



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/034
Judgment No.: UNDT/2025/097
Date: 26 November 2025
Original: English

Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

SALL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Monika Ona Bileris

Counsel for Respondent:

Alister Cumming, UNICEF

Chinonyelum Esther Uwazie, UNICEF

Introduction

1. The Applicant is a Human Resources Manager with the United Nations Children's Fund ("UNICEF") in Niamey, Niger. On 2 August 2024, he filed an application contesting the decision dated 8 May 2024 to impose on him the disciplinary measure of deferment, for four years, of eligibility for salary increment in accordance with staff rule 10.2(a)(iii).
2. On 30 August 2024, the Respondent filed a reply in which he contends that the contested decision was lawful.
3. The parties agreed that no hearing was needed and that the Tribunal could adjudicate the case based on their written submissions. The Tribunal concurred with the parties and considered that the written case record adequately informed it on the issues in contention. Therefore, no hearing was held in accordance with art. 16.2 of the Rules of Procedure of the Dispute Tribunal.
4. For the reasons set out below, the Tribunal rejects the application.

Facts

5. Pursuant to the Tribunal's Order No. 106 (NY/2024) of 14 October 2024, the parties submitted a jointly signed statement in which they agreed to the following facts:

... The Applicant joined UNICEF on 17 April 2018 as a Human Resources Specialist with the Division of Human Resources (DHR), New York Headquarters (NYHQ) at the P-3 level. The Applicant worked in DHR's Senior Leadership Support (SLS) team. On 27 April 2020, he was appointed as a Human Resources Specialist with UNICEF's West and Central Africa Regional Office in Dakar, Senegal at the P-3 level. On 2 July 2023, he was appointed as a Human Resources Manager with UNICEF's Niger Country Office in Niamey, Niger. On the date that the disciplinary measure was issued, he held the position with UNICEF Niger Country Office at the P-4 level, Step 1. He held it on a fixed-term appointment basis. His duty station was Niamey, Niger.

... [The Complainant, name redacted for privacy reasons] served as an intern with the SLS team for a period of about nine months in 2019, until September 2019. From around 9 September 2019 until 10 August 2020, she worked as an individual contractor supporting the SLS team.

... After [the Complainant] was recruited as an individual contractor with SLS, the Applicant commenced a romantic relationship with her. When the Applicant commenced this romantic relationship with [the Complainant] and throughout the period of his service with the SLS team, he did not disclose his romantic relationship with [the Complainant] to the head of his office.

... On 6 July 2023, UNICEF's Office of Internal Audit and Investigations (OIAI) received a report of possible misconduct involving the Applicant from [the Complainant]. In particular, it was reported that the Applicant failed to timely disclose his intimate relationship with two of his supervisees, including [the Complainant].

... On 27 October 2023, OIAI informed the Applicant that it was investigating the allegations. During the investigation, OIAI interviewed witnesses and gathered other evidence. On 2 November 2023, OIAI interviewed the Applicant. On 15 December 2023, OIAI transmitted its Investigation Report to the UNICEF Deputy Executive Director, Management (DED/M) for appropriate action.

... On 27 March 2024, the DED/M charged the Applicant with misconduct. In the Charge-Letter, the Applicant was requested to provide his response to the charges within 14 calendar days of his receipt of the Charge-Letter.

... On 10 April 2024, the Applicant submitted his response to the Charge-Letter.

... On 8 May 2024, the DED/M found that the Applicant engaged in misconduct and imposed the disciplinary measure of deferment, for four years, of eligibility for salary increment in accordance with UN Staff Rule 10.2(a)(iii).

Considerations

The issues of the present case

6. Under the established jurisprudence of the Appeals Tribunal, "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 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 DED/M of UNICEF lawfully exercise her discretion in imposing upon the Applicant the disciplinary measure of deferment, for four years, of eligibility for salary increment in accordance with staff rule 10.2(a)(iii)?
- b. If not, to what remedies, if any, is the Applicant entitled?

