

---

UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/082

Judgment No.: UNDT/2020/188

Date: 5 November 2020

Original: English

---

**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

KARKARA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

## **Introduction**

1. The Applicant, a former Senior Advisor at the United Nations Entity for Gender  
-5  
level, contests the decision to dismiss him for serious misconduct. UN Women found that the Applicant (a) sexually harassed, exploited and abused two non-UN personnel; (b) committed harassment and abuse of authority against an intern with the United Nations; and (c) misused the United Nations Information Communication and UN Women email account.

2. The Applicant submits that the facts on which the disciplinary measure was based are not established by clear and convincing evidence. The Applicant argues that the the assistance of several individuals who had serious disputes with him. The Applicant also submits that the investigation was biased and ignored exculpatory evidence and several witnesses breached the confidentiality requirement by speaking to the media, thereby undermining the integrity of the investigation.

3. The Respondent submits that based on the credible oral testimony of victims, which are further corroborated by other witness and text messages and the GPS

**Facts**

6. The Applicant held various positions with the United Nations since 2000. From 2008 to 2011, the Applicant worked

administrative leave with pay for three months or until completion of a disciplinary process, whichever is earlier.

13. On 16 and 19 December 2017, OAI provided a draft investigation report and

22. On 14 September 2018, the Executive Director of UN Women notified the Applicant that she decided to impose on him the disciplinary measure of dismissal, having concluded that the established facts amount to serious misconduct. In particular, the Executive Director concluded that it had been established clearly and convincingly that the Applicant had committed sexual harassment and sexual exploitation and abuse against Mr. SL (name redacted) and Victim 2 (confidential witness),



Women as a consultant. In 2016, the Applicant, who was then working with UN Women as Senior Advisor, Strategic Partner and Advocacy to the Deputy Executive Director in

The incident in Toronto, Canada in June 2016

36.





43. Mr. S

referred to an oral sex

44. During the interview, an OAI investigator commented to Mr. SL that it seemed that he was going along with the conversation. In response, Mr. SL explained that he

that the Applicant was referring to an oral sex request and he used crying and laughing emoji as he tried to deflect as much as he could but still going along with the joke. Mr. SL stated that he was afraid of repercussions if he directly asked the Applicant to stop.

45. At the hearing, Mr. SL stated that conversation about whether he watched pornography or not had come up before with the Applicant and that he had told the Applicant that he did not watch them due to his religious faith.

46. In his comments to the investigation report, the Applicant

47. At the hearing, the Applicant stated that he was not talking about anything sexual and that Mr. SL misunderstood the situation. The Applicant stated that when he

48. According to Mr. SL, in September 2016, the Applicant asked for a real kiss in the following WhatsApp exchanges:

2016-09-06, 10:22 PM [Applicant]: You are super brilliant

2016-09-06, 10:26 PM -

49. During the interview with OAI, Mr. SL stated that at this point the Applicant had sent him many similar messages and he found this message annoying. Mr. SL stated that he

fight , but also did not want the Applicant to think that he loved this exchange. Thus,

50. In the comments to the draft investigation report, the Applicant stated that if

had dinner together there

and that Mr. SL just showed up at the event . The Applicant denied that Mr. SL came to his hotel room, stating that he was flying out early in the following morning.

59. The Tribunal notes that the Applicant and Mr. SL exchanged WhatsApp messages on 1 December 2016 as follows:

2016-12-01, 2:23 PM [Applicant]: Hotel Omni Mont-Royal Pool []

2016-12-01, 3:18 PM [Applicant]: R u coming tonight

2016-12-01, 4:54 PM [Mr. SL]: Welcome back to Canada! CACACA

2016-12-01, 4:56 PM [Mr. SL]: R u coming

2016-12-01, 5:14 PM [Mr. SL]: Yes, but will be very late. I have other meetings in Montréal as well. I'm in a meeting right now.

