 March 2020 email demonstrated her will to support OIOS if they needed urgent assistance following the meeting with the Secretary-General's office. The Applicant does not dispute that she spoke about OIM internal concerns to NY in her role as auditor, IAD/OIOS. The evidence also establishes that NY shared confidential information about the audit with the Applicant. In her 22 February 2020 email, the Applicant spoke to NY about the accusation against TW. The Applicant added that "[i]f anyone learns that [NY] leaks confidential info to people outside OIOS, she [NY] will be in a deep trouble". On multiple occasions, the Applicant relayed NY's correspondence to other OIM staff members such as EH and WW knowing that they

were subject to the IAD/OIOS audits. It is undisputed that the Applicant did not report the possible misconduct of other staff members.

39. Consequently, based on the evidence on record, the Tribunal finds that the following has been established:

a. The Applicant provided information about OIM operations to NY.

b. NY shared confidential information about the audit with the Applicant.

c. The Applicant relayed NY's correspondence to other OIM staff members such as EH and WW knowing that they were subject to the IAD/OIOS audits.

d. The Applicant did not report the possible misconduct of other staff members.

40. For the foregoing reasons, the Tribunal finds that the Respondent has not proven, by clear and convincing evidence, that the Applicant engaged in efforts to unduly influence IAD/OIOS audits into OIM.

Allegation 3—Engaging in a course of behaviour targeting AA and BB

41. The Sanction Letter states:

> …
>
> In the period between October 2019 and September 2021,
>
> a. [The Applicant], together with other senior managers at the OIM, including [EH], then Senior Investment Officer, OIM, and [AR], then Deputy Director, Investment Management, OIM, engaged in a course of behaviour targeting AA, an Investment Officer in OIM who was previously Special Assistant to [the former RSG], that included:
>
> b. Collecting and sharing information or comments suggestive of collaborative efforts or contemplations to undermine AA's professional standing, influence the new RSG, against AA, instil animosity/hostility against AA, and impede AA's professional circumstances, including her

> return to her P-3 position at the OIM following the non-renewal of her temporary assignment.
>
> In the period between July 2019 and April 2020, the Applicant, together with other senior managers at the OIM, including [TW] then Senior Investment Officer, Fixed Income, OIM, and [MR], engaged in a course of behaviour targeting BB, then Deputy Director, Fixed Income, OIM that included:
>
> a. Collecting and sharing information or comments suggestive of collaborative efforts or contemplations to undermine BB's professional standing, influence the new RSG, against BB, instil animosity/hostility against BB, and impede BB's professional circumstances, including her removal from her post at the OIM.
>
> …

42. The Tribunal finds that the record establishes that there is clear and convincing evidence that the Applicant did engage in a course of behaviour targeting AA and BB.

43. First, the record demonstrates that the Applicant targeted AA by attempting to discredit AA and prevent her from being appointed to further positions. For example, on 14 April 2020, the Applicant asked EH to "tell [the new acting RSG] as much as [he] can" to discredit AA and she asked him what she could do to "prevent [AA] from coming back to public equities". The Applicant expressed her satisfaction that AA would not be able to return to her P-3 level post. She discussed with other senior managers in the Group how to prevent AA from getting a P-4 level post, worrying about the possibility that AA's candidacy would be favoured based on her "gender". The Applicant described AA as "most definitely part of the problem [at the OIM]" and "lying" on her qualifications. She identified AA as one of the Group's next targets to "[get] rid of" following the former RSG's resignation.

44. Second, the Applicant made disparaging comments speculating about AA's intimate life and appearance. For example, on 17 October 2019, TW conveyed to the Applicant and the rest of the Group that he had met with the former RSG and thought that AA might be placed on a P-5 level position. EH replied: "There is really no other explanation. The devotion to AA is unnatural". The Applicant also replied: "It's too gross to think about it but their relationship appears [too] intimate and bizarre…" On

11 January 2020, the Applicant wrote to AR and EH about AA looking "sullen these days". EH replied "I passed by her yesterday and she looked terrible. She is definitely not her usual self". The Applicant replied, "Poor woman…she already looks terrible enough… Wasted money on cosmetic surgeries".

45. Third, the Applicant targeted BB by lobbing for BB's removal from OIM. For example, on 30 March 2020, MR asked the Applicant and the rest of the Group to send her "[their] concerns regarding [HB] and [BB] before her 'offline' meeting with [the new SRG]". In her response to MR, the Applicant said the following about BB: "[BB] is a mini [former RSG]. Has no respect for anyone, only trying to please [the former RSG] and [HB]". The Applicant continued to accuse BB of "telling huge obvious lies regarding the fixed income portfolio" and concluded that BB "should not be Director for anything". On 11 May 2020, the Applicant sent to MR four screenshots of BB's LinkedIn profile, to which MR responded: "Tks. Let's talk afterwards". In a WhatsApp exchange dated 16 December 2020 between the Applicant and TW, upon TW's complaints about BB, the Applicant responded: "[BB] is our last target" before adding that it "may take some time but we will continue to work hard". In a WhatsApp exchange dated 26 January 2021 between the Applicant and TW, TW complained about BB and wrote: "She needs to go", "Now". In a WhatsApp exchange dated 19 February 2021 between the Applicant and TW, the Applicant stated that she "didn't expect [the new SRG] to say he would get rid of [BB] immediately", to which TW responded, "I am very sad that for now nothing can be done but maybe one day".

46. Consequently, based on the evidence on record, the Tribunal finds that the following has been established by the evidence:

a. The Applicant targeted AA by attempting to discredit AA and prevent her from being appointed to further positions.

b. The Applicant made disparaging comments speculating about AA's intimate life and appearance.

c. The Applicant targeted BB by lobbing for BB's removal from OIM.