The sanction letter

8. In the sanction letter dated 8 May 2024, it is stated that on 27 March 2024 the Applicant was charged with, between November 2019 and January 2020:

- a. Failing to disclose to the head of his office the possible or actual conflict of interest that arose from his romantic relationship with a former UNICEF individual contractor, the Complainant; and
- b. Failing to excuse himself from participating in matters involving the Complainant.

9. Following an investigation and an assessment of the evidence, including the Applicant’s responses, the DED/M concluded that the allegations against him were established by clear and convincing evidence and that his actions amounted to misconduct in violation of staff regulations 1.2(b) and 1.2(m), staff rule 1.2(p).

The Tribunal’s limited scope of review of disciplinary cases

10. Pursuant to 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; and *Khamis* 2021-UNAT-1178, para. 80). 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).

11. However, “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). Moreover, 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).

12. 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

13. The DED/M of UNICEF states in an annex to the sanction letter that there is clear and convincing evidence that from November 2019 to January 2020, the Applicant failed to disclose to the head of his office the possible or actual conflict of interest that arose from his romantic relationship with the Complainant, who at the time was a UNICEF individual contractor. The DED/M further states that during the same period, the Applicant approved payment for three separate invoices for the Complainant under her individual contractor contract. As these two questions are very closely intertwined, the Tribunal will review the related evidence jointly.

14. That the Applicant and the Complainant were involved in a romantic relationship during the relevant period is not disputed by either party. Indeed, this is clearly indicated in the joint statement of agreed facts presented by the parties. Therefore, the Tribunal will not examine the details of the romantic relationship. The questions under review are whether the Applicant failed to disclose the possible or actual conflict of interest arising from his romantic relationship with the Complainant and whether he failed to recuse himself from participating in matters involving her.

15. The Applicant's main submissions regarding the establishment of the facts of the contested decision may be summarized as follows:

- a. Administrative decisions concerning disciplinary actions "cannot be tainted by procedural irregularities, such as the failure to take into consideration facts which can lead to a fair determination of the facts of the case". In the present case, "the facts do not support a finding of misconduct. OIAI failed to show that the Applicant was [the Complainant's] supervisor through clear and convincing evidence". Further, OIAI "failed to show what, if any, conflict of interest arose as a result of the non-disclosure. In light of the lack of credible direct evidence against him, the disciplinary sanction is disproportionate. As such, a finding of misconduct cannot be upheld".

b. “The Administration bears the burden of establishing through clear and convincing evidence that alleged misconduct occurred before disciplining a staff member. In this case, the Organization relied on the testimony of staff members to establish that the Applicant was [the Complainant’s] supervisor, but such evidence was too scarce, contradictory, and inconsistent to establish same. Surely, if the Applicant was [the Complainant’s] supervisor, [the Division of Human Resources, DHR] would have had a record of it. OIAI did produce [the Complainant’s] Terms of Reference (TOR) which listed the Applicant as her supervisor, but the Applicant stands by his belief and understanding that he was not”.

c. “Apart from the TOR itself, the Organization failed to produce any communications or documents to show the Applicant’s role in serving as [the Complainant’s] supervisor. For instance, there are no emails informing the Applicant that he would be listed on [the Complainant’s] TOR as her supervisor or communications with him discussing the elements of her TOR. He was not involved in recruiting [the Complainant], extending her contract, giving her assignments or instruction, or evaluating her work. One would think he would have had an active role in any or all of these things if he was, in fact, her supervisor. His own TOR do not show that he was tasked with supervising consultants, and as mentioned above, [DHR] had no record to show he was anyone’s supervisor, let alone [the Complainant’s].

d. “The Applicant never denied working closely with [the Complainant]”, but his “short-lived relationship” with her “created no conflict of interest”. His “personal relationship with [the Complainant] did not interfere with his official duties. His own work remained unaffected, and there is no allegation that [the Complainant’s] work was affected by their relationship. Neither was the Applicant’s impartiality affected. He admitted to approving two payment invoices for [the Complainant], but there was nothing untoward with signing them as he did not alter, manipulate, or otherwise favor [the Complainant] by doing so: this was money she had earned, which had nothing to do with the Applicant. There

was no personal benefit to either one of them. Further, there was no mitigation required as the relationship ended and [the Complainant] left the Organization”.