2016-12-01, 5:18 PM - [Applicant]: Come fast

2016-12-01, 5:26 PM -

62. Mr. JB was a consultant for UN Women from August to December 2016 and his supervisor was the Applicant. Mr. JB stated that he met both the Applicant and Mr. SL about the same time in March 2016. Mr. JB said that the Applicant and Mr. SL were very close to each other and he considered their relationship as mentor/mentee relationship. According to Mr. JB, the Applicant gave Mr. SL quite a few opportunities to continue to





*The Applicant's alleged offenses against Victim 2*

69. In the 14 September 2018 sanction letter, it is stated statement gathered during the OAI investigation supported the findings of the against Victim 2.

70. Victim 2, a non-UN personnel, was interviewed by OAI via telephone in March 2018 regarding his complaint against the Applicant. Mr. SL told OAI investigators that , and Mr. AK, who provide referred Victim 2 to the OAI investigators. While agreeing to be interviewed, Victim 2 chose to remain anonymous. At the interview, Victim 2 mentioned that he is involved in the youth issues and works on volunteer advocacy or resource mobilization. He was first introduced to the Applicant in 2015 as they were both involved in youth issues, and he worked together

71. Victim 2 stated that the Applicant sent him WhatsApp messages of sexual  
Victim 2 stated that he received these messages before he changed his phone and that he therefore no longer had these records.

72. Victim 2 also stated during the interview with OAI that either on the CSW Youth Forum day or the following day in 2016, both the Applicant and he attended some workshops. During a break in one of them, Victim 2 went to a restroom and the Applicant followed him. Victim 2 does not know if the Applicant deliberately followed

Victim 2 uncomfortable. Victim 2 understood that the Applicant asked him to show his genitals. There was nobody else in the restroom when this incident happened. Victim 2 stated that this incident happened in a building that is also occupied by offices of the United Nations, which is located on the Second Avenue. He stated that he does not remember the name of the

building. He further clarified that this building was located outside the United Nations premises.

73. Victim 2 further stated that, other than the incidents he described, the Applicant was not a bad person to him in other ways.

74. During one of his interviews with OAI, the Applicant denied that he sent his  
Regarding the incident at the restroom, the Applicant denied the allegations and stated that the event was held at the Salvation Army building, and he does not even remember going to the restroom. He further suggested that the OAI investigators go to the site and check the restrooms as they are normally dividers between the urinals.

75. OAI search of did not find any private WhatsApp communication between Victim 2 and the Applicant nor any pornographic messages sent from the Applicant to Victim 2. OAI only discovered that both the Applicant and Victim 2 were part of a group chat consisting of 240 members and call records showed that they had phone conversations. OAI further contacted Victim 2 in an attempt to obtain his WhatsApp records but did not receive any response from him.

76. Regarding the restroom incident, OAI confirmed that the CSW Youth Forum was held at the Salvation Army building, which is located between the Third Avenue and Lexington Avenue, on 11 March 2016 as well as at the Conference Building of the United Nations on located in the basement of the Salvation Army building, which was used by the event participants according to a building staff. The said building staff told OAI investigators that there was only one toilet urinal for men that was functional during the CSW event in March 2016 as another urinal was out of order at the time restrooms near conference rooms in the Conference Building of the United Nations where the CSW Youth Forum was held on 12 March 2016 and found that there were side-by-side urinals in the restrooms with no dividers.

77. In the comments to the draft investigation report, the Applicant denied the allegations by Victim 2 and pointed out that the alleged incident could not have happened as described by Victim 2 due to the set-restroom at the Salvation Army building. At the hearing, the Applicant again denied the allegations by Victim 2.

*The Applicant's alleged offenses against Mr. OA*

78. The 14 September 2018 sanction letter states that a witness statement from Mr. OA and a corroborating statement from a third-party witness, gathered during the OAI investigation, supported the findings of \_\_\_\_\_ against Mr. OA.

79. Mr. OA, a then intern with the United Nations, was interviewed by OAI in August 2017 regarding his complaint against the Applicant, and, in July 2020, he testified before the Tribunal. Mr. OA confided his complaint against the Applicant to another intern, Ms. MP, during his internship. Ms. MP was interviewed by OAI and testified before the Tribunal.