Whether the established facts legally amounted to misconduct

47. The Tribunal notes that in the Sanction Letter, the USG/DMSPC found that the Applicant's action amounted "serious misconduct" in violation of staff regulations 1.2(a), 1.2(b), 1.2(e), 1.2(f), 1.2(g), 1.2(i), and 1.2(q); staff rules 1.2(c), 1.2(f), and 1.2(j); sections 4.1 and 5.1 of ST/SGB/2004/15; and OIM "Information sensitivity, Classification of Documents and Records Management Policy".

Allegation 1—Participating in collaborative efforts to disclose sensitive information

48. In relation to the first charge, the Tribunal finds that it is established with clear and convincing evidence that:

a. The Applicant responded positively to EH's request for her to talk to a journalist about "new asset allocation" at OIM.

b. The Applicant supported the Group's idea to contribute to blogs against the OIM leadership.

c. The Applicant used her personal email for OIM related matters.

d. The Applicant was copied in on emails discussing meetings with Permanent Missions of Member States on the issue of OIM management.

e. The Applicant was copied in on a series of emails from EH and MR, and that she spoke about OIM internal concerns to MR in her role as a staff representative

49. The Applicant states that the evidence presented by the Respondent does not support the misconduct findings made against her. In particular, she submits that:

a. The Applicant had served since 2009 as a Senior Investment Officer with OIM at the P-5 level, and at the time of the contested decision was serving

on a continuing appointment. The Pension Fund amounting to some USD80 billion, is administrated by a separate Pension Fund Secretariat which reports to the General Assembly, but the OIM, which is responsible for making investment decisions, is part of the United Nations Secretariat and its head is appointed by the Secretary-General.

b. She was part of a high-performing investment team until a leadership change in 2018 led to questionable investment practices and financial losses. The former RSG had been externally recruited to the position in 2018. The Applicant states that after "consistently achieving returns on Pension Fund investments in excess of industry benchmarks over many years, controversial and reckless policies implemented by the former SRG resulted in a 20% loss of the value of the Fund by early 2020".

c. In 2019, she, together with a number of the OIM senior investment officers, voiced their concerns, first to OIOS and later directly to the Secretary-General. The OIOS complaint did not lead to any further action. However, after the Group's report to the Secretary-General, an OIOS audit was launched and subsequently the former RSG resigned. The Applicant states that a number of the issues raised in these complaints were recognized as valid in the later OIOS Governance Report dated 21 July 2020.

d. Interventions by the Staff Union, the Group's own joint letter to the Secretary-General and OIOS audit investigations precipitated the former RSG's resignation. This "courageous action to protect the Pension Fund is at the center of this case". Despite internal audits confirming a toxic work environment and recognizing her whistleblower status, the Applicant was later wrongfully accused of misconduct.

e. In formulating the charges, the Respondent has engaged in tautology. Information is deemed sensitive "simply because the Respondent considers it so", thus concluding, for example, that "minutes of Private Market Committee

["PMC"] meetings are confidential, not public". The minutes in question are not part of the record and there is no proof they are regarded as confidential or that the Applicant had shared them with anyone. For the Tribunal's information and to demonstrate the prevarication behind the Respondent's arguments on this issue, the Applicant discloses a copy of the PMC Minutes, submitting that not only is the document not marked as confidential, but the meeting was open to external parties, suggesting it is far from private. The same is true of staffing tables (which are submitted to the General Assembly). All this is consistent with the Pension Fund's policy of transparency in its management of the participants' money. The Respondent's comment that such information is sensitive is not explained or demonstrated.

f. Moreover, although OIOS found no direct evidence of any leaks of confidential information by the Applicant, a case was manufactured from retrieving other people's private communications and holding her responsible for their thoughts and words, i.e., "group activities suggestive of ... pursuing grievances against [the former RSG]". The Respondent admits the case "is not about [the Applicant's] independent stand-alone conduct". Implicit in this approach, which is unprecedented as a case of misconduct, is the Respondent's obvious hostility towards whistleblowers and a desire to punish a group of people for engaging in it, which the Respondent refers to as "plotting" and "covert operations".

g. It is not clear who first contacted a news media entity. It may well have been the former RSG himself. It is clear that contacts with the media are not uncommon for OIM leadership. There is no evidence of any OIM staff member initiating contact with FF or giving her internal documentation. The Respondent is essentially blaming the Applicant for the alleged actions of MR or some other unidentified party. EH responded to a telephone inquiry based on information already in the possession of FF. His email to MR references a public [news media entity] article.

h. The Applicant's actions have been categorized in the Sanction Letter as "[participating] in discussions suggestive of collaborative efforts to disclose without authorization sensitive information relating to the OIM..." and "[engaging] with other OIM staff members ... in building opposition to the instructions and/or directives of the OIM leadership..." This seriously misstates the purpose of these communications. What is also striking about these formulations is that rather than citing actual conduct by the Applicant, the charges cite responsibility for the opinions, words and even the thoughts of others simply by virtue of being copied on an email, whether or not the conduct ever took place. An additional interesting question is why some, but not all, of the OIM staff who were part of the Group and engaged in the same discussions were singled out for disciplinary action.

i. The administrative issuance cited in the Sanction Letter, namely ST/SGB/2007/6 (Information sensitivity, classification and handling) provides that sensitive information is considered either "confidential" or "strictly confidential" when it could reasonably be expected to cause damage to the work of the United Nations and specifies it should be marked as such. This has never been demonstrated for any of the Applicant's communications. ST/SGB/2004/15 (Use of information and communication technology resources and data) defines "sensitive data" as data that is classified or the use and distribution of which is otherwise restricted pursuant to applicable administrative issuances. The Respondent has not shown how any of the views expressed by the Applicant involved classified or restricted information. In particular, the Respondent has not demonstrated how investment policy issues, which are publicly and transparently disseminated by the Pension Fund on its website could be considered sensitive or internal information or how discussing them could become the subject of misconduct.

