



UNITED NATIONS DISPUTE TRIBUNAL

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| Case No.: | UNDT/NY/2024/020 |
| Judgment No.: | UNDT/2025/085 |
| Date: | 6 November 2025 |
| Original: | English |

Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

SINHA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Elizabeth Gall, BMS/OLS, UNDP

Introduction

1. By application filed on 25 April 2024, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”), contests the decision to separate her from service with compensation in lieu of notice and without termination indemnity.
2. On 28 May 2024, the Respondent filed a reply in which he contends that the application has no merit.
3. On 14 April 2025, the Tribunal conducted a hearing at which the Applicant and four other witnesses gave testimony.
4. For the reasons set out below, the Tribunal rejects the application.

Facts

5. The Appeals Tribunal has held that if the parties have agreed to certain facts, “it is not open to [the Dispute Tribunal] to conduct its own evaluation and then to substitute its view for that of the parties” (see *Ogorodnikov* 2015-UNAT-549, para. 28). In the present case, the parties agreed to the following facts (emphasis and footnotes in original omitted):

... [XM, name redacted for privacy reasons], D1, assumed the role of the Deputy Executive Secretary, [United Nations Capital Development Fund—“UNCDF”], D1 level, on 22 September 2014.

... On 1 January 2021, the UNDP Mobility Policy was launched as part of the UNDP Office of Human Resources’ People for 2020 Strategy.

... On 11 February 2021, the Applicant joined the United Nations Capital Development Fund (UNCDF) as the Executive Secretary, at the D2 level, in New York under a two-year UNDP Fixed-Term Appointment. The Applicant was until then based in Geneva, Switzerland. The Applicant was appointed to the position of UNCDF Executive Secretary by [AS, name redacted for privacy reasons], the UNDP Administrator, following a rigorous, transparent, and competitive recruitment process supported by the external executive search firm, [name redacted]. The appointment of the Applicant was approved by the UN Secretary-General [...]

... The Applicant started her work as UNCDF Executive Secretary in February 2021, after more than 30 years of experience in private sector and multilateral development sector working in top, world-class global investment banks and in the development finance sector, including at the African Development Bank, a multilateral development bank and a close partner of the United Nations.

... The day-to-day responsibility for UNCDF's operational, administrative, and financial issues was delegated to the Applicant as the UNCDF Executive Secretary, who reported [to AS], UNDP Administrator. The Applicant met with him periodically and communicated with him on any major issues. The Applicant also regularly met with [MC, name redacted for privacy reasons], Chief of Staff to the UNDP Administrator (D2 level) to discuss progress on key developments at UNCDF.

... [MC] approved the Applicant's travel overseas and requests for leave.

... As the Deputy Executive Secretary of UNCDF, D1 level, [XM] reported to the Applicant. [XM's] functions included supporting the Applicant with respect to the strategic vision and direction of UNCDF, and oversight of the programme of work and management of UNCDF, a significant part of which was overseeing the functions of the UNCDF Office of Finance and Management Services (OFMS). OFMS is headed by [JR, name redacted for privacy reasons]. [JR] managed the three teams of Finance, Procurement and Human Resources in UNCDF which reported to him.

... The Applicant and [XM] acknowledged to the Office of Audit and Investigations (OAI) that their working relationship was difficult. The Applicant and [XM] have different recollections concerning when the difficulties in their working relationship began.

... On 19 April 2021, the Applicant invited [DB, name redacted for privacy reasons], Director, Bureau for Management Services/ Office of Human Resources (BMS/OHR), UNDP to address a Townhall for all UNCDF Staff to explain the UNDP Mobility Policy and answer any questions.

... On 14 August 2021, [DB] sent an email informing all UNDP staff that, under UNDP's Mobility Policy, the mobility requirement transition period had been extended to 31 August 2023. Under the Mobility Policy, [XM] was required to change assignment on or before 31 August 2023.

... In April 2022, during a mission to Vienna, the Applicant had a discussion with [XM] about creating a new position in UNCDF in Nairobi to oversee programmatic actions.

... On 26 April 2022, the Applicant sent an email to [MC] regarding the upcoming UNCDF Capabilities Review with ongoing discussions on an optimal structure for UNCDF to achieve its aspirations and growth targets to serve the [least developed countries, “LDC”s] and the UN family with its financing instruments. The Applicant attached the draft [terms of reference, “TORs”] of the capability review. The four objectives of the Capabilities Review included 1) bringing UNCDF closer to the countries; 2) the expansion of UNCDF’s ability to deploy investment officers; 3) the reconfiguration of the Office of Finance and Management Services (OFMS); and 4) to build an integrated and aligned “One UNCDF”.

... The Applicant and [XM] attended a meeting in May 2022 with [DB] regarding the impact of UNDP Mobility Policy on UNCDF staff members.

... On 10 June 2022, [XM] made a report to OAI via the Ethics Point portal alleging that [ZF, name redacted for privacy reasons], a UNCDF consultant, had threatened him in a WhatsApp message.

... On 16 September 2022, [XM] sent an email to OAI alleging misconduct by the Applicant.

... UNCDF staff [JR, MA, CS and AF, names redacted for privacy reasons] confirmed to OAI that [XM] expressed criticism of the Applicant’s leadership and management.

... On Monday 26 September 2022, the Applicant’s Executive Assistant, [AO, name redacted for privacy reasons], sent [XM] an Outlook invitation for a meeting with her on Tuesday 27 September 2022, from 12:00 p.m. to 12:45 p.m.

... On 27 September 2022, from 10 a.m., the Applicant and [XM] attended the biweekly UNCDF management meeting. The meeting was recorded.

... On 27 September 2022, from 12 p.m., the Applicant met with [XM] in her office.

... On 27 September 2022, between 12:29 p.m. and 1:00 p.m., the Applicant exchanged WhatsApp messages with [MC], Chief of Staff, UNDP.

... On 27 September 2022, at 1:29 p.m., [XM] sent an email to the Applicant setting out his summary of the meeting. The Applicant did not respond to the email. The Applicant forwarded [XM’s] email to [MA] at 1:44 p.m. In a conversation with the Applicant about [XM’s] email, [MA] suggested that she consult BMS/OHR. On 27 September 2022 at 7:18 p.m., the Applicant sent an email to [DB]

requesting a meeting. The Applicant's email did not mention the topic of the requested meeting.

... On 3 October 2022, during a retreat for UNDP Resident Representatives, the Applicant had a conversation with [DB] about a possible secondment for [XM] to UNDP.

... Also on 3 October 2022, during the retreat, the Applicant had a separate conversation with [SN, name redacted for privacy reasons], Senior [Human Resources] Business Advisor, BMS/OHR about a possible assignment to UNDP for [XM]. The Applicant told [SN] that UNCDF would fund the assignment.

... On 4 October 2022, the Applicant was on an official mission to Geneva, Switzerland.

... On 6 October 2022, the Assistant Administrator and Director, BMS informed the Applicant by letter of the decision to place her on administrative leave with pay (ALWP) for three months.

... On 6 October 2022, UNDP suspended the Applicant's access to her UNCDF email [her official email address] in connection with her placement on ALWP.

... On 6 October 2022, the Applicant's official mobile telephone number with [a telephone company, name redacted] on her UNDP-issued mobile phone, an iPhone 12 [number redacted for privacy reasons], was deactivated in connection with her placement on ALWP.

... On 10 October 2022, [XM] submitted a request for protection against retaliation to the UNDP Ethics Office under section 6.1 of UNDP's Policy for Protection against Retaliation (PaR Policy).

... On 17 October 2022, the UNDP Ethics Office determined that there was a *prima facie* case of retaliation under section 7.1(c) of the PaR Policy, and referred the case for investigation to OAI. OAI undertook an investigation between October 2022 and March 2023 (the PaR Investigation).

... On 5 January 2023, the Applicant informed [DB] in an email that her "whatsapp on the phone [number redacted for privacy reasons] [was] no longer working" and that she received a message "that this whatsapp [was] now active on another phone?"

... On 13 January 2023, OAI notified the Applicant by letter that she was the subject of an investigation.

... On 26 January 2023, [SS, name redacted for privacy reasons], Chief Information Officer, Bureau for Management Services, Information and Technology Management (BMS/ITM) and [MP, name redacted for privacy reasons], Manager, Global Communication and Collaboration Unit, BMS/ITM provided assistance to the Applicant by reactivating her UNDP-issued iPhone 12 as the old mobile telephone number [redacted for privacy reasons] had been reassigned by [the telephone company]. In this process, a new mobile telephone number [redacted for privacy reasons] was activated on the UNDP-issued iPhone and the Applicant's access to her UNCDF email account was restored.

... On 26 January 2023, at 6:03 p.m. New York time, the Applicant emailed [SS] confirming that her UNCDF email account and WhatsApp appeared to be working on the new phone number, [redacted for privacy reasons].

... On 2 and 3 February 2023, OAI investigators interviewed the Applicant.