e. “The Applicant’s approval of two of [the Complainant’s] invoices did not signify a supervisory relationship over her, did not pose a conflict of interest, and [was] done out of necessity as there was no one else to sign off on them”. He “merely inserted the invoice” into the computer system “as he did not have the authority to approve invoices or a receiving officer role in the system”.

f. In the Senior Leadership Support (“SLS”) team, “it was not about who was responsible for approving and processing payments and other documents, it was about who happened to be around to do it”. The Applicant approved the invoices “because he happened to be the only person in the office at the time”. Other staff members approved invoices as well, including some who were not even part of the SLS team. “Still, the Applicant accepted responsibility for having released invoices for [the Complainant] and admitted that perhaps he should have recused himself from having done so. He did not do so as he was not aware of any official supervisory role he had over [the Complainant]”.

g. “OIAI attempted to imply fault when it stated that the Applicant testified to being aware that disclosures must be made even where a work relationship involves a secondary supervisory line, thereby calling its neutrality into question. His point was that, as [a Human Resources] professional, he was aware that such disclosures must be made, and if he was in such a situation, he would have made a disclosure himself. Indeed, he had nothing to lose by doing so. A new line of reporting could have been arranged [...]”.

h. Moreover, “the Respondent fails to explain how or why there was any benefit to either the Applicant or [the Complainant] stemming from the

Applicant's alleged approval of her invoices or failure to disclose the relationship. What was the Applicant's personal interest in approving [the Complainant's] invoices? The Respondent does not say, likely because there was none". "There was no harm or potential harm to the Organization resulting from the approval of [the Complainant's] invoices. It is not alleged, for instance, that [the Complainant] did not complete the work for which she was hired and the Applicant falsely approved illegitimate invoices".

i. "The Applicant was obligated to disclose his relationship where it could be shown that failing to do so would affect his work or status, where his personal interests interfered with his official duties or responsibilities, or where there was an actual or potential conflict of interest, but simply put, his approval of [the Complainant's] invoices did not trigger any such issues. Absent proof to the contrary, the Respondent cannot show that the Applicant engaged in the misconduct with which he was charged".

j. "OIAI asserts that [the Complainant] stated that the Applicant told her not to mention their relationship because it could endanger his career, and that he used to joke that he could get in trouble with OIAI". However, as a human resources professional, the Applicant was aware that disclosure of the relationship would merely "result in a change of reporting line or other action to remove the conflict of interest".

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

a. "There is clear and convincing evidence that between November 2019 and January 2020, the Applicant failed to disclose the possible or actual conflict of interest that arose from his romantic relationship with a former UNICEF individual contractor to the head of his office and failed to excuse himself from participating in matters involving her".

b. "The evidence shows that during the period in question, the Applicant approved three invoices for payment to the individual

contractor”. “When the Applicant approved the above payments, he was in a romantic relationship with the individual contractor which he did not disclose to the head of his office”.

c. “The Applicant has not specifically denied the allegations. Instead, he asserts that he approved the payments because he happened to be around and he was the most senior staff in the office. He also asserts that because he did not have a supervisory role over the individual contractor, he did not know that he was required to recuse himself from approving payments to her. Therefore, it is undisputed that he approved the payments to the individual contractor when he was in a romantic relationship with her, and he did not disclose the romantic relationship to the head of his office, nor did he formally recuse himself from approving the payments”.

17. The Tribunal observes that while the OIAI investigation report may have alleged that the Applicant had a *de facto* supervisory relationship with the Complainant from September 2019 until April 2020, this allegation was not pursued in the charge letter dated 27 March 2024 or in the sanction letter of 8 May 2024. Therefore, the Applicant’s submissions regarding the absence of a supervisory relationship between him and the Complainant are not a point of contention and are irrelevant to the Tribunal’s consideration of the case.