50. In relation to the misconduct findings, the Respondent submits that:

a. The Applicant participated, via use of personal email address, in discussions of the Group's collaborative efforts to supply sensitive information (i.e., internal, non-public information) to the media, blogs, and Permanent Missions to the United Nations, without authorization. The record contains email evidence including the Applicant's own emails capturing the above conduct, which is referred to in detail in the contested decision. The same record also captures that, knowing about EH's off-the-record conversations with a journalist, FF, about the OIM's business, the Applicant volunteered and agreed to talk with FF, with respect to sensitive, internal information relating to the OIM.

b. The Applicant also actively supported the Group's idea to mobilize blogs against the OIM leadership. For instance, she wrote to the Group: "we should (or have someone) write in the blog in details […] Do we use email? Maybe we can create a new account so no one can guess who the writer is […]. And a better writer among us should represent us?" (Applicant's email dated 26 July 2019).

c. In addition, the Applicant was part of the Group's efforts to engage Permanent Missions in pursuing their opposition against the OIM leadership. With respect to the Permanent Mission of a Member State, she, as part of the Group, received (1) EH's September 2019 email sharing "our script" to go to the Permanent Mission of a Member State; (2) EH's October 2019 email reporting on the Permanent Mission of a Member State's agreement to meet; and (3) EH's November 2019 email conveying the outcome of the meeting with the Permanent Mission of a Member State.

d. Throughout the relevant period, the Applicant admittedly knew but did not report others' violation of the prohibition against seeking to influence any Member State or communicating to any external person non-public information

known to staff members by reason of their official position. Instead, she supported and contributed to it. In this regard, the Applicant's claims that she herself did not personally act on the Group's plans, or that there is no evidence of her own personal disclosure of confidential OIM information outside OIM is not responsive to the factual issues at hand, namely, the Applicant's conscious support and willing participation in the Group's discussions about unlawful activities.

e. The record also disproves the Applicant's argument that she acted on her fiduciary duty. Initially, the Group's goals were to remove the former RSG and overturn his directives. The Applicant wrote to the Group that "[t]his psycho needs to be removed a.s.a.p.; [the former RSG] cannot think of and do anything else night and day and on weekends". After the former RSG's resignation, the Group refocused its efforts to target those who had cooperated with him, including AA and BB, by discussing ways to seek their removal. The Applicant wrote to the Group: "Wow can you believe we got rid of majority of problematic people in 15 months? One more to go, ideally two including [AA]", whom she disliked to the extent that she did not "even want to see". This demonstrates the personal and vindictive nature of the Applicant's engagement with the Group.

f. The Applicant also disclosed, together with the Group members, sensitive information, without authorisation, to MR and drafted possible questions to be asked of the OIM leadership. The contested decision sets out the email evidence capturing such conduct. For instance, the Applicant was part of the email exchanges where the Group offered MR assistance in preparing her response to the former RSG's memorandum of 4 November 2019, which aimed to "bury [the former RSG] in questions and create doubts about his proposed budget". The Group, represented by EH, AR, TW and the Applicant, accepted MR's request for "questions to ask [the new RSG] through the staff union".

51. In the Tribunal's assessment of the evidence, the established facts do not amount to misconduct for the following reasons.

52. First, the Applicant's involvement role in the discussions was limited. She did not participate in all the activities alleged by the Respondent and primarily contributed her own opinions and suggestions within the Group. There is no indication from the evidence provided by the Respondent that she took any steps to disclose sensitive information to external parties. She participated in group dialogue and offered personal opinions but did not engage in any broader activities beyond that. The evidence on file primarily consists of email exchanges in which the Applicant and her colleagues expressed concerns about the former RSG's leadership and investment decisions. While the evidence indicates that the Applicant responded positively to EH's request for her to talk to a journalist about "new asset allocation" at OIM and that she supported the Group's idea to contribute to blogs against the OIM leadership, her signals of approval were not followed by actions. Her positive responses could have been as a result of a number of legitimate factors, such as she believed that the suggested ideas were supportive of her endeavor to protect the Pension Fund from potential mismanagement, and she realized at a later stage that they were not viable or permissible under the circumstances. Her affirming responses in relation to the media and blogs could also have been lapses in judgment, which by themselves are not automatically indicative of misconduct. Despite what was discussed at the planning stages within the Group, what remains important is that there is no evidence to indicate that the Applicant did proceed to speak to the media or that she contributed to the disclosure of sensitive information to blogs.

53. Second, the evidence only affirms the Applicant's own position, namely that she and her colleagues were engaged in a protected activity consisting of legitimate discussions about potential misconduct by the former RSG and governance concerns within OIM. The emails reflect internal group discussions regarding suspected misconduct and mismanagement within the administration, which were formally reported to the appropriate investigative body. The discussions were part of a collective

effort to address these issues. Much of the evidence presented by the Respondent falls within the scope of protected activity and does not amount to misconduct. The evidence reflects good faith efforts by the Applicant and her peers, while admittedly not always perfect in form or style, to address serious concerns and protect the Pension Fund from potential mismanagement.

54. In this regard, the Tribunal notes that the Organization actively encourages staff members, of all levels, to speak up when they consider a situation to be misaligned with the United Nations values and legal framework. Under staff rule 1.2(c), staff members have "a duty to report any breach of the Organization's regulations and rules to the officials who are responsible for taking appropriate action". Section 3.5(g) of ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) further states that it is the obligation of staff members to "[r]eport possible prohibited conduct and cooperate with investigations, audits and reviews".