... On 16 February 2023, the Applicant provided supplementary written information to OAI, which contained extracts from WhatsApp messages she had exchanged with UNCDF and UNDP colleagues.

... On 27 February 2023, the Applicant submitted a formal complaint of harassment by [XM] against her to OAI. The Applicant's report contained allegations accompanied by extracts of WhatsApp messages.

... On 3 March 2023, the Applicant provided further supplementary information to OAI following her interviews.

... On 9 March 2023, the Applicant responded to OAI's request for further information on her complaint of harassment by [XM] against her.

... On 13 March 2023, [JA, name redacted for privacy reasons], OAI Investigator, sent an email to the Applicant requesting physical custody of her official UNDP-issued iPhone.

... On 16 March 2023, the Applicant was in New York.

... On 16 March 2023, at 6:41 p.m. New York time, the Applicant carried out a "Factory Reset" of her UNDP-issued iPhone.

... Between 17 and 20 March 2023, the Applicant and [JA] exchanged emails about the arrangements for the Applicant to handover her UNDP-issued iPhone to OAI.

... On 21 March 2023, at OAI's offices in DC-1, New York, the Applicant handed over her UNDP-issued iPhone to [JA] and [DS, name redacted for privacy reasons], IT Forensics Specialist.

... On 25 and 27 April 2023, OAI transmitted its report to the UNDP Ethics Office under section 7.4 of the PaR Policy (PaR Investigation Report).

... On 19 May 2023, [BS, name redacted for privacy reasons], Deputy Director, Head of Investigations, OAI informed the Applicant by letter that, upon assessment, it had determined that a formal investigation of the Applicant's allegations against [XM] (reported to OAI on 27 February 2023) was not warranted and closed the case (OAI Case No. IS/2023/12000).

... On 12 June 2023, [the Applicant] requested that OAI provide her with a summary of its findings and conclusions in OAI Case No. IS/2023/12000.

... On 20 June 2023, OAI provided the Applicant with a summary of the outcome of the assessment and the basis for closure of OAI Case No. IS/2023/12000.

... On 23 June 2023, following a determination that the PaR Investigation Report supported some of the allegations of retaliation, the UNDP Ethics Office referred the case to the General Counsel and Director, BMS Office of Legal Services (BMS/OLS) for a determination of whether disciplinary proceedings should be initiated against the Applicant under section 7.8.1 of the PaR Policy.

... On 27 June 2023, the General Counsel and Director, BMS/OLS informed OAI that BMS/OLS considered that there was evidence which supported allegations of misconduct and requested that OAI take the necessary steps to finalize its investigation in accordance with the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (UNDP Legal Framework).

... On 25 July 2023, OAI sent to the Applicant a copy of a draft investigation report and related exhibits and requested that she provide comments and any countervailing evidence within 10 calendar days.

... On 28 August 2023, following an extension of time by OAI, the Applicant provided her initial comments to OAI on the draft investigation report.

... On 7 September 2023, OAI provided the Applicant with additional statements provided to OAI from two witnesses and

granted her an additional 14 days to provide any additional comments.

... On 21 September 2023, the Applicant provided OAI with updated comments which [were] 56 pages long.

... On 6 November 2023, OAI issued the Investigation Report to BMS/OLS.

... In OAI's Investigation Report, OAI indicated that, in light of the Applicant's comments on the draft investigation report, OAI would "consider" its 19 May 2023 decision not to conduct a formal investigation of the Applicant's complaint against [XM].

... On 29 November 2023, the Applicant submitted to OAI a second complaint of misconduct, harassment and discrimination by [XM] against her.

... On 12 December 2023, by letter from the Assistant Administrator and Director, BMS, the Applicant was charged with misconduct and asked to provide comments within 10 working days (the Charge Letter).

... On 13 December 2023, the Applicant wrote to the Assistant Administrator and Director, BMS requesting an extension of time of two months to provide comments on the Charge Letter, indicating that she would consult the Office of Staff Legal Assistance (OSLA).

... On 14 December 2023, the General Counsel and Director, BMS/OLS informed the Applicant of an extension of time to 12 January 2024.

... Also on 14 December 2023, the Deputy Director a.i., Head of Investigations, OAI informed the Applicant by letter that, after conducting the investigation, OAI had concluded that the allegations of procurement fraud, misuse of resources, workplace harassment and abuse of authority made against the Applicant were unsubstantiated and had closed the cases (Case Nos. IS/2022/11611, IS/2022/11746 and IS/2022/11752).

... From 15 November 2023, UNDP Administrator [AS] assigned [XM] to Haiti as the Resident Representative of the UNDP in Haiti, a.i. in an interim capacity.

... On 5 January 2024, OSLA wrote to BMS/OLS requesting a further extension of time. On 8 January 2024, BMS/OLS informed OSLA that this request was not granted.

... On 12 January 2024, the Applicant provided her comments on the Charge Letter in a 114 page document.

... On 2 February 2024, the Applicant received the decision letter dated 1 February 2024 that imposed on her the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity under UN Staff Rules 10.1(a) and 10.2(a).

... On 26 February 2024, [VP, name redacted for privacy reasons], Deputy Director, Head of Investigations a.i., OAI informed the Applicant by letter that, upon assessment, it had determined that a formal investigation of the Applicant's allegations of wrongdoing against [XM] was not warranted and closed the case (OAI Case No. IS/2023/12425).

... On 25 April 2024, the Applicant filed her application with the UN Dispute Tribunal (UNDT) contesting the decision of [HX, name redacted for privacy reasons], Associate Administrator, UNDP to impose the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, contained in a letter dated 1 February 2024.

Considerations

The issues of the present case

6. The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review” and that when defining the issues of a case, “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

7. Accordingly, the basic issues of the present case can be defined as follows:

- a. Did the Associate Administrator, UNDP lawfully exercise his discretion in imposing upon the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rules 10.1(a) and 10.2(a)(viii)?
- b. If not, to what remedies, if any, is the Applicant entitled?

The sanction letter

8. In the sanction letter dated 1 February 2024, it is stated that on 12 December 2023 the Applicant was charged with:

a. engaging in retaliation against [XM], Deputy Executive Director, D1 level, United Nations Capital Development Fund (UNCDF); and

b. interference, and failure to cooperate, with the investigation conducted by the Office of Audit and Investigations (OAI) by deleting data contained on [her] UNDP-issued iPhone.

9. Following an investigation and an assessment of the evidence, the Associate Administrator, UNDP determined that there was clear and convincing evidence establishing that the Applicant: (a) engaged in retaliation in breach of the standards of conduct in staff regulation 1.2(b), staff rules 1.2(c) and (g), and para. 25(n) of the UNDP Legal Framework; (b) engaged in abuse of authority, in breach of staff regulation 1.2(a), staff rule 1.2(f), and paras. 22(a) and 25(k) of the UNDP Legal Framework; and (c) knowingly destroyed evidence sought by OAI during an investigation in breach of her obligations under staff regulations 1.2(b) and 1.2(r) as well as paras. 19 and 39 of the UNDP Legal Framework.

10. The Associate Administrator, UNDP concluded that the Applicant's actions were inconsistent with the standards expected of United Nations staff members and fell short of the standards required for continued employment in the Organization. He therefore considered it appropriate to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity under staff rules 10.1(a) and 10.2(a)(viii).

The Tribunal's limited scope of review of disciplinary cases

11. Under art. 9.4 of the Dispute Tribunal's Statute, 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. When termination is a possible

outcome, misconduct must be established by clear and convincing evidence, which means the truth of the facts asserted is highly probable. (In line herewith, see the Appeals Tribunal in *Karkara* 2021-UNAT-1172, para. 51 and similarly in, for instance, *Modey-Ebi* 2021-UNAT-1177, para. 34; *Khamis* 2021-UNAT-1178, para. 80; *Wakid* 2022-UNAT-1194, para. 58; *Nsabimana* 2022-UNAT-1254, para. 62; and *Bamba* 2022-UNAT-1259, para. 37). The Appeals Tribunal has further explained that clear and convincing proof “requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable” (see *Molari* 2011-UNAT-164, para. 30). 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 *Turkey* 2019-UNAT-955, para. 32).

12. However, the Appeals Tribunal has also underlined 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 Appeals Tribunal has stated that “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).

13. Further, the Appeals Tribunal has pointed out that in assessing the Administration’s exercise of its discretion, “[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).

14. Accordingly, the Tribunal will assess the contested decision in light of the criteria set out in art. 9.4 of the Dispute Tribunal’s Statute and the jurisprudence of the Appeals Tribunal.

Whether the facts on which the disciplinary measure is based have been established

Did the Applicant engage in retaliation against XM?

15. It is alleged in the sanction letter that the Applicant retaliated against XM by seeking to make him leave UNCDF after learning that he had made a report of possible misconduct implicating her.