80. A few days before the hearing, Mr. OA submitted a written statement to the Tribunal which included additional allegations against the Applicant, and Mr. OA also gave testimony regarding this new matter. However, since the new allegations were not part of the investigation nor did it form a factual basis of the disciplinary measure imposed on the Applicant, the Tribunal will not consider them in this judgment.

81. During the interview with OAI, Mr. OA stated that he worked at the United \_\_\_\_\_ UN-Habitat as an intern for four months between May and August 2016. While attending meetings held at UN Women, he got acquainted with the Applicant, who took his number, became his mentor, assisted him in improving his social media profiles and provided him with information about the United Nations and its career opportunities. Mr. OA stated that the Applicant is a very good guy but that sometimes he made inappropriate remarks, such as messaging him

request, Mr. OA

85. At the hearing, the Applicant stated that Mr. OA was very bright and he had given advice to Mr. OA. With respect to pictures the Applicant requested from Mr. OA, the Applicant testified that it must have been related to the UN media campaign encouraging young men to do un-stereotypical activities. He further stated that Mr. OA was an active member of that campaign. The Applicant denied having sent the texts described by Mr. OA.

### **Consideration**

#### *Standard of review in disciplinary cases*

86.

In determining whether these evidential standards have been established in any case, the [Dispute Tribunal] must consider and weigh not only the evidence put forward by witnesses produced for the Secretary-General, but also any countervailing evidence adduced for the staff member, and any relevant and probative documentary evidence which may either corroborate or cast doubt on the recollections of witnesses.

*Whether the facts on which the disciplinary measure was based have been established*

88. In this case, the sanction letter concluded that the Applicant committed (a) sexual exploitation and abuse as well as sexual harassment against Mr. SL, (b) sexual exploitation and abuse against Victim 2, and (c) harassment and abuse of authority against Mr. OA. The sanction letter also concluded that the Applicant



96.

and notes that they are further corroborated by other evidence. Mr. SL submitted GPS information which shows that he was in Toronto in June 2016 and stated that he went

attended the event in Toronto in June 2016 and Mr. SL picked him up and dropped him off at the hotel where he was staying. While the Applicant denied at the hearing that Mr. SL came to his hotel room, during the interview with OAI, the Applicant mentioned that Mr. SL came to his hotel room in Toronto. Therefore, the Tribunal finds that

97.

of the incident which are partly corroborated by other evidence. Mr. SL stated that he allowed the Applicant to touch his genitals searching for moles in the context of an astrology reading. Indeed, during the interview, the Applicant stated that astrology readings could be performed by looking for moles in the body parts, such as hand, face, back, or chest, and he has done astrology readings for his close friends and family members when requested.

98. Mr. SL stated that the Applicant sent him astrological readings by email thereafter but did not produce such email because he stated that he did not want to remember this incident and deleted everything related to it. This email was also not

99. At the hearing, the Applicant stated that his colleagues and two of his cousins were at the hotel as his cousins came to see him. The Applicant stated that after attending the event in Toronto, he went to another city in Canada to visit his cousin. When questioned if his colleagues or cousins could be called as witnesses, the Applicant stated that he could provide full names of these potential witnesses, but he never did.

100. While the email containing astrological reading was not produced, considering other evidence, including GPS information, Mr. SL drove him to his hotel and came to his hotel



room, and the fact that the Applicant conducted astrological readings for his friends and family by looking at the moles in the body parts, accounts with regard to the Toronto incident are credible and established by clear and convincing evidence.

101. The second incident concerns WhatsApp exchanges between the Applicant and

for oral sex

referred to pornographic videos.

102. The Applicant does not dispute the authenticity of these exchanges; the

103. At the hearing, the Applicant stated that he was not talking about anything sexual and that Mr. SL misunderstood. Instead, he gave his interpretation of the





Case No. UNDT/NY/2018/082

Judgment No. UNDT/2020/188





ic devices and did not discover any of these text messages. Therefore, this allegation is not corroborated by any other evidence.