55. The Tribunal considers that it is unreasonable for the Administration to then attempt to claim, without sufficient evidence, that a staff member's engagement with other staff members on the issue of possible prohibited misconduct is unlawful. This is especially true in the case of reporting against a senior manager or senior official such as the former RSG, where there are inherent unequal power dynamics at play, and subordinate staff may need to seek support and cooperation from other staff to be able to effectively address potential misconduct (see *Hamam* UNDT/2024/109, para. 63).

56. Third, the Tribunal notes that subsequent to the Group's complaints the former RSG resigned from his role and the Applicant and her colleagues were formally thanked by the United Nations administration for their efforts. On 12 May 2021, the USG/DMSPC sent a letter acknowledging their concerns and confirming that the matter had been addressed through the resignation of the former RSG and the departure of his principal director. This recognition underscores the legitimacy of the Applicant's actions and further undermines the Respondent's claim of misconduct in respect of this

allegation. The Tribunal will note that the Applicant's actions in respect of her complaint against the former RSG were protected under the UN's whistleblower policy (ST/SGB/2017/2/Rev.1). In its letter to the Applicant dated 24 September 2019, the Ethics Office determined that the Applicant engaged in a protected activity pursuant to ST/SGB/2017/2/Rev.1. The Respondent's attempt to characterize the Applicant's communications in relation to her complaint against the former RSG as misconduct is therefore improper. The Tribunal agrees with the Respondent that the provisions of ST/SGB/2017/2/Rev.1 do not prejudice the legitimate application of regulations, rules and administrative procedures nor provide blanket immunity to the Applicant nor shield her from accountability for misconduct. However, the Respondent has a burden to provide evidence of the alleged misconduct which he has failed to do in this case.

57. Fourth, the Applicant's use of her personal email address during the group discussions did not breach the OIM policy. The Respondent has not shown that the Applicant sent any sensitive, confidential, or classified information or documents via her personal email address to external parties. The Tribunal finds the Applicant's concern to not use her office email to avoid "retaliation and being monitored by [the former RSG]" to be valid. The Tribunal will note that it is not stated in the sanction letter what specific provision of the policy the Applicant actually violated by using her personal email address. Accordingly, the Tribunal finds that the Applicant committed no misconduct in this regard.

58. As a final note, the Tribunal observes that the charge against the Applicant, that she "participated in discussions suggestive of collaborative efforts to disclose without authorization sensitive information relating to the OIM to the media, blogs and/or Permanent Missions", is vague and unclear. Findings of this nature must be supported by clear and convincing evidence. The Respondent's broad, imprecise phrasing effectively expands the range of conduct that could be labeled as misconduct. Either the Applicant disclosed confidential or sensitive information to external parties, or she did not; the present allegation is therefore ambiguous.

59. The Respondent concedes that it has been difficult for him to find relevant evidence because "due to secrecy and the Group's avoidance of official e-mails, not all their communications/activities with external entities are on file". Nonetheless, absent clear and sufficient proof, it is legally impermissible to advance an allegation of serious misconduct. The Respondent asserts that the evidence on file does establish "repeated attempts and plotting of disclosure [for] which the Applicant knew that there was no authorization" and "this is sufficient to break the Organization's trust in her". The Tribunal rejects that construction as an acceptable standard for establishing serious misconduct. The Respondent could have easily decided he would build more trust in the Applicant, given her commended role in supporting the Organization in investigating mismanagement by the former RSG.

60. In light of the foregoing, the Tribunal finds that it has not been established by clear and convincing evidence that the Applicant committed misconduct in respect of allegation 1.

Allegation 2—Engaging in efforts to influence IAD/OIOS audits into OIM

61. In relation to the second allegation, the Tribunal finds that it is established that:

a. The Applicant provided information about IOM operations to NY.

b. NY shared confidential information about the audit with the Applicant.

c. The Applicant relayed NY's correspondence to other OIM staff members such as EH and WW knowing that they were subject to the IAD/OIOS audits.

d. The Applicant did not report the possible misconduct of other staff members.

62. The Applicant states that the evidence presented by the Respondent does not support the findings made against her. In particular, she submits that:

a. This charge concerns the conduct of the IAD/OIOS audits of OIM. It is telling that the reports of the two most critical audits have been repressed by the Respondent, suggesting it is embarrassment that has motivated this entire scapegoating process. Special attention needs to be paid to the Respondent's egregious refusal to comply with the Order of the Tribunal on disclosure of documentation. What we know from the circumstances surrounding these reports is that the former RSG, who reportedly knew about the complaint to OIOS, made claims of under-performance against several of the Applicant's colleagues, resulting in Special Report 1. It may be inferred from this that the toxic atmosphere that permeated OIM after the complaint to OIOS was filed warranted the Applicant's need to protect herself and others from retaliation.

b. The OIOS/IAD inquiry into the complaint made to the Secretary-General by the Applicant and her colleagues resulted in Special Report 2 which was followed immediately by the former RSG's resignation. It may be inferred from this that the Applicant's "participation" was a legitimate exercise of her duty to report possible misconduct and the substance of the complaint was sustained by OIOS.

c. The allegations suggesting that the Applicant tried to influence the audits and engaged in unauthorized disclosure are ill-founded. While the Respondent argues that the lack of any impact from the Applicant's exchanges with the OIOS auditor is irrelevant, he continues to insist she tried to influence the outcome, although it is not defined how. Staff are obliged to cooperate with audits. Providing information is intrinsic to the process. The Respondent's conclusions appear disconnected from the actual work that auditors do in verifying the facts needed to do their analysis. This was the context for NY's emails of 29 July 2019 and 11 December 2019. NY, who OIOS had designated at its focal point for OIM, was obliged to prevent harassment and retaliation if she uncovered it. In this respect while under extreme time pressure, she attempted to facilitate the gathering of facts so that she had the material needed

to make a fair assessment. In doing so she and her fellow auditors concluded some staff were being targeted with false information. The refusal of the Respondent to share the outcome of this process is indicative of a lack of ethical concern. In any case, NY's judgment call was not the responsibility of the Applicant.