16. The Applicant's main submissions may be summarized as follows:

a. The appointment as the Executive Secretary of UNCDF, at the D-2 level, was her first appointment with the United Nations. Almost immediately after taking office in February 2021, she "began experiencing a difficult work environment" with the Deputy Executive Secretary, XM, who she believed was an unsuccessful candidate for the post of Executive Secretary. Her working relationship with XM continued to deteriorate and by the end of 2021, she suggested to UNDP that since XM had been in his post since 2014, he was due for rotation to a suitable new role.

b. In 2022, XM began monitoring the Applicant's expenses and reporting on them to the UNDP Executive Office. In June and September 2022, XM reported some of his concerns to OAI. On 2 October 2022, XM submitted a request for protection from retaliation with the UNDP Ethics Office, which referred them to OAI for investigation. The Applicant was then placed on administrative leave with pay on 6 October 2022. On 25 July 2023, OAI provided the Applicant with a draft investigation report, on which she submitted "extensive comments" on 21 September 2023.

c. XM's complaint against the Applicant was made in bad faith and he "was driven by his disappointment at not achieving the post of UNCDF Executive Secretary". The Applicant "was never formally informed by OAI about any allegations relating to her business expenses until she received the letter from OAI dismissing these allegations on 14 December 2023". In addition, XM "exhibited a pattern of insubordination and lack of

cooperation” in his interactions with the Applicant, and OAI closed the Applicant’s two complaints against XM without investigating them.

d. The Applicant did not engage in retaliation against XM. “Under the Ethics Policy, it has to be shown that but for the protected activity, the action complained of would not have been taken”. The efforts to reassign XM to a different role “were already envisaged and had nothing to do with his false reporting”.

e. As early as April 2021, XM had himself raised the issue of his rotation with the Applicant, emphasizing the need for making UNDP positions available for UNCDF personnel such as himself. Efforts to find a new posting usually begin a year early, and a temporary assignment will often facilitate a subsequent appointment. This is not punitive, intimidating or injurious. “Reassigning staff for legitimate purposes is authorized and normal”. After seven years in the same post, XM “was due for rotation under the new UNDP Mobility Policy”.

f. In June 2021 the Applicant met with the UNDP Chief of Staff, MC; the UNDP Director of Human Resources, DB; and the Senior Human Resources Business Advisor, SN, “to discuss the Mobility Policy for the UNCDF Directors”, and XM was present at the meeting. She again raised these issues with the Chief of Staff via WhatsApp in December 2021, ten months before XM made his allegations against her. These steps were all taken “within the one-year preparatory time frame under the Mobility Policy” and demonstrate that “the Applicant’s actions in seeking a reassignment for [XM] were part of a broader strategy for UNCDF’s mobility planning and restructuring”.

g. Several witnesses interviewed by OAI also confirmed that XM had been looking for new opportunities and had expressed the desire to rotate to a new position. Thus, the claim that the Applicant only requested XM’s transfer after learning of his allegations against her and that the transfer request was retaliatory is “factually incorrect and deliberately misleading”.

h. It was only after “efforts to have a productive discussion with [XM] proved impossible due to his complete lack of cooperation” that the Applicant proposed a temporary assignment, which UNCDF would fund, to a position of his choice, “in preparation for a planned round of selection for UNDP Resident Representative (RR) positions a few months later”. The fact that “exactly the same solution [was] later implemented by UNDP” vindicates her position and invalidates the claim that her actions were detrimental to XM.

i. “The Applicant’s actions in this regard were proactive and lawful” and the reassignment proposal was in line with the UNDP Mobility Policy launched in January 2021, under which XM “was required to rotate from his post at the latest by August 2023”. It is advised that efforts to find a posting begin a year before and a temporary assignment in the field will often facilitate a subsequent appointment and/or promotion. Additionally, as the Applicant did not have the authority to reassign XM by herself, she cannot be held responsible for any adverse impact on XM “for merely beginning to discuss a potential secondment”.

j. Moreover, the presumption of innocence should guide all considerations. The investigation was biased and incomplete, ignored the duty to gather both incriminating and exculpatory evidence, and many of its findings were based on factually incorrect assumptions, resulting in opinion and assertion being presented as fact. Since OAI failed to pursue the Applicant’s complaints against XM, it missed the context of her efforts to address a managerial problem.

k. Further, XM’s “level of open criticism in September 2022 rose to a level that needed to be addressed as a managerial issue since he publicly denigrated not only the Applicant but UNCDF at a critical time”, repeatedly calling it “a sinking ship”. XM’s performance also “continued to deteriorate” and his conduct included “disparaging the Applicant’s leadership, obstructing key institutional processes, and fostering a toxic workplace”.

l. “Since OAI did not pursue the complaint filed by the Applicant against [XM], the latter’s complaints of retaliation lack any context and her efforts to address a managerial problem appear unsupported. At senior levels staff are often reassigned to other areas based on the needs of the [O]rganization, particularly one like UNDP with a stated rotation policy. The Applicant never sought [XM’s] separation. She merely used the informal means of dispute resolution to address what had become a counterproductive arrangement”. “The numerous failures of the OAI investigation have to be seen in the context of lack of independence in that OAI report to the UNDP Administrator”.

m. Furthermore, “there is no evidence that the Applicant knew anything about [XM’s] unfounded complaint to OAI on her alleged misuse of resources”. As far as the Applicant knew, all her expenses had been approved following the established procedures, as OAI later determined. Her rationale for seeking a prompt solution to XM’s reassignment was tied to his increasing tendency to criticize and belittle the Applicant and UNCDF. The purpose of the meeting of 27 September 2022 was to give XM “a chance to address these negative rumors attributed to him and to clarify and clear the air”. Evidence adduced at the hearing demonstrates that XM “exhibited a propensity to submit complaints to OAI and the Ethics Office including against other colleagues”.

n. The initiative to contact the UNDP Chief of Staff, the Director of Human Resources or the Senior Human Resources Business Advisor regarding a possible secondment for XM were all “within the one-year time frame in the Mobility Policy”. It is unfortunate that no one else “took a proactive role in addressing the issue”.

o. “In order for retaliation to be established, the impugned action must have an adverse effect on the affected staff member, *and* the action must have been engaged in *with the purpose* of so adversely affecting that staff member, in a manner *that punishes, intimidates or injures* that staff member” (emphasis in the original).

17. The Respondent's main contentions may be summarized as follows:
- a. The Applicant's conduct towards XM satisfied the elements of retaliation as misconduct as defined in UNDP's Policy on Protection against Retaliation (the "PaR Policy"). On learning in September 2022 that XM had filed a complaint of possible misconduct against her, the Applicant "engaged in retaliatory action, including efforts to make him leave UNCDF and acts of marginalization". She took steps to initiate his departure "almost a full year" before he was due for a rotation under UNDP's Mobility Policy. She also undertook acts of marginalization against XM and took "direct detrimental action" to punish him for engaging in a protected activity, including by contacting other UNDP officials to discuss XM's move from UNCDF and by offering to fund the move.
 - b. Further, according to the Respondent, the Applicant "improperly used her influence, power and authority in order to influence [XM's] career". Her statements to UNCDF staff indicated that "she sought to use intimidation and threats to address senior managers' behaviour that she considered to [be] unsatisfactory or insufficiently supportive of her agenda". The Applicant's use of her position of authority as Executive Secretary to seek to remove XM from his position without his agreement and without following the established processes constitutes abuse of authority under UNDP's Policy on Harassment, Sexual Harassment, Discrimination, and Abuse of Authority.
 - c. Moreover, between late September and early October 2022, the Applicant took further steps to initiate XM's departure from UNCDF by contacting MC, the UNDP Chief of Staff; DB, the UNDP Director of Human Resources; and SN, the Senior Human Resources Business Advisor on separate occasions, to urgently discuss a possible secondment or an assignment in the field for XM.
 - d. The established facts show that the Applicant's actions constituted retaliation as defined in sec. 1.1 of the PaR Policy. Believing that XM had filed a complaint against her in bad faith, she sought to retaliate by getting

rid of him. Without consulting with XM or obtaining his consent, she took unilateral action aimed at ensuring his immediate departure from UNCDF long before he was due for a rotation under the UNDP Mobility Policy. This detrimental action that was threatened against XM in response to his filing of a complaint amounted to an act of retaliation.

18. The Tribunal notes that UNCDF is an autonomous entity under UNDP and is headed by an Executive Secretary at the D-2 level who operates under the authority of the UNDP Administrator, an Under-Secretary-General. The Applicant commenced her tenure as Executive Secretary of UNCDF on 11 February 2021 with XM serving as the Deputy Executive Secretary, at the D-1 level.

