



# UNITED NATIONS APPEALS TRIBUNAL T

Judgment No. 2023-UNAT-1333

Counsel for Appellant: Robbie Leighton, OSLA

Counsel for Respondent: Patricia Aragonès

**JUDGE GAO XIAOLI, PRESIDING.**

1. Ms. Hasmik Egian (Appellant), the Director of the Security Council Affairs Division (SCAD) appeals the judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) that dismissed her application contesting the imposition of certain disciplinary measures for misconduct.

2. Appellant submits to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) that the UNDT committed errors of fact and law in upholding the Organization's misconduct finding and in affirming the sanction of written censure and loss of two steps in grade.

3. For the reasons set out in this Judgment, the Appeals Tribunal dismisses the appeal and

viewed as emphasizing that Ms. Y.B., whose background was in information technology, was not a lawyer.<sup>3</sup>

8. At some point in 2017, Ms. Egian placed a call from the Security Council Chamber to Ms. Y.B., only to then ask her to pass the phone to Ms. B.M., which Ms. B.M. perceived as marginalizing Ms. Y.B.

9. In December 2017, there was a need to place two P-4 level staff from one of the teams in the Sanctions Branch to other positions in SCAD. Initial discussions involved Ms. Egian, the Front Office of the Office of the Under-Secretary-General (OUSG), the Executive Office and the Chief of the Sanctions Branch. Two vacant positions on Ms. Y.B.'s team (SCPCR) were identified as options. However, Ms. Y.B. was not consulted about the placement of the two P-4 staff on her team until after the decision was made.

Ms. Egian immediately encouraged Ms. Y.B. to approve the request. Later, when Ms. Y.B. made a FWA request to Ms. Egian to work remotely from another country, Ms. Egian did not approve the request promptly.<sup>8</sup>

13. On 21 January 2019, Ms. Y.B. filed a formal complaint of prohibited conduct against Ms. Egian, alleging that Ms. Egian had created a hostile work environment and misused United Nations resources.

14. On 7 March 2019, the Executive Officer of DPPA (EO/DPPA) requested approval from the Under-Secretary-General for Political and Peacekeeping Affairs (USG/DPPA) to establish a fact-finding panel (Panel) to investigate allegations of misconduct under the Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). The EO/DPPA proposed that two retirees residing in the New York area, who were both OIOS-trained and rostered investigators, would serve on the Panel and be paid for their services.

15. The Panel interviewed sixteen staff members, including Ms. Egian, Ms. Y.B., and fourteen other witnesses. The Panel also reviewed numerous documents.

16. On 16 May 2019, the Panel submitted its final report to the USG/DPPA. The Panel concluded, in pertinent part, that:

Ms. [Y.B.] has been a victim of demeaning and disparaging remarks by Ms. Egian and that (...) Ms. Egian's behavior could be identified as harassment and abuse of authority according to the applicable norms.

...

[T]he recruitment of Mr. [V.R.], who is the spouse of a senior official in the same Department, should ha -1z8[(M)-6.6-1 (6.6 (e) id)5.4 a-.5 (r)-4.i.04.2 (ou(-1z8[(44y5b )-5.4 94a)-4.5 ( -1z8[(M)

17. On 25 November 2019, the Assistant Secretary-General for Human Resources (ASG/HR) advised Ms. Egian that it had been decided to issue formal allegations of misconduct against her (Allegations Memorandum). In particular, it was alleged that she engaged in:

- a. Creating a hostile work environment towards Ms. [Y.B.] by: i) making disparaging and demeaning remarks against Ms. [Y.B.], humiliating and belittling Ms. [Y.B.] in front of her colleagues or others; ii) sidelining Ms. [Y.B.] from SCPCRБ-related decisions and/or work; and iii) abusing your authority over Ms. [Y.B.] by showing favoritism towards Ms. [B.M.]
- b. Misusing UN assets and resources in relation to the recruitment of Mr. [V.R.], demonstrating favoritism or giving rise to the perception of favoritism; and
- c. Unreasonably interfering in a recruitment exercise relating to a P-2 TJO vacancy in SCPCRБ, and by doing so, also misusing UN resources.<sup>10</sup>

18. By letter of 29 October 2020 (the Sanction

about Ms. Y.B.'s suitability for the position before Ms. Y.B. arrived. The Dispute Tribunal noted that there was already in DPPA an unfavorable view



33. On 13 April 2022, Ms. Egian filed an appeal of the impugned Judgment, to which the Secretary-General submitted his Answer on 13 June 2022.