18. The evidence before the Tribunal shows that during the period from November 2019 to January 2020, the Applicant approved three invoices for payment to the Complainant, who at the time was an individual contractor working for UNICEF. First, on 26 November 2019, the Applicant approved a payment in the amount of USD5,040 for services the individual contractor provided to the SLS team for the period 1 November 2019 to 30 November 2019. Second, on 30 December 2019, the Applicant approved a payment in the amount of USD5,280 for services the individual contractor provided to SLS for the period 1 December 2019 to 31 December 2019. Finally, on 31 January 2020, the Applicant approved a payment in the amount of USD1,920 for services the individual contractor provided to SLS for the period 1 January 2020 to 31 January 2020.

19. It is undisputed that between 1 November 2019 and 31 January 2020, the Applicant was involved in a romantic relationship with the Complainant. It is also undisputed that the Applicant did not disclose this romantic relationship to the head of his office. Further, although the Applicant asserts that he recalls approving only two of the payments, the evidence on record shows that he did in fact approve all three separate payments to the Complainant during the period in question. Thus, the Applicant failed to excuse himself from participating in matters involving the Complainant.

20. Based on the foregoing, the Tribunal finds that the Respondent has established through clear and convincing evidence that from November 2019 to January 2020, the Applicant was in a romantic relationship with the Complainant, and that he did not disclose to the head of his office the possible or actual conflict of interest that arose from this romantic relationship. The Tribunal also finds that the Respondent has established through clear and convincing evidence that from November 2019 to January 2020, the Applicant failed to excuse himself from participating in matters involving the Complainant.

Whether the established facts legally amount to misconduct

21. In the sanction letter dated 8 May 2024, the DED/M of UNICEF concluded that the allegations against the Applicant were established by clear and convincing evidence and that the Applicant's actions amounted to misconduct in violation of staff regulations 1.2(b) and 1.2(m), and staff rule 1.2(p).

22. Staff regulations 1.2(b) and 1.2(m) provide as follows (emphasis in the original):

Basic rights and obligations of staff

Core values

...

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

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

...

Conflict of interest

(m) A conflict of interest occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization.

23. Staff rule 1.2(p) provides as follows (emphasis in the original):

Conflict of interest

(p) Staff members shall, except as otherwise authorized by the Secretary-General, formally recuse themselves from any involvement in a matter which might give rise to an actual or possible conflict of interest as set out in staff regulation 1.2 (m) and take any other action as may be deemed necessary pending the consideration by the Organization of any mitigation or remediation measures. Staff members shall implement the mitigation or remediation prescribed by the Organization to resolve that conflict of interest situation.

24. The Applicant's main submissions in this regard may be summarized as follows:

a. The Applicant did not violate the Staff Regulations and Rules. "[T]he Respondent fails to show how the Applicant's approval of [the Complainant's] invoices or his failure to disclose their relationship interfered with his official duties or affected his integrity, independence and impartiality in the performance of his duties". "The payment of invoices was not a discretionary decision and had no bearing on his performance or that of [the Complainant]. It was merely transactional and there was no way in which the interests of the Organization could have been or were affected".

b. “The Applicant did not personally benefit from approving [the Complainant’s] invoices, financially or otherwise. [The Complainant] was an approved contractor who performed the work with which she was tasked, and therefore payment needed to be made to her regardless of who approved her payments (and indeed, numerous people did). There was no harm or potential harm to the Organization resulting from the approval of [the Complainant’s] invoices. It is not alleged, for instance, that [the Complainant] did not complete the work for which she was hired and the Applicant falsely approved illegitimate invoices”.

c. “The Applicant was obligated to disclose his relationship where it could be shown that failing to do so would affect his work or status, where his personal interests interfered with his official duties or responsibilities, or where there was an actual or potential conflict of interest, but simply put, his approval of [the Complainant’s] invoices did not trigger any such issues. Absent proof to the contrary, the Respondent cannot show that the Applicant engaged in the misconduct with which he was charged”.