128. OAI investigators stated in the investigation report that they found the Victim [redacted] bly describe the nature of the pictures and videos that were sent to him which was consistent with the testimonies of other victims. However, since Victim 2 remained anonymous throughout the proceedings, including before the Tribunal, the Tribunal was not able to examine the credibility of Victim 2 nor did the Applicant have an opportunity to cross-examine him.

129. and that the Applicant denies the allegations, the Tribunal finds that these allegations were not established by clear and convincing evidence.

130. evidence. In particular, Victim 2 stated that this incident occurred at the building outside the United Nations premises, and OAI investigators discovered that due to the set- [redacted] used by the event participants at the Salvation Army building, where the CSW Youth Forum was held, it was not possible for the incident to have occurred as described by Victim 2. Nevertheless, OAI investigators concluded that the incident must have occurred at the Conference Building of the United Nations, [redacted] visited New York to participate in the event and was not entirely sure where the incident occurred.

131. However, it is the Administration who bears the burden of establishing the factual basis of the disciplinary measures by clear and convincing evidence. Considering that this discrepancy could not be resolved due to the fact that Victim 2 remained anonymous and therefore could not be further examined at the hearing, the Tribunal finds that this allegation is not established by clear and convincing evidence.





138. The Tribunal found that the following facts are established by clear and convincing evidence: (a) the Applicant transmitted pornographic images using his work email account; (b) the Applicant inappropriately touched Mr. SL in Toronto and Montreal and sent WhatsApp messages asking for oral sex and kisses; (c) the Applicant sent Mr. OA messages at night to have a conversation and asked Mr. OA to take and send pictures of himself. The Tribunal will consider whether the established facts legally amount to misconduct. As the Tribunal found that the allegations by Victim 2 are not established by clear and convincing evidence, this part will not be further examined.

139. The sanction letter states that the established facts legally amount to misconduct  
ed staff regulations 1.2(a) and (b), staff rule 1.2(e),  
ST/SGB/2003/13 (Special Measures for Protection from Sexual Exploitation and Sexual Abuse), UN Women Policy on Workplace Harassment and Abuse of Authority, and UN Women Standard on Acceptable Usage of Information and Communication Technology Resources and Data.

140. Staff regulations 1.2(a) and (b), which are applicable to all the misconduct charges, provide as follows:

(a) Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men

highest standard of conduct for international civil servants (among the uses which would clearly not meet this standard are use of ICT resources for purposes of obtaining

142. In this case, the transmission of pornographic images to and from the resources and therefore the established facts amount to misuse of ICT resources.

---

exual exploitation and abuse

and sexual harassment?

143. Staff rule 1.2(e) provides as follows:

(e) Sexual exploitation and abuse is prohibited. Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or the age of consent locally, except where a staff member is legally married to a person who is under the age of 18 but over the age of majority or consent in his or her country of citizenship. Mistaken belief in the age of a child is not a defence. The exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited. United Nations staff members are obliged to create and

nature, whether by force or under unequal or coercive conditions.

### **Section 3**

#### **Prohibition of sexual exploitation and sexual abuse**

(a) Sexual exploitation and sexual abuse constitute acts of serious misconduct and are therefore grounds for disciplinary measures, including summary dismissal;

145. The UN Women Policy on Workplace Harassment and Abuse of Authority defines sexual harassment as follows:

5. Sexual Harassment, as one form of workplace harassment, is understood as any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature (including pornography, sexually-colored remarks) that has or that might reasonably be expected or be perceived to cause offense or humiliation to another.

6. Sexual harassment may occur when it interferes with work, is made a condition of employment or when it creates an intimidating, hostile or offensive environment. Sexual harassment normally implies a series of incidents. However, a one-time incident could fall within the definition of sexual harassment if it has an unambiguously offensive sexual character. Sexual harassment may be present regardless of the intent of the alleged offender. Both male and female staff members can be either

that the Applicant increasingly wielded power over him due to favors and opportunities he gave Mr. SL and demanded public praises.