d. NY explained the reasons for her actions in her additional comments on her interview of 10 August 2022 in which she stated, "I genuinely wanted to prevent retaliation, marginalization, and major disruption to the Pension Fund, as sound investment management was the key to the survival of the Fund .... At that time, I considered the investment officers as whistleblowers. At least in my view, they seriously worried about the future of the Fund". By extracting excerpts of communications, with no context, the Respondent has tried to suggest a conspiracy based presumably on the similar nationality of the Applicant and NY. This is not only false, but it is also discriminatory.

e. NY's communication was consistent with sec. 3.5 (f) of ST/SGB/2019/8, which requires staff members to: "Take action if they witness prohibited conduct". The Respondent essentially argues that when blatant harassment is witnessed, one should look the other way. The terms "sensitive" and "confidential" in respect of the audits are not defined or identified and, in any case, all information conveyed was purely internal. There is no indication that any of this influenced the audits which were subject to rigorous peer review and accepted by the Secretary-General.

f. The egregious refusal to comply with the Tribunal's Order for Production of Documentation related to Special Reviews 1 and 2 is all the more reprehensible because of the false reasoning given. The reports, which are within the purview of the Secretary-General as Chief Administrative Officer (who both ordered them and is in possession of them), has nothing to do with the operational independence of OIOS.

g. The Respondent has engaged in a clear abuse of process by creating a bogus case of privilege by enlisting OIOS to claim these were internal working documents that OIOS cannot be forced to disclose. This is clearly a false argument since OIOS was not being asked to disclose anything. These reports were originally requested by and are now in the possession of the Respondent, i.e., the Executive Office of the Secretary-General and the USG/DMSPC. There was no rationale offered for refusing to provide them at least on an *ex parte* basis to the Tribunal. The Tribunal may consequently wish to draw adverse inferences from this decision to cover up critical evidence exonerating the actions of the Applicant and her colleagues and to consider an award of costs for abuse of process.

63. In relation to these allegations, the Respondent submits that:

a. The Applicant engaged in efforts to influence IAD/OIOS audits into the OIM through private communications and information sharing with NY, then an OIOS Auditor. The Applicant received from NY sensitive information about OIOS audits and shared it with EH and WW, knowing that they were subject to the audits.

b. Contrary to the Applicant's contention, whether her conduct impacted the outcome of OIOS reviews/audits is of no relevance. No staff regulation or rule she was found to have violated requires such impact as a factual element of a violation. It is obvious from NY's messages that her disclosure was irregular and should be kept secret. The Applicant knew the impropriety and unlawfulness of such conduct but assisted and concealed it. Whether NY or the Applicant managed to affect the audit to the Group's benefit does not change the prohibited nature of the Applicant's conduct.

c. The Applicant's contention that her "communications should […] be seen in light of" bystander action under section 3.5(f) of ST/SGB/2019/8 should fail. Section 3.5(f) allows by-stander action "as appropriate". The Applicant's

conduct was in violation of her obligations under the staff regulations and rules and cannot fall under section 3.5(f).

d. The Applicant's assertion that NY "was obliged to prevent retaliation if she uncovered it" is meritless. NY was not in a position to determine that retaliation had occurred. Further, it does not explain the efforts taken by NY and the Applicant to avoid detection of the communications in issue.

e. The Applicant's claims that NY's emails were "to facilitate quick turnaround" and that she did not coach EH because the review of EH's work was "forensic and based on historical documentation" are meritless. These claims do not accord with NY's own message where she asked the Applicant to tell EH "to defend himself that there was no concealment in any sorts" and to "turn things around as a false accusation". NY's message shows that, even before the completion of the audit, she had already made up her mind in favour of EH, which is evident from her referring to the matter as a "false accusation". Further, she strategized EH's defence by directing him to focus on "no concealment". The secrecy that NY requested from the Applicant signifies the unlawfulness of the leak. Moreover, in the 11 December 2019 email, NY set out issues to be explained by EH one by one (for instance, the reason for cancelling the contract of a private company, the reason for not having used the endorsed benchmark), which guides preparation of narratives and supporting data. EH's hesitation or inability to produce documents does not warrant NY's message which was not about specific documents but the questions that the audit team was examining.

64. In the Tribunal's assessment of the evidence, the established facts do not amount to misconduct as the record demonstrates that the Applicant's contact with NY was lawful. The Applicant contacted NY about OIM internal concerns in her official capacity as an auditor, IAD/OIOS. The Applicant's involvement was evidently at ensuring that the audit process accurately reflected the challenges and irregularities

within the Organization. The Applicant's emails to NY were consistent with her role as a senior staff member and her responsibility to uphold the principles of good governance.

65. The Applicant cooperated with IAD/OIOS by sharing facts, updates and her personal concerns relevant to the audit to NY. For example, on 16 November 2019 EH emailed the Applicant and the rest of the Group alleging that the former RSG extensively amended the minutes of the "July [Investment Committee] meeting". On 18 November 2019, the Applicant then informed NY about this matter. The Applicant noted that the amendments were "made in order to make it look like supporting all [of the former RSG's] claims" and the Applicant added: "We [the Group] have more documents to show the lack of governance if [NY] need[s]". There is no irregularity in the Applicant's attempt to inform OIOS about the alleged irregularities or discrepancies in the meeting minutes. There is no indication that she attempted to undermine the integrity of the audit by sharing false information. The Tribunal finds that the Applicant's communications with NY were part of her efforts to highlight governance issues within the Organization, which is a legitimate and protected activity under the Staff Regulations and Rules.