25. The Respondent’s main contentions may be summarized as follows:

a. “The Applicant’s established conduct amounts to misconduct in violation of [United Nations] Staff Regulations 1.2(b) and 1.2(m), and [United Nations] Staff rule 1.2(p). Before approving payments to the individual contractor with whom he was romantically involved, he should have disclosed his relationship, and pending consideration by UNICEF of any mitigating measures, he should have recused himself from any involvement in matters concerning the individual contractor”.

b. “Contrary to the Applicant’s assertion, there is no requirement under the legal framework for a supervisory relationship to exist before the obligation for disclosure and formal recusal can attach. Staff Regulation 1.2(m) requires disclosure of a personal interest that interferes or has the potential to interfere with the performance of a staff member’s official

duties or responsibilities or with his or her integrity, independence, and impartiality”.

c. Moreover, contrary to the Applicant’s claim, “the DED/M did not decide that he was required to disclose his relationship and formally recuse himself because he had a supervisory role over the individual contractor”. Rather, the DED/M decided that “during periods he was in a romantic relationship with the individual contractor, he approved payments to her, and he did not disclose the romantic relationship and formally recuse himself from approving the payments”.

d. “It is not an excuse that the Applicant was unaware of the required standard of conduct. Ignorance of the law is not an excuse for a staff member failing to comply with the obligations set out under the Staff Regulations and Rules. Where in doubt, the Applicant could have sought advice from the UNICEF Ethics Office”. “In any event, as a member of Human Resources personnel, he had experience dealing with matters of conflict of interest. Therefore, he knew or should have known the required standard of conduct”.

e. “In addition, the operational necessity notwithstanding, the Applicant was obliged to disclose his relationship and allow UNICEF the opportunity to mitigate any actual or potential conflict that arose from that relationship. Contrary to the Applicant’s assertion, liability for failing to comply with the disclosure obligation does not only attach in cases of actual conflict of interest, i.e., where it is established that a staff member’s personal interest did not in fact interfere with his or her official duties and responsibilities”. Moreover, “it is not relevant that other members of the Applicant’s team approved payments in other instances” and “it is not relevant that the Applicant’s involvement was limited to the approved payments while other members of his team approved and/or processed other documents concerning the individual contractual arrangement”. The Applicant was obliged to disclose the romantic relationship with the

individual contractor “and formally recuse himself from participating in matters involving her”.

26. As established earlier, it is undisputed that when the Applicant approved the invoice payments for the Complainant in the period from November 2019 to January 2020, he was in a romantic relationship with her, which he did not disclose to the head of his office or to anyone in UNICEF. The Tribunal considers that this situation gave the perception of a potential or actual conflict of interest on the Applicant’s part.

27. The Tribunal recalls that during his interview with OIAI as well as in his response to the charge letter, the Applicant acknowledged that perhaps he should have recused himself from approving payment for the Complainant’s invoices. However, the Tribunal does not accept his assertion that he was unaware of his obligation to disclose his romantic relationship with the Complainant since he was not her supervisor during the relevant period. As a staff member of the Organization, and especially as a Human Resources professional, he is presumed to know the standard of conduct expected under the Staff Regulations and Staff Rules of the United Nations.

28. In particular, staff regulation 1.2(b) requires staff members to adhere to the highest standards of efficiency, competence and integrity. It highlights the concept of integrity, which “includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting [the staff members’] work and status”. Similarly, under the definition of a conflict of interest provided in staff regulation 1.2(m), where a staff member’s personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member’s status as an international civil servant, this “shall be disclosed” by the staff member to his or her head of office. Moreover, staff rule 1.2(p) mandates that staff members shall “formally recuse themselves from any involvement in a matter which might give rise to an actual or possible conflict of interest as set out in staff regulation 1.2(m). These provisions put all staff members on notice that they are under a continuous

obligation to put the Organization's interests first, and to disclose any situation that might give rise to a possible or actual conflict between their personal interests and the interests of the Organization.