### **Submissions**

#### **Ms. Egian's Appeal**

34. Appellant requests that the impugned Judgment be vacated, and the findings of misconduct and sanction be rescinded. In addition, Appellant requests an award of moral damages for medical harm caused by the contested decision.

35. Firstly, Appellant submits that the UNDT erred in fact and law when it considered the conflict of interest of the USG/DPPA and the EO/DPPA.

36. Appellant points out that prior to Ms. Y.B.'s complaint against her, the USG/DPPA had been publicly criticized for not taking action against Appellant with respect to the recruitment of

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conclusions unsupported by evidence. Appellant states that these actions of the Panel tainted the evidence that they gathered.

39. Appellant submits that the UNDT erred in fact and law in finding it irrelevant that the Panel members were retirees, pointing out that as retirees they were remunerated for their work, and the EO/DPPA who provided them with this opportunity had a conflict of interest.

40. Secondly, Appellant claims that

44. Appellant submits that the UNDT erred in law in finding that there was no breach of



55. The Secretary-General submits that the UNDT was correct to find that Appellant committed an abuse of authority when she cancelled and re-started the P-2 TJO recruitment. The Secretary-General argues that this was an abuse of authority regardless of the fact that it

UNDT correctly reviewed past cases and found that the Administration had imposed comparable or more severe sanctions in cases involving comparable conduct. The Secretary-General further points out that the sanction imposed was on the milder spectrum of options available to the Administration, and thus the UNDT was correct to decline to interfere with the Administration's exercise of discretion.

59. The Secretary-General submits that Appellant is incorrect to claim that the UNDT did not consider the difference between the misconduct sanctioned by the Administration and the misconduct established by the UNDT. He asserts that there is no indda0 1ld0 Td [s(that thh)-7.9 e UNDO 1



69. For all of the foregoing reasons, the Secretary-General requests that the UNAT dismiss Appellant's appeal in its entirety.

### **Considerations**

70. The Appeals Tribunal's review of a challenge to a disciplinary sanction is based on our well-settled rule applicable to such cases. In *Veronica Irima Modey-Ebi*,<sup>24</sup> the Appeals Tribunal stated:

... In disciplinary cases the Appeals Tribunal will examine: i) whether the facts on which the disciplinary measure is based have been established; ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected.

71. According to the submissions of Ms. Egian and the Secretary-General, the main issues in the present case are as follows: i) Did the UNDT err in concluding that, by a preponderance of the evidence, Appellant's actions had contributed to a hostile work environment and constituted an abuse of authority? ii) Did the UNDT err in concluding that the established facts amounted to misconduct? iii) Did the UNDT err in finding that the Administration's sanction was proportionate, even though the UNDT rejected all of the Administration's findings on harassment? iv) Did the UNDT err in concluding that Appellant's due process rights were not violated by the alleged conflict of interest of the USG/DPPA and the EO/DPPA? We take each of these issues in turn.

- i) *Did the UNDT err in concluding that, by a preponderance of the evidence, Appellant's actions had contributed to a hostile work environment and constituted an abuse of authority?*

(b) Preponderance of the evidence (more likely than not that the facts and circumstances underlying the misconduct exist or have occurred), for imposing any other disciplinary measure.

73. Thus, according to Section 9.1(b) of ST/AI/2017/1, the standard of proof for a disciplinary sanction that does not result in termination, as in this case, is “preponderance of the evidence”.

74. The Appeals Tribunal has also confirmed the above-mentioned standard of proof in *Suleiman*<sup>25</sup> as follows:

...