19. In her testimony before the Tribunal, the Applicant stated that when she first took up the position at UNCDF, she understood that her role was to leverage her years of experience as an investment banker to raise funds from the public and private sectors to facilitate the implementation of projects in the least developed countries. It was also her role to effectively motivate the UNCDF staff. In the 20 months that she worked there, she was able to significantly increase the amount of funds raised as well as to improve the level of service delivery. During this time, XM continued as the Deputy Executive Secretary and his primary responsibilities included supervising the Office of Finance and Management Services (“OFMS”) and managing the network of Country Offices. In 2021, the Applicant rated XM’s performance as fully satisfactory but pointed out some areas that needed improvement, such as his speed of project delivery, his empowerment of staff, and the need for him to take ownership of his results as well as to raise more resources and to focus on staff retention.

20. She testified that she first became aware of XM’s need to find a new position soon after she arrived at UNCDF in February 2021. She knew that the UNDP Mobility Policy launched in January 2021 affected staff members such as XM who had served in UNCDF for seven years or longer. She understood that the affected staff members needed to rotate to new positions, or else they could be unassigned or let go. There was also the possibility within the Mobility Policy to use inter-agency assignments or secondments to achieve staff mobility. XM was not singled

out as he was not the only UNCTD staff member in that situation. In total, about 11 UNCTD staff, including XM and two other Directors at the D-1 level, were initially affected by the Mobility Policy.

21. The Applicant testified that she took a number of steps to facilitate XM's options with regard to the Mobility Policy. In 2021, she encouraged him to take the Resident Coordinator examination, but he was not successful. In 2022, she discussed with him the possibility of a transfer to Nairobi as Chief of Programmes in the Country Office, and later she discussed with him a possible secondment to the UNDP's Latin America Bureau, and she also tried to prepare him to participate in the Resident Representative rotations in March 2023.

22. The Applicant stated that by 2022, XM's performance had deteriorated, he exhibited insubordination, was resistant to the Applicant's leadership, showed hostility towards her, tried to undermine some of her initiatives, started making false allegations about UNCTD and engaged in counter-productive email exchanges with colleagues. This created a toxic working environment in UNCTD. The Applicant started hearing in late 2022 that XM was making negative comments about UNCTD being a sinking ship, was criticizing the Applicant's leadership style, and disparaging her experience and the performance of UNCTD. All of these were contrary to the reality on the ground since UNCTD was actually experiencing its best ever performance under the Applicant's leadership.

23. As these were statements she had heard from others, she decided to confront XM so he could explain his comments directly to her. She arranged for a bilateral meeting with him on 27 September 2022 as she wanted to give him the opportunity to explain his concerns and to rectify their professional relationship. At the meeting, XM did not really want to engage in any discussions with her. Instead, he got "quite upset", "angry", "ballistic", refused to explain, and requested that she put her query in writing. She wanted to propose solutions to him, so she suggested a secondment or a temporary assignment to prepare him for the upcoming UNDP rotation in March 2023. She did not file any formal complaint against XM for his hostility and negative behaviour at that time but did so at a later date. However, the investigations by OAI were closed without action, which she viewed as inadequate.

24. She contacted MC, the Chief of Staff; DB, the Director of Human Resources; and SN the Senior Human Resources Business Advisor, to seek their advice and recommendations regarding XM's unhappiness and negative behaviour and to find solutions. She felt XM was causing harm to UNCDF due to his non-selection for the Executive Secretary post and she requested his secondment as part of a rotation. Instead, she was immediately summoned back to New York while on mission in Geneva and placed on administrative leave. She felt she was pressured to leave the Organization and was asked several times to resign but she refused.

25. The Applicant also testified that at first, she was not aware that XM was discussing her business expenses with UNDP officials. Those expenses normally went through a rigorous three-tiered multi-approval process, as stated in UNCDF's standard approval procedure. She became aware of the allegations only in December 2023 when OAI informed her that they were being dismissed as unsubstantiated. At the time when she was placed on administrative leave, she also was not aware that XM had filed a complaint of retaliation against her.

26. In addition to a written witness statement, DB, the UNDP Director of Human Resources, testified before the Tribunal. During his testimony, he explained the timing of the annual rotation exercise. He clarified that under the modified Mobility Policy, if a staff member fails to secure a new position or rejects one without a good reason, such a staff member may face consequences. The policy has been rather successful in that most of the candidates end up getting new positions either on their own or with the assistance of UNDP management. He further explained that the mobility exercise is not about performance management.

27. DB testified that in the spring of 2021, he initiated a series of regular quarterly meetings with the heads of various bureaus and offices under UNDP, such as UNCDF, to discuss human resources issues with them. He recalled having only one such meeting with UNCDF, in April 2021, and that he explained the rationale for the rotational policy at that time. He explained that mobility and rotation are two distinct processes within UNDP. The majority of UNDP posts are subject to mobility and only a small number of posts, including that of Resident Representative, are exempted from the mobility exercise but are subject to an

annual managed rotation exercise. The position of Deputy Executive Secretary of UNCDF encumbered by XM was subject to mobility as it was a non-rotational post. However, XM was not required to move to a new position until 31 August 2023. DB also stated that the responsibility of finding a new position falls only on the affected staff member and not on his or her supervisor.

28. Witness DB also recalled a meeting in May 2022 with the Applicant and XM to discuss the mobility policy. He clarified that mobility is a development tool, not a performance management tool. He also described a brief, agitated conversation he had with the Applicant at the Resident Representatives' retreat on 3 October 2022, where, referring to XM, she stated that "this person has to go". He reported this conversation to the Chief of Staff but did not seek further clarification due to its hurried and public nature.

29. The evidence before the Tribunal establishes that from the outset, the Applicant and XM had a difficult working relationship particularly surrounding certain key areas. These included XM's scrutiny of the Applicant's claims for reimbursement for hospitality and travel expenses, the proposed restructuring of UNCDF through the Capabilities Review, and the Applicant's belief that XM was talking about her and UNCDF in negative terms to other offices.

30. The Tribunal also notes that under UNDP's Mobility Policy, XM was required to move to a different position within the Organization by 31 August 2023. The evidence shows that the Applicant had occasional discussions with XM and others regarding XM's efforts to apply for other positions ahead of the August 2023 deadline. For instance, on 1 December 2021, the Applicant had approached the UNDP Chief of Staff about a possible move by XM from UNCDF to UNDP. The Applicant told OAI investigators that in April 2022, she discussed with XM the possibility of a move to a new position in Nairobi, which XM declined. One witness, JR, Head of Finance and Management Services, told OAI investigators that in a meeting prior to 27 September 2022, the Applicant expressed the view that the position of Deputy Executive Secretary was not required, and proposed to XM that he should become head of programmes.

31. The evidence before the Tribunal further establishes that on 16 September 2022, XM reported to OAI that during meetings held on 26 August 2022 and 7 September 2022, the Applicant had engaged in misconduct by asking him to leave UNCDF. XM reportedly believed that the Applicant's request was motivated by the fact that he had stopped several of her claims for reimbursement of expenses. In turn, the Applicant admitted to OIA investigators that she believed XM had filed a complaint of alleged misconduct against her and that she had intended to confront him on 27 September 2022 to find out whether this was true. Following the UNCDF staff meeting on that day, the Applicant had a separate bilateral meeting with XM in her office during which she accused him of talking to external parties in negative terms about her and UNCDF. Immediately afterwards, XM sent the Applicant an email summarizing the substance of their discussion, including the fact that the Applicant had asked him to leave the Organization immediately. The Applicant has not challenged the accuracy of XM's email summarizing their interaction. In fact, she confirmed the essence of these assertions in her account to the OAI investigators.

32. The email in question from XM to the Applicant reads, in relevant part, as follows:

[...] Further to the meeting that just took place in your office [...]
To summarize your words:

- There is a break of confidence from you to me [...]
- You are asking me to leave immediately the organization and you are suggesting that the organization will cover the cost of a temporary assignment outside of UNCDF anywhere I choose. [...]
- There is a serious reputational risk for me through the actions that you accuse me of taking.
- You are accusing me to talk to external parties about UNCDF indicating that the organization is on a downward track, and the change management process [...] is questionable.
- You also referred that you knew that I instigated an investigation.

Let me also [*sic*] that this conversation occurred just after a management meeting during which you told the entire management team that there are colleagues that are not positive about the organization and talking to external parties, that this will not be tolerated, and that there will be consequences. [...]

33. The Tribunal further notes that subsequent to that encounter with XM, the Applicant engaged on the same day in an exchange of messages via WhatsApp with the UNDP Chief of Staff indicating that she had asked XM to leave UNCDF and that she was happy to fund a secondment or detailed assignment for him elsewhere. In her WhatsApp messages to the Chief of Staff, she stated that she wanted XM to “move on” from UNCDF and that she was willing to fund a secondment for him “wherever he would like to go”. She also stated that since XM had referred to UNCDF as a “sinking ship”, she was offering him a chance to “get off the sinking ship”. These messages clearly indicate that the Applicant sought to remove XM from UNCDF. The Applicant admitted during her OAI interviews that she was “shocked and distressed” upon learning that XM had reported her to OAI. She also admitted that she wanted to “confront” XM during their meeting on 27 September 2022, about whether he had filed a complaint with OAI.