66. The Tribunal will note that some of the Applicant's correspondence fell below the standard expected of a senior manager and demonstrate a lapse of judgment. On multiple occasions, the Applicant relayed NY's correspondence to other OIM staff members such as EH and WW knowing that they were subject to the IAD/OIOS audits. The Tribunal considers that in light of the context of the overall case where she and her colleagues had to coordinate a high profile and complex reporting of mismanagement, misconduct and possible retaliation by OIM leadership to OIOS, the Applicant's correspondence with OIOS and her colleagues does not itself amount to misconduct.

67. In this regard, the Tribunal is compelled to note that by Order No. 024 (NY/2025) dated 21 February 2025, the Tribunal ordered the Respondent to file certain documents that the Applicant had requested to be disclosed, namely two Special Audit

Review Reports of OIOS/IAD relating to the complaint of the Applicant and her colleagues against the former RSG for investment of the assets of the Pension Fund and the latter's complaint against certain staff in OIM. The Applicant had stated that the reports related to the disputed facts in this case and will shed light on the credibility of complaints over management of UNJSPF's assets. In response to Order No. 024 (NY/2025), Counsel for the Respondent submitted that he was "unable to provide the requested documents", referring the OIOS's alleged "operational independence" relative to the Respondent. The Tribunal considers that the disclosure of the documents, even if made on an *ex-parte* basis, would have assisted the Tribunal in its deliberations. It is undisputed that this case consists of a complex web of circumstances, which the Applicant was attempting to navigate, whilst fulfilling her duty to the Organization in reporting the perceived mismanagement by OIM leadership. It is only fair and reasonable to situate her conduct within this wider context and not view it in a vacuum.

68. The Respondent asserts that "[t]he secrecy that [NY] requested from the Applicant signifies the unlawfulness of the leak". The Respondent states that all email exchanges sent by the Applicant were via personal email accounts and that it is clear from the nature of the information received from NY that NY was not authorized to formally convey the said information to the Applicant and that the matter was not part of official communications from IAD/OIOS. The Respondent concludes in his reply that the Applicant assisted with NY's misconduct and attempted to conceal NY's misconduct.

69. The Tribunal does not agree with this construction. The evidence on file indicates that NY was the OIOS's designated focal point for OIM. The Applicant contacted NY on this basis. There is no indication that the Applicant's contact with NY was improper or unlawful. The Tribunal notes that there was a level of secrecy in their communications but considers that this could have arisen from the Group's reporting of possible prohibited conduct by their senior management, which itself was a confidential process.

70. It is important to reiterate that this case concerns the Applicant's conduct and not NY's conduct. Staff members cannot be pursued for the possible misconduct of their colleagues on the basis of mere association. The Administration carries the burden to prove, by clear and convincing evidence, that a staff member committed misconduct. There is no such evidence in relation to this allegation. The Applicant's actions were consistent with her role as a senior staff member and her responsibility to uphold the principles of good governance. By sharing this information with NY, the Applicant acted in good faith to promote transparency and accountability, which are core values of the United Nations. There is insufficient evidence to suggest that her actions were improper or intended to influence NY or the audit in an unlawful manner.

71. The fact that the Applicant did not report the "possible misconduct" of other staff members does not constitute misconduct. The Respondent asserts that the Applicant's failure to report the possible breach of the Organization's regulations and rules by EH and NY was a violation of staff rule 1.2(c).

72. The Tribunal notes that staff rule 1.2(c) imposes a duty on staff members to report *any* breach of the Organization's regulations and rules. As mentioned, the Applicant was at the center of a high profile, complex situation, which had layers of confidentiality. The Applicant was in essence reporting her own head of entity for prohibited conduct and mismanagement. It is without doubt that she acted in good faith and for the benefit of the Organization when conducting herself, even when encountering *possible breaches* of the Organization's regulations and rules by EH and NY. While it is true that she did not report the activities of EH and NY, she did not commit misconduct in this regard as she could not reasonably know that these activities, in and of themselves, amounted to misconduct in the context.

73. For the reasons stated above, the Tribunal finds that it has not been established by clear and convincing evidence that the Applicant committed misconduct in respect of allegation 2.

Allegation 3— Engaging in a course of behaviour targeting AA and BB

74. In relation to the third misconduct allegation, the Tribunal finds that it is established with clear and convincing evidence that:

a. The Applicant targeted AA by attempting to discredit AA and prevent her from being appointed to further positions.

b. The Applicant made disparaging comments speculating about AA's intimate life and appearance.

c. The Applicant targeted BB by lobbing for BB's removal from OIM.

75. The Applicant submits that her actions in relation to AA and BB do not amount to prohibited conduct. She suggests that her own conduct towards AA and BB was "never in question as her personal and professional views remained private and [AA] and [BB] were completely unaware of them. However, both [AA and BB] contributed to the toxic atmosphere cited in the OIOS Governance Report and were rightly criticized for it". The Applicant states that her opinions expressed regarding AA were "private opinions" and her views regarding BB were "merely factual". The Applicant submits that AA was the former RSG's special assistant and had been instrumental in carrying out his abuse of authority in misusing the assets of the Pension Fund. She had been improperly appointed by him to a higher-level post. The Applicant states that BB's supervisors had recognized similar issues with her performance resulting in her unsatisfactory performance reviews and later separation from service.

76. The Respondent submits that the Applicant's messages in relation to AA and BB are beyond any acceptable level of an exchange of opinion in any workplace, let alone the United Nations. The Applicant's messages were not factual or constructive feedback but disseminated serious accusations attacking AA's and BB's integrity and professional standing. The messages were shared among senior managers who could impact AA's future career at OIM, and AA felt the hostility emanating from the Applicant, and identified her as part of the "clique" against her.