76. The Appeals Tribunal notes that the UNDT's findings on these incidents were based on extensive examination of the record in the Panel's dossier, including the testimonies of all the concerned witnesses, the Allegations Memorandum, the Sanctions Letter, the submissions from both parties, as well as contemporaneous emails amongst those involved. The UNDT considered all the evidence and arguments presented before it by Appellant and the Appeals Tribunal concludes that the UNDT's findings satisfied the requisite standard of proof for disciplinary sanctions other than those involving separation or termination.

77. The Appeals Tribunal observes that, with regard to the UNDT's findings on Appellant's alleged comment regarding the gender diversity amongst SCAD managers, her handling of the placement of two P-4 staff on Ms. Y.B.'s team, and her interference with the P-2 TJO recruitment exercise, Appellant did not seriously dispute the facts found by the UNDT, rather, she disagreed with the UNDT's qualification of her actions as "could" or "did contribute to creating a hostile work environment".

78. The Appeals Tribunal notes that "hostile work environment" is not defined separately in the relevant legal framework but is instead subsumed in the definitions of "abuse of authority" and "harassment" in ST/SGB/2008/5.

79. Specifically, with respect to the definition of abuse of authority, Section 1.4 of ST/SGB/2008/5 provides:<sup>28</sup>

Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority *may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion*. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

80. Concerning harassment, Section 1.2 of ST/SGB/2008/5 provides:<sup>29</sup>

Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person.

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<sup>28</sup> Emphasis added.

<sup>29</sup> Emphasis added.

*Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.*

81. In addition, Section 3.2 of ST/SGB/2008/5 stipulates the duties of managers and supervisors:<sup>30</sup>

*Managers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct. They must act as role models by upholding the highest standards of conduct. Managers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to fulfill their obligations under the present bulletin may be considered a breach of duty, which, if established, shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate.*

82. Finally, Staff Regulation 1.2(a) provides the basic rights and obligations of staff as follows:<sup>31</sup>

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

83. Appellant, as a D-2 level official of the United Nations, should act in all circumstances in a manner befitting her status as an international civil servant. Her comments about the gender composition of the SCAD managers, even accepting that she made them with no malicious intent as she claimed, did cause concerns and discomfort among the division managers at the meeting, albeit for different reasons. These kind of comments undoubtedly did not contribute to a harmonious work environment. The UNDT did not err in finding that such comments could contribute to a pattern of behavior that creates a hostile work environment.

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<sup>30</sup> Emphasis added.

<sup>31</sup> Emphasis added.

84. The foregoing analysis also applies to the placement of the two P-4 staff on Ms. Y.B.'s team. The UNDT is correct in finding that although Appellant was engaged in managerial acts, she could have used a more skillful approach. The Appeals Tribunal shares the view that Appellant's management of the whole process of the placement of the two P-4 staff on Ms. Y.B.'s team caused discord and disharmony within her division and was perceived by the affected manager, Ms. Y.B., as sidelining her. Thus, the UNDT's finding that Appellant's managerial style in this incident "did contribute to creating a hostile work environment" is reasonable.

85. Appellant contends that her actions are entirely different from those, such as "intimidation, threats, blackmail or coercion", giving rise to a hostile work environment. However, Section 1.4 of ST/SGB/2008/5 specifies that "[a]buse of authority may also include conduct that creates a hostile or offensive work environment which includes, *but is not limited to*, the use of intimidation, threats, blackmail or coercion".<sup>32</sup> It is clear that the four specific acts listed in Section 1.4 and highlighted by Appellant are only *examples* of the types of conduct that may create a hostile work environment. Section 1.4 does not provide an exclusive list, and other acts may also give rise to a hostile work environment. Appellant thus misconstrues the pertinent rule.