34. The Chief of Staff later told OAI investigators that he was concerned about the Applicant’s actions aimed at moving a staff member out of the Organization. In a similar vein, the Applicant also contacted the UNDP Director of Human Resources and the Senior Human Resources Business Advisor to discuss ways of possibly expediting XM’s move from UNCDF.

35. The Applicant denies that the actions she undertook were for the specific purpose of punishing XM for engaging in a protected activity. She claims instead that her actions were managerial steps taken in good faith in the best interests of the Organization. She also maintains that her intention was to assist XM with his move to a new position under the UNDP Mobility Policy and to provide XM with a good reassignment option as the post of Deputy Executive Secretary that he encumbered was likely to be abolished during the Capabilities Review exercise.

36. Although the Applicant denies that she asked XM to leave the Organization immediately, her own characterization of his reaction to her comments leaves little room for doubt as to his understanding of those comments. She described him as being “not responsive”, “agitated”, “getting a bit ballistic”, and “emphatically banging his hands on the table”. These reactions tend to negate the Applicant’s claim that she was trying to find an amicable solution to their professional

differences or to offer him assistance in his search for a new position as a part of the rotation requirement.

37. The Tribunal recalls that under the UNDP Mobility Policy, XM was only required to move to a different position by 31 August 2023. However, the record shows that the Applicant took steps to force XM to leave his position at UNCDF by the end of 2022, at least eight or nine months early. Based on a review of XM's contemporaneous notes following his meeting with the Applicant on 27 September 2022; the Applicant's WhatsApp exchange with the UNDP Chief of Staff on the same day; the witness statements provided to the OAI investigators; the written statement and oral testimony of Witness DB; and the parties' written submissions to the Tribunal, the allegation that the Applicant took steps to force XM out of UNCDF long before his mandatory mobility deadline finds support in the case record.

38. The Tribunal notes that Witness DB's testimony highlighted the procedural frameworks governing staff mobility in UNDP, including the limited authority of supervisors in the process. He also provided context for the Applicant's emotional state during the period leading up to her administrative leave. His account demonstrated that decisions regarding staff movement are primarily driven by human resources policies and processes, not individual supervisors' discretion.

39. The Tribunal finds that the totality of evidence does not support the Applicant's claim that her request for XM to leave UNCDF was motivated solely by legitimate purposes. For instance, considering that XM had until 31 August 2023 to move to a new position, it was clearly not rational to require him to move out of UNCDF before the end of 2022. Secondly, the fact that the Applicant started agitating for XM's departure shortly after learning that XM had engaged in a protected activity by filing a complaint of alleged misconduct implicating her on 16 September 2022, leads to the logical conclusion that the Applicant was acting in retaliation. The temporal link between the Applicant learning of XM's report to OAI on 16 October 2022 and her subsequent actions, in the period from 27 September 2022 through 3 October 2022, to remove him from UNCDF leads to the inescapable conclusion that her actions were retaliatory. Thirdly, the Applicant

contradicts her own statements by asserting, on the one hand, that her meeting with XM on 27 September 2022 was an attempt to reach an amicable and peaceful solution and, on the other hand, that she intended at the meeting to confront XM about his derogatory comments to external parties regarding the Applicant and UNCDF. Further, there is no evidence to support the Applicant's assertion that XM's complaint to OAI was made in bad faith including after assessment by the UNDP Ethics Office.

40. Moreover, the Tribunal is not persuaded by the Applicant's submission that she sought XM's departure from UNCDF as a legitimate managerial response to address issues related to his performance and conduct. The Applicant's claim that her actions were motivated by legitimate managerial concerns is not credible. The evidence shows that her explanations for seeking XM's departure are inconsistent and unsupported by the facts and existing legal framework. The Organization has in place a policy that sets out the necessary procedures to address performance shortcomings and these do not include pre-emptively moving out a purportedly underperforming staff member from one office to another as a means of addressing performance issues.

41. The Tribunal has also considered the Respondent's submission that the Applicant's actions "would otherwise constitute Abuse of Authority" as defined in UNDP's Policy on Harassment, Sexual Harassment, Discrimination, and Abuse of Authority. In this regard, the Respondent asserts that the Applicant "improperly used her influence, power and authority in order to arbitrarily influence [XM's] career". He also maintains that the Applicant's statements during the management meeting on 27 September 2022 to the effect that certain conduct "probably won't be tolerated" indicates that she sought to use intimidation and threats to address senior managers' behaviour that she considered to be unsatisfactory or insufficiently supportive of her agenda. According to the Respondent, the Applicant's subsequent actions regarding XM came directly after these threats and represented an improper use of her authority to influence his career by securing his departure from UNCDF. However, since the Tribunal has already considered the impugned conduct as part of the retaliation claim, there is no need to review it again as abuse of authority.

42. Based on the foregoing, the Tribunal finds that it has been established by clear and convincing evidence that the Applicant engaged in retaliation against XM by seeking to make him leave UNCDF after learning that he had filed a report of alleged misconduct implicating her.

Did the Applicant interfere, and fail to cooperate, with the OAI investigation?

43. It is alleged in the sanction letter dated 1 February 2024 that on 16 March 2023, the Applicant intentionally erased all data on her UNDP-issued mobile phone in order to destroy and conceal evidence.

44. The Applicant's submissions may be summarized as follows:

a. The claim that she intentionally interfered with the investigation process is "entirely misplaced". The material that was lost when the iPhone was reset was initially available to UNDP, who had stopped the telephone company's service to the Applicant's phone at the time of her suspension and prematurely returned the number to the telephone company in haste. The evidence reflects that "she merely followed the instructions she was given". Moreover, it was UNDP's return of the phone number to the telephone company that resulted in the loss of the material. Thus, this additional charge of interference "appears contrived to help justify the severe penalty imposed" on the Applicant.

b. It was the Applicant who repeatedly and actively urged for the reactivation of the old phone in order for her to be able to retrieve and submit her exculpatory evidence regarding XM. Hence it would make no logical sense for her to delete data if it was on her phone. It stands to reason that if she was requesting more information to substantiate her claims against XM, she would not destroy it if it was already in her possession. On the contrary, the return of the former phone number with all its records to the telephone company, without making any backup, was a clear act of negligence by UNDP.

c. The allegation that the Applicant erased data from her UNDP-issued iPhone “less than three hours after receiving an email from [JA] which reiterated that OAI sought physical custody of the iPhone” is “not true”. JA had sent the Applicant an email “3 days earlier on 13 March 2023 requesting custody of the phone to view the SMS messages exchanged with [XM] referenced in the Applicant’s complaint against [XM]. These messages were long unretrievable because UNDP returned the official UN phone number to the telecom provider in an improper manner”. Moreover, the phone was in the Applicant’s possession from 6 October 2022 until 21 March 2023. OAI did not request the phone after the Applicant’s interview on 2 and 3 February 2023 as it did not require the phone to complete that investigation.

d. “There is also no clear and convincing evidence of any failure to cooperate with the investigation. This appears to be a contrived argument the Respondent later concocted in order to justify the termination decision”.

45. The Respondent’s primary contentions may be summarized as follows:

a. The Applicant interfered with an OAI investigation by intentionally erasing the data on her UNDP-issued iPhone after being asked by OAI to turn over the iPhone. The Applicant was aware that the iPhone contained evidence relevant to the OAI investigation “as she relied upon WhatsApp messages as countervailing evidence” in her submissions. Her claim that she is not responsible for the loss of data has no merit because a user must pass through several steps and warnings before an iPhone can be reset and restored to its factory settings.

b. On 3 March 2023, during the investigation, the Applicant informed OAI that she had hundreds of SMS messages on her phone that proved that she had not engaged in retaliation, but that these had all been lost in January 2023 when her UNDP-issued iPhone was reactivated on a new number. In response, on 13 March 2023, JA, an OAI investigator, requested physical custody of the Applicant’s phone in order to retrieve from it the relevant evidence including the allegedly lost SMS messages. On 13 March 2023, JA sent the Applicant an email confirming that OAI sought custody of the

iPhone so that DS, a Forensics Specialist at OAI, could attempt to retrieve the lost evidence from it. After further exchanges with JA, on 21 March 2023, the Applicant handed over the UNDP-issued iPhone to JA and DS.

c. According to the OAI forensic report prepared by DS, a “factory reset” was performed on the Applicant’s UNDP-issued iPhone at 6:41 p.m. on 16 March 2023, three days after JA’s email confirming that OAI sought custody of the phone. The forensic report noted that the “factory reset” not only wiped out any data that had existed on the phone prior to that date, but it also deleted the encryption keys that are necessary to access the data. DS explained that the “factory reset” returned the phone to the state in which it was when it came out of the factory, and at that stage no data, including SMS messages, WhatsApp messages or any other data, could be extracted from the physical iPhone.

d. “A Factory Reset requires several steps and warnings before the user confirms the final step of erasure of data. Using the iPhone, the user must access ‘Settings’, ‘General’, then select ‘Transfer or Reset iPhone’, followed by ‘Erase All Content and Settings’. The screen shows what data will be removed by erasing the iPhone. If the user wishes to proceed, the user must select ‘Continue’ and then enter the passcode for the iPhone”.

e. The Applicant has not denied that she carried out a factory reset of her UNDP-issued iPhone on 16 March 2023, nor has she stated that any other person had access to the iPhone on 16 March 2023. Her claim that the messages on the phone were lost on 6 October 2022 when she was placed on administrative leave and the telephone company reassigned her phone number to another person has no merit. Similarly, her claim that she performed the “reset” action after being instructed by UNDP representatives on 26 January 2023 is not supported by the evidence. The email exchanges between the Applicant and UNDP information technology (“IT”) personnel show that on 26 January 2023, they assisted her in activating her new UNDP telephone number and to set her UNDP network password on the iPhone.