77. The Tribunal notes the following relevant provisions of the Staff Regulations and Rules:

> [Staff regulation 1.2(a)]
> … 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.
>
> [Staff regulation l.2(b)]
> … 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.
>
> [Staff regulation l.2(f)]
> 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.
>
> [Staff regulation l.2(g)]
> Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour.
>
> [Staff Rule 1.2(f)]
> 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.

78. In the Tribunal's assessment, the Applicant's communications are beyond any acceptable level of an exchange of private or professional opinion in any workplace,

especially at the United Nations. The Tribunal finds the Applicant's submissions to be neither supported nor relevant to the allegations for the following reasons. The Applicant's conduct violated staff regulations 1.2(a), 1.2(b), 1.2(f) and 1.2(g) and staff rule 1.2(f).

79. First, the Applicant made serious accusations and disparaging remarks against AA and BB, in an effort to undermine their professional circumstances at the OIM. The Applicant's abusive behaviour targeting AA and BB failed to respect the dignity and worth of her colleagues. The Applicant failed to conduct herself at all times in a manner befitting her status as a United Nations staff member and uphold the highest standard of integrity. In particular, the Applicant's suggestion that AA's relationship with the former RSG is "intimate and bizarre" or that she "wasted money on cosmetic surgeries" could create a negative perception of AA among colleagues. This could contribute to a hostile or intimidating work environment for AA, especially if such comments were shared widely or used to undermine AA's professional standing. In addition, the Applicant's comment could also be interpreted as defamatory as it implies inappropriate behaviour or favoritism without evidence. Such remarks could harm AA's reputation and create a perception of impropriety, even if unfounded.

80. Second, the Applicant's comment about AA looking "terrible" and "wasting money on cosmetic surgeries" could be seen as personal and demeaning. Such remarks could create a hostile or intimidating environment for AA, especially if they were shared among colleagues or used to mock or belittle her. The comment about AA's appearance and cosmetic surgeries could be interpreted as malicious and defamatory as they were intended to harm AA's reputation or professional standing. The Applicant is misguided to argue that her private comments could not amount to misconduct. In the Tribunal's view, there is no professional basis to privately speculate and degrade a colleague's appearance or intimate life. The Applicant's comments about AA contribute to a hostile work environment for AA. These remarks, especially when shared among colleagues, could create a perception of bias, favoritism, or personal animosity, which could intimidate or isolate AA.

81. Third, the Applicant's characterisation of BB is highly critical and demeaning, portraying her as incompetent and untrustworthy. The Applicant's negative remarks could contribute to a hostile work environment for BB, especially if they were shared with others or used to undermine her authority. The Applicant's action of sharing four screenshots of BB's LinkedIn profile with MR suggests a deliberate effort to gather information about BB for the purpose of targeting and undermining her, which could be interpreted as abusive behaviour.

82. Further, the Applicant used her office for personal reasons to prejudice the positions of those she did not favour, for instance, AA and BB. She had access to the senior managers within the OIM, through her office. Using such access, she expressed animosity towards AA and BB. The Applicant had no basis to opine on AA's role or candidacy for a higher position as the Applicant was not on the hiring panel. The messages were shared among senior managers who could impact AA's future career at OIM, and AA felt the hostility emanating from the Applicant, and identified her as part of the "clique" against her.

83. In conclusion, the Applicant's communications relating to AA and BB disseminated serious accusations attacking both AA's and BB's integrity and professional standing. The Applicant's conduct is beyond a staff member expressing private opinions about a colleague. Staff members can legitimately coordinate and report possible misconduct to an appropriate authority. It is, however, unprofessional and abusive for staff members to take it upon themselves to target, investigate, undermine and spread speculation about the standing of their colleagues or impede their career opportunities. Collectively, these behaviours contribute to the creation of a hostile work environment. The Tribunal finds that the Applicant's conduct constituted a violation of staff rule 1.2(f) and staff regulations 1.2(a), 1.2(b), 1.2(f) and 1.2(g).

Whether the disciplinary measure applied was proportionate to the offence

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

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

86. The Appeals Tribunal has held that the Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose (see, for instance, *Toukolon* 2014-UNAT-407). The Appeals Tribunal has further stated in *Samandarov* 2018-UNAT-859, at para. 24, that "due deference does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. This obliges the [Dispute Tribunal] to objectively assess the basis, purpose and effects of any relevant administrative decision".

87. In the Sanction Letter, the Administration imposed on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii). The Tribunal notes that this sanction was imposed based on the finding that the Applicant committed "serious misconduct" by disclosing "sensitive information" to the media, blogs and/or Permanent Missions; engaging in efforts to influence IAD/OIOS audits

into OIM, and engaging in prohibited conduct towards AA and BB. In the annex of the Sanction Letter, the USG/DMSPC accepted that as mitigating factors: (a) the Applicant had a long positive service with the Organization with no prior disciplinary record; (b) OIM's toxic working environment at the time might have contributed to the Applicant's conduct; and (c) the global pandemic might have contributed to the Applicant's difficulties in engaging in personal interactions about her workplace dissatisfactions. The USG/DMSPC further took into account as aggravating factors, that: (i) the Applicant voluntarily worked in concert with others; (ii) the Applicant concealed her conduct; (iii) the Applicant's conduct involved numerous acts and a pattern of misconduct, over an extended period of time; (iv) the Applicant's conduct involved manipulative acts; and (v) the Applicant's conduct risked bringing the Organization into disrepute.

88. The Respondent submitted that the imposed disciplinary measure is proportionate to the Applicant's misconduct and is in line with the Organization's obligation to hold senior managers accountable for misconduct and to ensure consistency of treatment in similar cases. The Respondent stated that "[b]y her compound misconduct, the Applicant violated the core duties of international civil servants, which normally results in termination of appointment. The Applicant irrevocably broke the Organization's trust in her and, as a result, a less drastic measure would not have accomplished the necessary disciplinary objective".