29. The Applicant's argument that a conflict of interest could only have arisen if he were the Complainant's supervisor or if either of them benefited personally from him approving the invoices is incorrect. He was obliged to disclose the relationship notwithstanding the operational need and even if no supervisory relationship existed between him and the Complainant. As this Tribunal has previously observed, the legal framework is sufficiently clear that a conflict of interest may exist even when there is only the possibility that a staff member, or the party that he or she is involved with, could benefit from the association (see, for instance, *Vedel* UNDT/2019/110, para. 43).

30. Moreover, as outlined in the Staff Regulations and Rule cited above, in case of a possible or actual conflict of interest, it is for the Organization, not the staff member, to determine the appropriate action in mitigation. As a Human Resources professional, the Applicant has sufficient experience dealing with matters of conflict of interest. Therefore, he knew or should have known the required standard of conduct. If he had any doubts regarding his obligation to disclose the romantic relationship, he could have sought confidential advice from his supervisors or from the UNICEF Ethics Office.

31. As the Appeals Tribunal has stated, "failure by a staff member to comply with his or her disclosure of information obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, or to observe the standard of conduct expected of an international civil servant, is undeniably misconduct" (*Rajan* 2017-UNAT-781, para. 37).

32. The evidence before the Tribunal shows that the Applicant failed to disclose to the head of his office the fact that he was involved in a romantic relationship with the Complainant, who at the relevant time was an individual contractor working in the same office. This gave rise at least to the appearance of a conflict of interest.

The evidence further shows that the Applicant failed to recuse himself from participating in matters involving the Complainant, and that he approved three invoices for payment to the Complainant during the same period.

33. Accordingly, having reviewed the entirety of the evidence on record, the Tribunal finds that the DED/M acted within her scope of discretion when finding that the established facts legally amounted to misconduct. The Applicant breached his obligations of disclosure of conflict of interest under the Staff Regulations and Staff Rules by failing to disclose his romantic relationship with the Complainant to the head of his office and by failing to recuse himself from participating in matters concerning her.

Whether the sanction is proportionate to the offence

34. In the sanction letter, the DED/M states that in determining the appropriate sanction to impose on the Applicant, she took into consideration several factors including the nature of the Applicant's actions, the past practice of UNICEF in matters of comparable misconduct, as well as any applicable aggravating and mitigating factors.

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

- a. "The impugned disciplinary measure is disproportionate to the misconduct alleged, and as such [must] be quashed". The principle of proportionality dictates that "an administrative decision should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if the course of action is reasonable, but not if the course of action is excessive." Further, "mitigating factors are looked at in assessing the appropriateness of a sanction. Mitigating circumstances include long and satisfactory service with the Organisation; an unblemished disciplinary record; an employee's personal circumstances; sincere remorse; restitution of losses; voluntary disclosure of the misconduct committed; whether the disciplinary infraction was occasioned by coercion

[...]; and cooperation with the investigation.” (Citing *Yisma* UNDT/2011/061).

b. “In this case, the sanction of deferment of eligibility for salary increment for four years is excessive. The Applicant has a flawless record with UNICEF and has never committed misconduct. The only charge against him is that he failed to disclose a relationship and recuse himself from matters concerning [the Complainant], even though he acknowledged that he should have made the disclosure and apologized for any perceived wrongdoing. His quick disclosure [in another matter] illustrates that he sought to follow the Staff Rules and Regulations. UNICEF suffered no damage or loss as a result of the non-disclosure. To wait four years for a salary increment based on a momentary lapse of judgment when it has not even been proven that the Applicant was [the Complainant’s] supervisor is excessive”.

c. OIAI failed to show what, if any, conflict of interest arose as a result of the non-disclosure of the Applicant’s romantic relationship with the Complainant. “In light of the lack of credible direct evidence against him, the disciplinary sanction is disproportionate. As such, a finding of misconduct cannot be upheld”.