86. In the Appeals Tribunal's view, the UNDT correctly found that Appellant's interference with the P-2 TJO recruitment led to the sidelining of Ms. Y.B. and added considerable futile work for Ms. Y.B. and other SCPCR staff members, wasted considerable resources and time of her team, while also creating a hostile work environment. Appellant cancelled the almost completed P-2 TJO recruitment in order to recruit an internal candidate. Regardless of whether her motivation was benign, the fact is that Appellant interfered with a lawfully conducted recruitment process which led to the hiring of an internal staff member within SCAD instead of one of the external candidates originally recommended in the cancelled recruitment process. Appellant's unreasonable insistence that the recruitment be cancelled over the objections of colleagues in subordinate positions, including Ms. Y.B., to satisfy Appellant's personal preference that a specific category of applicants be selected, falls squarely within the definition of abuse of authority, regardless of whether it was

decisions are unpopular”. The UNDT did not err in fact and law in concluding that Appellant’s actions with respect to the P-2 TJO recruitment were an abuse of authority and contributed to a hostile work environment.

*ii) Did the UNDT err in concluding that the established facts amounted to misconduct?*

87. With respect to the second issue on appeal, the guiding principle is found in Staff Rule 10.1 (a), which provides:<sup>33</sup>

Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant *may amount to misconduct* and may lead to the institution of a disciplinary process and imposition of disciplinary measures for misconduct.

88. Based on the above analysis, Appellant’s actions were established as contributing to creating a hostile work environment and also were an abuse of authority as a D-2 level official. These actions also then constitute misconduct under the above-mentioned legal framework. The Appeals Tribunal agrees with the UNDT’s conclusion in this regard.

89. Appellant argues that the UNDT erred in fact and law in finding that certain actions that were not harassment were still misconduct. The Appeals Tribunal holds that “misconduct” is a broader concept than “harassment”, wherein the former includes any failure of the staff to comply with their obligations under the United Nations’ legal framework for the conduct of international civil servants. The UNDT did not err in fact and law in finding that certain of Appellant’s actions that were not harassment were still misconduct.

90. The UNDT found that Appellant’s comments about the gender composition of senior management in SCAD *did not* represent harassment, but that they

justify that even if there is only a possibility of creating a hostile work environment, the contested actions may still constitute misconduct.

91. The UNDT found that Appellant’s placement of two P-4 staff on Ms. Y.B.’s team was a valid exercise of her managerial duties and was “not objectively harassing behavior” but that it “did contribute to creating a hostile work environment”. Contrary to Appellant’s argument, this does not mean that the UNDT established misconduct “exclusively on subjective reaction”. While the UNDT did not find that the incident served to establish harassment, creating a hostile work environment is nonetheless misconduct under ST/SGB/2008/5.

92. We are also mindful of our longstanding jurisprudence that UNDT findings are accorded a degree of deference and will not be overturned lightly. In *Messinger*,<sup>34</sup> the Appeals Tribunal stated:

... It is not sufficient for an appellant to state that he or she disagrees with the findings of fact or to repeat the arguments submitted before the UNDT. An appellant must identify the apparent error of fact in

94. None of Appellant's arguments challenging the UNDT's confirmation of her actions as misconduct have merit. We conclude that Appellant has failed to establish that the UNDT made a manifestly unreasonable decision warranting the intervention of the Appeals Tribunal.

*iii) Did the UNDT err in finding that the Administration's sanction was proportionate, even though the UNDT rejected all of the Administration's findings on harassment?*

95. Appellant next contends that the UNDT failed to consider the difference between the misconduct for which she was sanctioned by the Administration and the misconduct that was established by the UNDT. She argues that the number of incidents and the gravity of the misconduct found had altered radically from the administrative stage to the review by the UNDT. Appellant also argues that the UNDT erred in referencing the Organization's past practice involving discipline for (non-sexual) harassment and abuse of authority when harassment was not established in her case.

96. Concerning the proportionality of the sanction, Staff Rule 10.3 (b) provides:

Any disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.

weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

98. In *Zaqout*,<sup>37</sup> where the staff member was subject to a harsher sanction than that imposed on Appellant here, the Appeals Tribunal reasoned:

... After reviewing the allegations and the testimonies, the investigation found that there was evidence the Appellant used abusive, inappropriate and unprofessional language not only toward the Complainant but also toward other colleagues.

...