“There is no instruction to the Applicant to carry out a Factory Reset of the iPhone”.

f. Even if any data was lost in connection with the changes to the telephone number, that data could have been extracted by OAI had the encryption keys on the physical iPhone not been intentionally erased through the factory reset performed by the Applicant at 6:41 p.m. on 16 March 2023. Moreover, “the evidence demonstrates that, after 26 January 2023, the Applicant did have access to data on her UNDP-issued iPhone, including WhatsApp messages and emails. On 16 February and 3 March 2023, the Applicant included extracts from numerous WhatsApp messages with [XM] and other colleagues in her written evidence to OAI”. Had the Applicant performed the reset on 26 January 2023 as she claims, she would not have had access to data on the UNDP-issued iPhone and would not have been able to include extracts of her WhatsApp messages with countervailing evidence in her written statements on 16 February and 3 March 2023. Thus, it is “reasonable to infer that the Applicant deleted the data in the belief that the data contained evidence which did not support her account in response to the allegations of retaliation, or which indicated that she had engaged in other misconduct”.

46. In her testimony before the Tribunal, the Applicant stated that immediately after she was placed on administrative leave, she was informed that her official UNDP telephone number had been switched off so no more calls could be made from that number and at that time, and all the SMS messages on the phone had also disappeared. She said she was further informed that her UNCDF official email account had also been switched off and that only the WhatsApp account could be used when the phone was connected to Wi-Fi. She was advised to use WhatsApp to communicate with DB, the Director of Human Resources, who would be her liaison with UNDP going forward. However, the UNDP-issued mobile iPhone and laptop computer were left in her possession.

47. The Applicant testified that when she was placed on administrative leave in October 2022, UNDP negligently returned her official mobile phone number to the

telephone company and that when a phone number is not used for some time, the telephone company typically assigns it to another person. Around December 2022, she received a suspicious message informing her that her WhatsApp messages were now available on another phone. Around 26 January 2023, she was in touch with UNDP IT specialists, DS and MP, regarding the possibility of getting back her old official phone number so that she could retrieve information and prepare for the OAI interview scheduled in early February 2023. Since her old phone number had already been returned to the telephone company, they provided her with a new phone number. They then proceeded to reset the mobile phone to the new number and to set up the password for the Applicant's UNDP email and her WhatsApp. Her old SMS messages did not appear on this new phone number.

48. According to her testimony, later on, as part of her complaint against XM filed on 3 March 2023, she needed to retrieve some WhatsApp messages from her old number to use as evidence. JA, the OAI investigator, asked the Applicant to turn over her physical UNDP-issued iPhone so that the evidence could be retrieved from it. In preparing the phone to turn it over to JA, the Applicant said she remembered the steps that MP had taken to activate the new phone number on 26 January 2023. She did not believe there was any latent information on the phone at the time of the reset. Since all the SMS messages had disappeared the moment UNDP had switched off her telephone service, she believed all other information had also disappeared from the phone and now resided on the telephone company's servers. This was also verified by DS when she met with him and JA on 21 March 2023. The UNDP IT specialists did not tell the Applicant whether they had made a backup of the information on her phone before returning the number to the telephone company, but they did have access to her iCloud backup tool.

49. The Applicant stated that during two intensive days of interviews with OAI investigators on 2 and 3 February 2023, she was not requested to hand over her phone. It was only after she had filed her complaint against XM on 3 March 2023 that she was asked to turn over the phone so that her evidence could be retrieved from it. She also stated that on 16 March 2023, her intention was to use the settings to reset the phone to the new number before handing it over to OAI and that there

was no intent on her part to erase the data on the phone. She had been using the new number since January 2023 to access WhatsApp messages.

50. JA, an OAI investigator, provided a written witness statement and testified regarding the allegations concerning the Applicant's claims for reimbursement of expenses. She stated that XM was a certifying officer for UNCDF expenses as reflected on the "F-10" claims forms. She testified that some of the cases against the Applicant regarding procurement fraud were closed because the allegations were not substantiated and were closed. However, the case involving retaliation was examined on the basis of the relevant criteria including whether there is a protected activity, whether there is an adverse effect on the staff member, and whether there is a causal connection between them. The investigators also looked at all exculpatory evidence, the credibility of the complainant, and whether it was a good-faith report.

51. JA also testified that the investigators did not request the Applicant to turn over her phone for inspection earlier in the investigation because it was not necessary at that time. It became relevant only after the Applicant was notified that she was the subject of an investigation and she stated that she needed to retrieve evidence in the form of WhatsApp messages from the phone. The investigators then followed up with the Applicant between 20 and 27 January 2023 with the assistance of UNDP IT specialists. JA stated that she did not know why no backup of the Applicant's phone was made before the old phone number was recovered from the Applicant in October 2022.

52. JA also testified that the investigators requested XM's phone, and he turned it over to them. This followed the OAI interviews with the Applicant on 2 and 3 February 2023 and her subsequent comments including her references to SMS messages that she said she had lost. The investigators then asked her to turn over her phone, which she did on 21 March 2023. After the UNDP IT forensics expert examined the Applicant's phone, he noticed that the data had been erased. The investigators then requested XM's phone to find out if it contained the evidence that the Applicant had lost. XM turned over his phone to the investigators on 28 March 2023.

53. Witness JA testified that she reviewed over 1,400 SMS messages on XM's phone but did not find any information relevant to the Applicant's claim that XM was harassing her. The witness stated that she did not know why XM raised his complaint against the Applicant to the level of misconduct, but that XM mentioned in his OAI interview that he had flagged a number of the Applicant's expenses and perhaps he was just being prudent.

54. Witness MP, a Global Communications Officer with UNDP, provided a written statement and also gave testimony to the Tribunal. He stated that he was first contacted on 25 January 2023 by SS, a UNDP IT Officer, for assistance in restoring the Applicant's old phone number. However, he understood from a representative of the telephone company that an unused phone number can only be held for up to 60 days after which it is released to a new customer. MP did not enquire whether the telephone company had made copies of the Applicant's emails and messages before releasing the number. At that point, it was decided to issue the Applicant a new phone number. The conversation on 26 January 2023 was the only time MP ever spoke with the Applicant. He received a WhatsApp message from her on 21 March 2023 but did not respond to it. He did not remember telling the Applicant that it was not possible to recover her SMS and WhatsApp messages on her old phone number.

55. MP also testified that on 26 January 2023, SS gave instructions for the Applicant to reset her password and regain access to her email account. A WhatsApp message with instructions to reset the password was also sent to the Applicant. MP explained that the reset in question was in reference to the password for the Applicant's UNDP email account and that she needed the phone as a second factor authentication in order to access her email. For security reasons, the email system requires that the password be reset periodically. MP did not think the instructions to reset the password could have been mistaken for anything else. He also stated that it was not UNDP policy to create iCloud backups of phone messages.

56. Witness DS, the UNDP IT Forensic Specialist, also provided a written statement and testified before the Tribunal. He explained that an iMessage is a form

of communication between Apple devices such as iPhones and is transmitted by Apple servers, while an SMS is an old-style text message which is processed by traditional data carriers such as the telephone companies. On an iPhone, iMessages and SMS messages are usually contained in the messaging app and stored in a database on the iPhone itself. Thus, even if mobile phone service to a particular iPhone is discontinued, this would have no impact on the messages stored in the phone's memory. Similarly, there would be no impact on WhatsApp messages as these are also stored on the iPhone's database. DS recalled extracting some 228 messages from XM's UNDP-issued iPhone. These were mainly exchanges between XM and the Applicant.