89. Based on the Tribunal's above findings that the first two of the three allegations established against the Applicant did not amount to misconduct, the Tribunal considers that the disciplinary measure applied was not proportionate to the offence, especially as it was not a case of compounded "serious misconduct" as the Respondent claims. The Tribunal also notes that EH, who is cited as the author of much of the correspondence and directly engaged in some of the activities that are cited, received full termination indemnity upon separation (see, *Hunt* UNDT/2024/056, para. 1), while some of the other members of the Group who participated in the same email exchanges,

were not sanctioned at all. This disparity indicates that the sanction imposed on the Applicant was arbitrary as well as disproportionate.

90. The Tribunal "is vested with the authority to overturn a prescribed penalty if it is regarded as too excessive in the circumstances of the case". (*Rajan* 2017- UNAT-781, para. 48; *Negussie* 2016-UNAT-700, para. 28; *Ogorodnikov* 2015-UNAT-549, paras. 30-35).

91. For the reasons stated above, the Tribunal finds that the sanction imposed on the Applicant was not proportionate to the offence. In light of this judgment, the Administration may issue an alternative sanction in respect of the Applicant's misconduct against AA and BB.

Remedies

92. As remedies in the present case, the Applicant requests in her closing statement "the rescission of the contested decision and an award of appropriate compensation for abuse of process".

Reinstatement or compensation *in lieu* under art. 10.5 of the Statute of the Dispute Tribunal

93. Since the Tribunal has found that the disciplinary measure applied was not proportionate to the offence, the contested decision is unlawful. In these circumstances, the most appropriate remedy is to rescind the contested decision in accordance with art. 10.5(a) of the Dispute Tribunal's Statute. The Applicant is to be reinstated in her previous position in OIM.

94. Since the contested decision concerns "termination", also under art. 10.5(a), the Tribunal shall also set an amount of compensation that the Respondent may elect to

pay as an alternative to the rescission of the contested administrative decision, as compensation *in lieu*.

95. The Appeals Tribunal has held that the general purpose of compensation is "to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations" (see para. 10 of *Warren* 2010-UNAT-059, as affirmed, for instance, in *Kilauri* 2022-UNAT-1304, para. 25).

96. In *Wakid* 2024-UNAT-1417, the Appeals Tribunal further explained that "the consistent jurisprudence of this Tribunal considers compensation *in lieu* as the economic equivalent of rescission". As for the "economic or pecuniary value of rescission", this is "calculated by the appropriate assessment of past, and possibly future, financial entitlements that would normally result from retrospective reinstatement". In "receiving this package of alternative compensation, the staff member, although not effectively reinstated, is treated financially as if he/she has pursued his/her employment with the Organization until the end of his/her appointment" (see paras. 81 and 82).

97. In *Laasri* 2021-UNAT-1122, the Appeals Tribunal also held that "the elements which can be considered are, among others, the nature and the level of the post formerly occupied by the staff member (i.e., continuous, provisional, fixed-term), the remaining time on the contract, and chances of renewal". It must further "also be taken into account that the two-year limit imposed by the [Dispute Tribunal] Statute constitutes a maximum, as a general rule, albeit with exceptions. As such, it cannot be the average '*in lieu* compensation' established by the Tribunal".

98. The Appeals Tribunal has stated that there is no need for an applicant to prove mitigation of loss since *in lieu* compensation "is not compensatory damages based on economic loss" (see *Zachariah* 2017-UNAT-764, para. 36). Also, in *Cohen* 2011-UNAT-131, it found that "when the Administration elects to pay compensation in lieu of the performance of a specific obligation ordered by the Tribunal … within the meaning of article 10.5(b), of the Statute of the Dispute Tribunal … the Tribunal is not

bound to give specific reasons to explain what makes the circumstances of the case exceptional".

99. In the present case, at the time of the Applicant's separation from the Organization, she held a continuing appointment and nothing in the casefile indicates that this appointment would have been terminated had it not been for the contested decision. At the same time, the Tribunal notes that although a continuing appointment, per definition, is open ended, it cannot be assumed that the Applicant would necessarily have continued her employment with the Organization until her retirement. Considering the Appeals Tribunal's compensation award in *Lucchini* 2021-UNAT-1121 (although the appellant in that case held a fixed-term appointment), the Tribunal will award the Applicant two years of net-base salary in compensation *in lieu*.

Compensation for harm in accordance with art. 10.5(b) of the Dispute Tribunal's Statute

100. The Applicant submits that the contested decision has had "devastating personal and professional consequences" on her after she "devoted her career to UN service".

101. The Applicant seeks "adequate moral damages" without providing further details. The Tribunal observes that such damages can only be granted under art. 10.5(b) of its Statute, which requires that such compensation for harm be supported by evidence of harm. Since the Applicant did not provide any evidence of non-pecuniary (moral) harm, the Tribunal concludes that there is no ground for granting such compensation.

Conclusion

102. In light of the foregoing, the Tribunal DECIDES:

a. To grant the application in part.

b. To rescind the contested decision in part as set forth above in this judgement and that the Applicant be reinstated to her former post in the Organization.

c. Upon reinstatement to her previous post, the Administration shall retain the discretion to impose an alternative sanction on the Applicant in respect of her misconduct toward AA and BB, as outlined above in this judgment.

d. In respect of compensation in lieu of reinstatement, to set its amount at two (2) years' net base salary.

(*Signed*)
Judge Solomon Areda Waktolla
Dated this 6th day of November 2025

Entered in the Register on this 6th day of November 2025
(*Signed)*
Isaac Endeley, Registrar, New York