d. OIAI did not correctly assess the credibility and reliability of witness testimony in determining that the Applicant failed to disclose his relationship with the Complainant. “OIAI made assertions concerning the Applicant’s failure to disclose his relationship to [the Complainant] to UNICEF based on witness’ testimony, including the Applicant’s, that was largely misused and/or misinterpreted”. Further, OIAI did not interview certain “key witnesses” who “played an integral and active role and could have provided information” about the Complainant’s supervisor and the processing of invoices.

e. “In the present case, the offence was not serious as it was not discretionary and the Organization did not suffer any harm as a result. The Applicant has no disciplinary record and has always conducted himself according to the standards expected and required by the United Nations. He had no intent to commit any wrongdoing and, as argued in the [a]pplication, he acknowledged his actions and apologized for any perceived wrongdoing”.

f. “The impugned sanction is disproportionate to the misconduct alleged. Even if the Applicant had engaged in the conduct alleged, deferment of eligibility for salary increment for four years for having allegedly approved three invoices legitimately due to a contractor is excessive, especially where no harm befell the Organization or could have befallen the Organization, and considering the mitigating factors outlined in the [a]pplication. Should the Tribunal determine that a disciplinary sanction should indeed have been imposed, it should find that, in this case, the sanction imposed was excessive and disproportionate”. “It should easily be found that the disciplinary sanction against the Applicant was out of proportion to the misconduct alleged, and as such should be rendered null and void”.

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

a. In order for the Tribunal to interfere with the contested decision on the basis of proportionality, the disciplinary measure must be “blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity” (citing the Appeals Tribunal in *Ganbold* 2019-UNAT-976, para. 58) or akin to “taking a sledgehammer to crack a nut” (citing *Doleh* 2010-UNAT-025, para. 20).

b. The sanction imposed on the Applicant “was not arbitrary or disproportionate. The Applicant’s failure to disclose a blatant conflict of interest to UNICEF was [a] serious lapse in judgement, denoting a marked

failure to uphold minimal standards of integrity. In implementing its mandate to deliver for children world-wide, UNICEF works with a wide range of individual contractors. It is of utmost importance that its engagement with individual contractors is free from any form of bias. The Applicant who has experience dealing with matters of conflict of interest, engaged in conduct that directly violated the principles expected of him”.

c. The DED/M considered the Applicant’s experience dealing with matters of conflict of interest as an aggravating factor. She determined that because of this experience, the Applicant “knew or should have known the standard of conduct expected of him” or “he could have sought advice from the UNICEF Ethics Office”. The DED/M also concluded that in failing to take steps to ensure compliance with the required standard of conduct, the Applicant “acted in wilful or flagrant disregard of the rule relating to conflict of interests”. In mitigation, the DED/M considered the Applicant’s “early admission of his relationship with the individual contractor, his admission that he approved payments to the individual contractor, and his expression of remorse”.

d. The DED/M determined that deferment, for four years, of eligibility for salary increment was an appropriate disciplinary measure. In reaching this decision, the DED/M took into account “the nature of the Applicant’s actions, UNICEF’s past practice in comparable matters, and the aggravating and mitigating factors”.

37. 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”. The Appeals Tribunal pronounced “the principle of proportionality” in its seminal judgment in *Sanwidi* 2010-UNAT-084, holding that this “means that an administrative action should not be more excessive than is necessary for obtaining the desired result”. It also stated that the “requirement of proportionality is satisfied if a course of action is reasonable, but not if the course

of action is excessive”, which then “involves considering whether the objective of the administrative action is sufficiently important, the action is rationally connected to the objective, and the action goes beyond what is necessary to achieve the objective”. (See para. 39).

38. Additionally, under the more recent 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 behavior 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).

39. The Appeals Tribunal has held that the Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose (see, for instance, *Toukolon* 2014-UNAT-407). However, as the Appeals Tribunal stated in *Samandarov* 2018-UNAT-859, at para. 24, “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”.

40. In the present case, the Tribunal has carefully considered the sanction letter of 8 May 2024 as well as its annex and notes that in deciding on the appropriate disciplinary measure, the DED/M of UNICEF took into consideration both aggravating and mitigating factors.