57. DS testified that he asked the Applicant whether she had made any backup of her phone to iCloud and she said she did not use iCloud as she did not want her messages shared across devices since she shared an iCloud account with her mother. However, the Applicant gave DS the passcode to her iPhone as well as the password to her iCloud account. There was a welcome message from Apple which appeared to suggest that the iCloud account was created the night before the Applicant handed over the iPhone to the OAI investigators on 21 March 2023. However, Witness DS did not know if the Applicant had an older iCloud account, but he knew that there had been a previous telephone number on the phone. DS did not know at the time that the Applicant had been given instructions on how to set up the new number on the iPhone. At the time of handing over the iPhone, the Applicant did not inform the investigators that she had erased all data on it.

58. DS also stated that the telephone company keeps text messages on its servers for a limited time. By the time OAI enquired, the Applicant's text messages were no longer available on the telephone company's servers. DS did not recall whether the messages he retrieved from XM's phone were new or older ones.

59. The Tribunal has carefully reviewed all the evidence relating to the allegation that the Applicant interfered with the OAI investigation by intentionally erasing all data on her UNDP-issued mobile telephone in order to destroy and conceal evidence. While the Applicant does not deny that she performed a "factory reset" on the phone, she maintains that she was only following the instructions given

to her by UNDP's IT specialists and that the erasure of data was not intentional. However, the timeline and the sequence of events suggest otherwise. For instance, Witness MP testified that on 26 January 2023, he only assisted the Applicant in activating a new phone number on her mobile phone and in setting the password for her UNDP email. He denied providing the Applicant with instructions on how to erase data from the phone. Witness DS, the UNDP forensics specialist, testified that SMS and WhatsApp messages are stored in the memory of a physical iPhone even after the phone number is deactivated. JA, the OAI investigator, testified that after the subject interviews with the Applicant on 2 and 3 February 2023, the Applicant was able to provide additional exculpatory evidence including text messages stored on her phone on 16 February and 3 March 2023.

60. The Tribunal also recalls that in the statement of agreed facts jointly submitted by the parties, it is stated that "[o]n 16 February 2023, the Applicant provided supplementary written information to OAI, which contained extracts from WhatsApp messages she had exchanged with UNCDF and UNDP colleagues". Thus, it is clear that even after the UNDP's IT specialists assisted the Applicant in activating a new phone number on her UNDP-issued iPhone on 26 January 2023, she still had access to her text messages stored on the iPhone. The Applicant's claim that the data on her iPhone was lost due to technical issues is not credible. The evidence shows that she had access to the data on her iPhone after it was reactivated on a new number in January 2023. Regarding the Applicant's claim that she acted on the instructions of UNDP's IT personnel, the Tribunal has examined the exchanges between them during the relevant period and finds no evidence to support this claim.

61. The Tribunal further notes that the factory reset was performed on the Applicant's iPhone on 16 March 2023 after the OAI investigators requested her to turn it over to them to retrieve evidence relevant to the investigation. The Applicant's contention that she received the investigator's request three days earlier does not materially alter the situation. Additionally, even if any data was lost in connection with the changes to the phone number on 26 January 2023, that data could have been extracted by OAI had the encryption keys on the physical iPhone not been intentionally erased through the factory reset performed by the Applicant.

on 16 March 2023. Moreover, the steps required to perform a factory reset on an iPhone include multiple warnings before the user confirms the final step of erasure of data. Using the iPhone, the user must access ‘Settings’, ‘General’, then select ‘Transfer or Reset iPhone’, followed by ‘Erase All Content and Settings’. The screen shows what data will be removed by erasing the iPhone. If the user wishes to proceed, he or she must confirm this by selecting ‘Continue’ and then enter his or her personal passcode for the iPhone. The fact that the Applicant successfully performed the factory reset after following all these steps suggests that her actions were intentional and not the result of a technical error.

62. Based on the foregoing, the Tribunal finds that there is clear and convincing evidence to support the allegation that the Applicant interfered with the OAI investigation by intentionally erasing all data on her UNDP-issued mobile telephone in order to destroy and conceal evidence.

Whether the established facts legally amount to misconduct

63. ST/SGB/2017/2/Rev.1 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations), in its sec. 1.4, defines retaliation as follows:

Retaliation means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or injuring an individual because that individual engaged in an activity protected by the present policy as set out in section 2 below (“protected activity”).

64. Under sec. 2.1 (Protected activity) of ST/SGB/2017/2/Rev.1, protection against retaliation applies to any staff member who reports the failure of one or more staff members to comply with their obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or who cooperates in good faith with a duly authorized investigation or audit.

65. In sec. 1.1 of UNDP’s Policy on Protection against Retaliation (“PaR Policy”) retaliation is defined as follows:

Retaliation (for [the] purposes of this Policy) means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, where such action has been recommended, threatened or taken for the purpose of punishing, intimidating or injuring an individual because that individual engaged in “Protected Activity” as defined below. Retaliation is itself a separate act of misconduct and a violation of this Policy. For [the] purposes of this Policy, the legitimate application of regulations, rules or administrative policies, issuances or procedures, or the mere expression of disagreement, admonishment, criticism or a similar expression regarding work performance, conduct or related issues within a supervisory or similar relationship, do not constitute Retaliation[.]

66. Protected Activity is defined in sec. 1.3 of the PaR Policy as follows:

Protected Activity is a good faith report alleging misconduct, made in accordance with the procedures set out in the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct. Protected Activity also includes cooperating, in good faith, with a duly authorized audit or investigation.

67. The Applicant submits that under ST/SGB/2017/2/Rev.1, retaliation is defined as any direct or indirect detrimental action recommended, threatened, or taken because an individual engaged in a protected activity. To establish retaliation, the following must be proven: (a) that a protected activity occurred; (b) that the accused was aware of the protected activity; (c) that a retaliatory act followed; and (d) that the retaliatory act would not have occurred but for the protected activity. The provision also states that a protected activity is a good faith report alleging misconduct. According to the Applicant, it is doubtful that XM engaged in a protected activity by bringing a series of unsupported and malicious complaints against the Applicant and other colleagues. His motivation for this, as well as his later complaint of retaliation, were never fully scrutinized. Witness testimony also shows that XM’s claims were not sustained. Given that all his allegations were false, XM acted in “bad faith” and with ulterior motives, but this aspect of the case was completely neglected.

68. The Respondent contends that the Applicant engaged in two forms of misconduct. First, she engaged in retaliation against XM, the Deputy Executive Secretary of UNCDF, after she learnt that he had reported allegations of misconduct against her. Second, the Applicant interfered with an OAI investigation by

knowingly destroying evidence on her UNDP-issued iPhone. The facts are established by clear and convincing evidence, and the established facts amount to misconduct. The disciplinary measure is proportionate to the misconduct and the Applicant's due process rights were respected throughout the process.

69. The Tribunal recalls that the clear and convincing evidence establishes that after the Applicant learnt that XM had filed a complaint of alleged misconduct implicating her on 16 September 2022, she undertook certain actions with the specific purpose of punishing him. Under ST/SGB/2017/2/Rev.1 and UNDP's PaR Policy, making a good-faith report of alleged misconduct by a staff member is a protected activity. Thus, XM's complaint to OAI regarding alleged misconduct by the Applicant was a protected activity. Additionally, under both provisions, "any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual" because that individual engaged in a protected activity, constitutes retaliation. In the context of the present case, the Applicant's actions to expedite XM's departure from UNCDF long before his scheduled mobility deadline support the view that her intention was to punish him for engaging in a protected activity and constituted retaliation.

70. In the Tribunal's view, the Applicant's direct detrimental actions adversely affected XM's working conditions. By her own admission, when she confronted XM on 27 September 2022 about the alleged complaint and asked him to move out of UNCDF, he was "agitated", "ballistic" and not responsive to her comments. These reactions suggest that XM was not receptive to her proposals and contradict the Applicant's claim that she was trying to find an amicable solution or to resolve a managerial problem. Further, over the course of the following week from 27 September 2022 to 3 October 2022, the Applicant took additional steps to ensure XM's departure by contacting the UNDP Chief of Staff, the Director of Human Resources, and the Senior Human Resources Business Advisor to recommend an immediate secondment for XM even though his scheduled mobility deadline was almost a year later, by 31 August 2023.

71. In conclusion, the evidence before the Tribunal, including witness testimonies, the investigation report, witness testimonies, and annexed documents,

clearly and convincingly establishes that the Applicant retaliated against XM for engaging in a protected activity. The Applicant also interfered with the OAI investigation by intentionally erasing data from her UNDP-issued iPhone. Her actions were not motivated by legitimate managerial concerns but were instead aimed at punishing XM and preventing OAI from gathering relevant evidence.

72. Accordingly, the Tribunal finds that the established facts regarding the Applicant's actions legally amount to misconduct.