148. During one of his interviews with OAI, the Applicant stated that he always demanded loyalty from members of a youth group who he mentored. He explained that this means he expected these young people to retweet his tweets, to invite him to events as a speaker, and do various things he asked for in relation to youth and gender equality issues. He gave an example as Mr. SL to whom he asked to create self-advertisement materials for him and to provide him with technological support.

149. In written exchanges between the Applicant and Mr. SL, the Applicant asked for public acknowledgement and praises for support he gave to Mr. SL, and even threatened that he would change his behavior toward Mr. SL when he felt that Mr. SL was not acting toward him in the way he expected.

150. In light of the above, the Tribunal finds that Mr. SL was clearly in a position of differential power and vulnerability. The Applicant then exploited this position for sexual purposes when he inappropriately touched Mr. SL in Toronto and Montreal and made sexual jokes. T

humiliation to Mr. SL. Even if Mr. SL did not clearly express his discomfort and it appeared \_\_\_\_\_ and physical touching, the Applicant should have realized that his conduct might reasonably be expected or be perceived to cause offense and humiliation to Mr. SL.

151. Therefore, the Tribunal concludes that \_\_\_\_\_ against Mr. SL violated staff rule 1.2(e), ST/SGB/2003/13, and The UN Women Policy on Workplace Harassment and Abuse of Authority.

\_\_\_\_\_ Mr. OA amount to harassment and abuse of authority?

152. In accordance with the UN Women Policy on Workplace Harassment and Abuse of Authority, harassment and abuse of authority are defined as follows:

**Workplace Harassment**

2. Workplace harassment is any improper and unwelcome conduct by a staff member or non-staff personnel against another staff member or non-staff personnel or a group thereof that has or that might reasonably be expected or be perceived to cause offence or humiliation to another.

3. Harassment may be present in the form of words, gestures, electronic communication forms, or other actions that annoy, alarm, abuse, demean, intimidate, belittle, or cause personal humiliation or embarrassment to another, or cause an intimidating, hostile or offensive work environment. It includes harassment based on any grounds, such as race, religion, color, creed, ethnic origin, physical attributes, gender or sexual orientation. Harassment may be deliberate, unsolicited, and coercive. It will often consist of a series of incidents, but it may be brought about by a single incident only. Harassment may be present regardless of the intent of the alleged offender.

**Abuse of Authority**

7. The abuse of authority is the improper use of a position of influence, power or authority by a staff member or non-staff personnel against another staff member or non-staff personnel or a group thereof. This is particularly serious when the person in question uses his or her influence, power or authority to arbitrarily influence the career or employment conditions (including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion) of



l, arbitrary,  
adopted beyond the limits stated by the respective norms, excessive, abusive,

*Hallal* 2012-UNAT-207, *Massah* 2012-UNAT-274, *Applicant* 2013-UNAT-302, *Mbaigolmem* 2018-UNAT-819, *Nadasan* 2019-UNAT-918).

162. Therefore, the Tribunal finds that the Administration properly exercised its discretion when imposing the sanction of dismissal on the Applicant.

*Whether the staff member's due process rights have been respected*





168. Regarding the confidentiality of the investigative process, the applicable Investigation Guidelines

process to be effective in cases of alleged misconduct. Confidentiality is in the interest of the Organization, the investigation participants and the subject of the investigation.

take reasonable measures to protect as confidential any non-public information

(see sec. 5

Confidentiality).

169. Further, during the interviews, OAI investigators cautioned the interviewees, including Mr. SL, Mr. AK, Ms. KG, and Ms. MS, that investigations are strictly confidential and that interview participants should not discuss this interview or subject

173. Despite OAI i

a thorough and fair investigation by interviewing additional witnesses identified by the Applicant, performing site visits as suggested by the Applicant, and exploring all other

based on some of their findings, but even if the Tribunal was not persuaded by some of the conclusions of the investigation, that does not mean that OAI investigators were not objective.

## **Conclusion**