41. The DED/M underscored the fact that as the nature of UNICEF’s work requires it to engage with individual contractors, it takes seriously cases calling into

question a staff member's integrity and must rely on its staff members to bring any actual or possible conflict of interest to the attention of their heads of offices. In the present case, the DED/M considered that the Applicant's failure to inform the head of his office before approving three invoices for payment to the Complainant was "unacceptable". She also pointed out that the Applicant should have disclosed the relationship in order "to enable UNICEF to resolve the risk to it resulting from the relationship" and that the Applicant should have recused himself from approving the payments. She also stated that in the past practice of UNICEF, such cases have regularly led to sanctions ranging from separation from service to loss of one or more steps within grade, with or without written censure". As an aggravating factor, the DED/M also considered the fact that the Applicant is a Human Resources professional with experience dealing with matters of conflict of interest. She determined that he knew or should have known the required standard of conduct and that if he had any doubts, he should have sought confidential advice from the Ethics Office. The DED/M therefore concluded that the Applicant "acted willfully or in flagrant disregard of the rule regarding conflicts of interest".

42. In mitigation, the DED/M took into account the Applicant's early admission of his romantic relationship with the Complainant, his early admission that he approved payments to her, and his expression of remorse for his actions. Accordingly, she considered that "a separation from service would be disproportionate" in the Applicant's case. In the end, she determined that a disciplinary measure of deferment, for four years, of eligibility for salary increment "appropriately reflects the seriousness" of the Applicant's actions.

43. In light of the above, the Tribunal is satisfied that the DED/M considered the relevant matters, including aggravating and mitigating factors, and that she did not exceed her scope of discretion when imposing the disciplinary measure on the Applicant in terms of proportionality.

Whether the Applicant's due process rights were respected

44. The Applicant submits that in the investigation and disciplinary process, “[t]here were mistakes of fact and procedural irregularities which require the vitiation of the impugned decision”. According to him, “OIAI did not correctly assess the credibility and reliability of witness testimony in determining that the Applicant failed to disclose his relationship with [the Complainant]”. OIAI “made assertions” based on testimony “that was largely misused and/or misinterpreted”. It also failed to interview “key witnesses” who “played an integral and active role and could have provided information about the supervisor and invoice processing issues”.

45. The Applicant further submits that “OIAI attempted to imply fault when it stated that the Applicant testified to being aware that disclosures must be made even where a work relationship involves a secondary supervisory line, thereby calling its neutrality into question”.

46. The Respondent submits that “[t]he Applicant’s due process rights were respected throughout the investigation and the disciplinary process”. Despite OIAI’s assessment in its final investigation report, during the disciplinary process “the DED/M did not consider the allegation that the Applicant had a *de facto* supervisory relationship with the individual contractor” and that specific allegation “did not impact the disciplinary outcome”. “Under the circumstance, evidence of any invoice processing issues at SLS would not have been relevant to the determination by the DED/M. What was relevant was whether the Applicant made the required disclosure and formally recused himself from participating in matters involving the individual contractor notwithstanding any invoice processing issues”.

47. Having carefully examined the case file, the Tribunal notes that OIAI conducted a full investigation, which included interviews with relevant witnesses and gathering the related documentary evidence. OIAI duly notified the Applicant of the nature of the allegations against him and conducted an interview with him, after which it provided him with an audio-recording of the interview and gave him

the opportunity to present further information to the investigators. In the charge letter of 27 March 2024, the Applicant was informed of the allegations against him and of his right to seek the assistance of counsel. He was given the opportunity to respond to the allegations and was also provided with the OIAI investigation report and all relevant supporting materials. He submitted his response, which was duly considered before the sanction letter of 8 May 2024 was issued.

48. Based on the foregoing, the Tribunal is satisfied that the Applicant's due process rights were respected throughout the investigation and disciplinary processes.

Conclusion

49. The application is rejected in its entirety.

(Signed)

Judge Solomon Areda Waktolla

Dated this 26th day of November 2025

Entered in the Register on this 26th day of November 2025

(Signed)

Isaac Endeley, Registrar, New York