Whether the sanction is proportionate to the offence

73. In the sanction letter dated 1 February 2024, the Associate Administrator, UNDP determined that there was clear and convincing evidence establishing that the Applicant: (a) engaged in retaliation in breach of the standards of conduct in staff regulation 1.2(b), staff rules 1.2(c) and (g), and para. 25(n) of the UNDP Legal Framework; (b) engaged in abuse of authority, in breach of staff regulation 1.2(a), staff rule 1.2(f), and paras. 22(a) and 25(k) of the UNDP Legal Framework; and (c) knowingly destroyed evidence sought by OAI during an investigation in breach of her obligations under staff regulations 1.2(b) and 1.2(r) as well as paras. 19 and 39 of the UNDP Legal Framework. Based on these findings, the Associate Administrator, UNDP considered it appropriate to impose on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, pursuant to staff rules 10.11(a) and 10.2(a)(viii).

74. The Applicant contends that the contested decision violates the principles of fairness, proportionality and due process, and that it fails to meet any of the grounds required for upholding it on judicial review. According to her, the facts on which the allegations are based have not been established; there is no basis for a finding that misconduct occurred; the penalty imposed is disproportionate to the alleged offense; and the decision was tainted by violations of due process including a seriously deficient investigation and failure to consider any of the Applicant's responses, resulting in a rush to judgment with the apparent purpose of finding an excuse for replacing her. She asserts that separation from service is an excessive penalty for the alleged offenses.

75. The Applicant also submits that the Administration has not provided any explanation as to why it was appropriate to impose “such a severe disciplinary measure, as opposed to administrative action”, especially given the Applicant’s limited tenure with UNDP. Moreover, there is no demonstrable benefit to the Organization for this “excessive, unjust and demotivating penalty, which damages the staff member’s career and reputation”. The penalty “fails the test of being balanced and proportional”.

76. On his part, the Respondent contends that “[t]he disciplinary measure imposed on the Applicant is proportionate and took into account all relevant considerations”. He asserts that the disciplinary measure is in line with the jurisprudence and UNDP’s past practice, and that “the Appeals Tribunal has recognized that misconduct involving dishonesty or other egregious violations of the standards of integrity (for example: abuse of authority, failure to cooperate with an investigation) warrant termination of appointment”. He concedes that “UNDP has no past practice for Retaliation” but notes that “cases of abuse of authority have led to dismissal or separation from service” and cases involving interference with an investigation have also led to separation from service. Additionally, the Respondent points out that “the most severe disciplinary measure (dismissal) was not imposed on the Applicant” in this case.

77. The Respondent further submits that the disciplinary measure (separation from service) was proportionate to the severity of the Applicant’s misconduct. Retaliation and interference with an investigation are serious violations of UNDP’s standards of conduct, particularly for a senior official like the Applicant. Furthermore, he rejects the argument that the Applicant’s limited tenure with UNDP should have resulted in a less severe disciplinary measure and argues that all staff members, regardless of their tenure, are held to the same standards of integrity.

78. The Tribunal recalls that 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”. Under the well-established jurisprudence of the Appeals

Tribunal, 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).

79. The Appeals Tribunal has also held that the Secretary-General 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”.

80. In the present case, the Tribunal has reviewed the efforts made by the Associate Administrator, UNDP to consider the mitigating and aggravating factors related to the Applicant’s conduct before determining the appropriate disciplinary sanction to impose on her. In mitigation, the Associate Administrator, UNDP considered the fact that both the Applicant and XM acknowledged to the OAI investigators that they had a difficult working relationship, and this was apparent from the evidence. The Associate Administrator, UNDP also considered the fact that the Applicant expressed her “sincere apology to any staff member particularly the complainant—if they have been made to feel harassed, punished or injured because of [her] actions or manner of speaking”. The Applicant’s assertion that she encountered “resistance at the senior management level”, and “a well-entrenched office culture that did not wholly welcome or embrace the arrival of a woman of color in such a powerful role” was also taken into consideration, as was the fact that during her tenure as Executive Secretary she made efforts to improve the gender

balance and diversity at the management level of UNCDF. However, the Applicant's claim that she engaged "in good faith efforts", through UNDP's IT services, to recover lost text messages on her phone was not considered a credible mitigating factor.

81. In terms of aggravating factors, the Associate Administrator, UNDP considered the Applicant's status as Executive Secretary of UNCDF to be significant, and he highlighted the expectation that under the Standards of Conduct for International Civil Servants, managers, supervisors and others in positions of leadership serve as role models. He also considered UNDP's past practice and the jurisprudence regarding proportionality of sanction. However, he noted that it is the factors of the Applicant's case, as outlined above, that are determinative. He also reviewed the eight cases from 2019 and 2020 relied upon by the Applicant, some of which involved senior managers, where substantiated allegations of harassment, abuse of authority, or failure to uphold standards of integrity led to disciplinary measures ranging from written censure to dismissal. He noted that the Tribunals have upheld terminations of appointment through dismissal and separation from service for serious misconduct that involves dishonesty or failure to uphold the highest standards of integrity such that continuance of the employment relationship is untenable, and he found that the Applicant's actions involved precisely such impropriety. He also noted that in UNDP's past practice, cases involving interference and failure to cooperate with an investigation have resulted in separation from service.

82. Following a review of all the evidence on the record and having considered the matter, including the aggravating and mitigating factors, the Associate Administrator, UNDP concluded that the Applicant's actions were inconsistent with the standards expected of United Nations staff members and fell well short of the standards required for continued employment in the Organization. He therefore considered it appropriate to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity under staff rules 10.1(a) and 10.2(a)(viii).

83. Based on the foregoing, the Tribunal sees no reason to interfere with the impugned decision and finds that the disciplinary measure imposed on the Applicant was proportionate to the established misconduct.

Whether the Applicant's due process rights were respected

84. The Applicant contends that the contested decision “is marred by a biased and incomplete investigation that has presented opinion and assertion as fact”. In her view, the investigation was “unfair and prejudiced” against the Applicant and “portrayed an unfortunate desperation to establish [the Applicant's] guilt and unprofessionally served up accusations as facts in this case”. She further submits that the OAI investigators “ignored [their] duty to gather both incriminating and exculpatory facts” and that many of their findings were based on factually incorrect assumptions. The premise that XM merited protective status based on his “false reporting of financial impropriety” should have been more carefully considered. Moreover, since OAI did not pursue the complaint filed by the Applicant against her accuser, the latter's complaints of retaliation lack any context and her efforts to address a managerial problem appear unsupported. Regarding the allegation of interfering with the investigation process, “the claim is entirely misplaced”. UNDP initially had access to the material that was lost when service to the Applicant's phone was stopped and the phone number was prematurely returned to the telephone company. She also submits that the contested decision was rushed and appeared aimed at justifying her removal.

85. In her testimony before the Tribunal, the Applicant stated that she believed XM did not act in good faith. He acted based on his personal animosity and his career disappointment on not becoming Executive Secretary of UNCDF. She also stated that there was a degree of procedural mishandling by OAI and UNDP who ignored key evidence and proceeded to create a case which has no merit. It was UNDP who mismanaged the issue with her official phone, were negligent and lost the data. There is no basis for creating a case against the Applicant for lack of cooperation or interference. In fact, in the 14 December 2023 letter dismissing the unsubstantiated allegations against the Applicant, OAI thanked her for her cooperation. Thus, there are no grounds for any disciplinary action to have

occurred. What happened was a managerial process according to the ways in which the Organization normally handles rotation situations.

86. The Applicant also testified that the investigation and disciplinary process have had a serious impact on her mental health and resulted in high degrees of anxiety, as attested to by her doctor. She has dedicated her life to international finance, starting from 1992 when she began working for the World Bank. She has traveled and lived on four continents, always working on poverty alleviation and trying to bring her knowledge and expertise of finance to help people move out of poverty. But this whole process has really inhibited her ability to seek new employment because all the relationships between the donors and multilateral funds are closely connected.

87. The Respondent submits that the Applicant's due process rights were respected throughout the investigation and disciplinary process. She was informed of the allegations, given an opportunity to respond, and her comments were taken into consideration before the final decision was made. The Respondent also notes that the Applicant was provided with the draft investigation report and given an opportunity to provide comments and countervailing evidence.

88. The Tribunal notes that the statement of agreed facts jointly submitted by the parties included at the beginning of this Judgment presents the chronology of events relating to the investigation and disciplinary process. Having carefully reviewed that joint statement as well as the parties' submissions, the Tribunal is satisfied that the Applicant's due process rights were fully respected. For instance, she was duly notified that she was the subject of an investigation and given sufficient time to prepare for the subject interview, including the opportunity to provide countervailing evidence and to submit her comments on the draft investigation report. Further, after she was presented with the allegations of misconduct, she was given the opportunity and granted an extension of time to respond. It was also established at the hearing that during the investigation, the Applicant was represented by private counsel at the time when she provided her comments on the OAI draft investigation report and that later, during the

disciplinary process, when she prepared her comments on the charge letter, she was represented by counsel from the Office of Staff Legal Assistance (“OSLA”).

89. Based on the foregoing, the Tribunal is satisfied that the Applicant’s due process rights were respected during the investigation and disciplinary process.

Conclusion

90. The application is rejected in its entirety.

(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