... As such, the [Administration] imposed disciplinary measures on the Appellant that

101. The nature and gravity of the contested misconduct should be examined on a case-by-case basis. The UNDT referenced the Organization's past practice where staff members in comparable managerial or senior positions were sanctioned for comparable misconduct. Whether the past practice involved harassment and abuse of authority, or only one or the other, is of no relevance. There is no merit in Appellant's argument on this point.

102. In *Konaté*,<sup>38</sup> the challenged sanction was affirmed by the UNAT although not all the allegations of misconduct were proven. The UNDT considered the sanction of separation from service proportionate, even though it did not uphold the allegation of forgery against the applicant. On appeal, this Tribunal held:

... [W]hen reviewing a disciplinary sanction imposed by the Administration, the role of the Appeals Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.

... *Although not all the allegations of misconduct with which the staff member was charged were proven*, it was established by the Administration and the UNDT that Mr. Konaté failed to apply formal methods of solicitation in respect of contracts, in



misconduct charged by the Administration, the

107. Appellant submits that the UNDT erred in fact and law when considering the alleged conflict of interest on the part of the USG/DPPA and the EO/DPPA and erred in fact and law in finding no evidence that the Panel was biased.

108. To be specific, with regard to the claimed conflict of interest by the USG/DPPA, the UNDT was correct in finding that the allegations in relation to the recruitment of Mr. V.R. were dropped by the Administration and this issue was not directly related to the decision to investigate Appellant. Appellant's argument that the UNDT required her to prove ill-motive by the USG/DPPA to show a conflict of interest existed is without merit. As for the contention that the UNDT failed to exercise jurisdiction by refusing to enquire into why the Panel chose to investigate the recruitment of Mr. V.R., as this allegation had been dropped, the UNDT was under no obligation to review this issue. Besides, the UNDT denied Appellant's request for disclosure regarding this issue, which indicates that the UNDT did in fact properly exercise its jurisdiction.

109. With respect to the claimed conflict of interest by the EO/DPPA, the UNDT found that allowing the EO/DPPA to establish the Panel was a procedural flaw. Nonetheless, citing the Appeals Tribunal's decisions in *Sall*<sup>43</sup>



panel. The evidence does not support a reasonable perception or inference that the ASG/OHRM, when taking the decision, was biased against Ms. Belkhabbaz.

112. Notwithstanding that the Appeals Tribunal does not find the EO/DPPA's involvement in the appointment of the Panel to be a fatal flaw, the Organization should be mindful to avoid this kind of procedural flaw in constituting such panels.

113. Concerning the essential requirements of

evidence and arguments to respond to all aspects of this allegation. The UNDT was thus correct to find that Appellant had been “afforded full due process in regard to this incident”.<sup>48</sup>

116. In accordance with the foregoing, the Appeals Tribunal holds that Appellant’s contentions about her due process rights violations have been duly taken into consideration and appropriately dealt with by the UNDT. Appellant is merely repeating her submissions before the UNDT and expressing disagreement with the first instance judgment. The Appeals Tribunal finds no merit to Appellant’s appeals against the UNDT judgment concerning alleged violations of her due process rights.

*v) Appellant’s request for moral damages for medical harm*

117. Appellant requests that the UNAT award her moral damages for medical harm caused by the contested decision which was sought and evidenced before the UNDT. Since no illegality was found, there is no justification for the award of any compensation.<sup>49</sup>

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<sup>48</sup> Impugned Judgment, para. 57.

<sup>49</sup> See, e.g., *Sall* Judgment, *op. cit.*, para. 43; *Ladu* Judgment, *op. cit.*, para. 47.

**Judgment**

118. Ms. Egian's appeal is dismissed, and Judgment No. UNDT/2022/015 is hereby affirmed.

Original and Authoritative Version: English

Dated this 24<sup>th</sup> day of March 2023 in New York, United States.

*(Signed)*

Judge Gao, Presiding

*(Signed)*

Judge Raikos

*(Signed)*

Judge Halfeld

Judgment published and entered into the Register on this 28<sup>th</sup> day of April 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar