
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/014

Judgment No.: UNDT/2021/079

Date: 30 June 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

Introduction

1. The Applicant, a staff member of the United Nations High Commissioner for Refugees in Budapest, Hungary, contests the decision to impose the disciplinary measures of loss of three steps and deferment, for a period of four years, of eligibility for consideration for promotion, as well as a managerial action to provide him with training and coaching in matters related to professional conduct.

2. For the reasons stated below, the application is rejected.

Facts

3. The Applicant joined UNHCR in 2007. At the relevant time, the Applicant was serving as a Senior Recruitment Associate at the G-7 level in Budapest, Hungary.

4. AA (name redacted) joined UNHCR in January 2017 as a Senior Data Management Assistant on a temporary appointment at the G-5 level.

5. In April 2017, AA, during her visit to Greece for official business, sent a Facebook message to the Applicant asking him if he wanted anything. The Applicant then sent a link to a webpage with the Google image search results for Greek phallus opener and wrote that he wanted one of those. He then added just kidding.

6. In May 2017, the Applicant sent AA a link to s through Facebook Messenger. The webpage offered audio-orgasm sounds.

7. On 23-31 May 2017, the Applicant, AA, and BB (name redacted), another female staff member, travelled to Addis Ababa for official business where AA and BB shared a room and the Applicant stayed in a separate room. They were scheduled to travel from Addis Ababa to Nairobi for official business, but BB fell ill and could no longer go to Nairobi. It was therefore only the Applicant and AA who went to Nairobi.

According to AA, the initial idea was for her, BB and the Applicant to share a hotel room in Nairobi, but since BB did not join them due to health issues, AA and the Applicant shared the same room for two nights, using separate beds.

8. In June 2017, the Applicant sent AA Funny Handjob!! Heinz Commercial. In the video, a boy she refuses, asks her and the boy says, You hold it and imagine you are holding a bottle of ketchup and you want to get the ketchup out that, the girl hits (of which the image is blurred) with the palm of her hand and the video ends with an image of a Heinz Ketchup bottle.

9. In August 2017, the Applicant and AA 0.0588 0.0627 0.0667 rg0.0588 0.0627 0.0667 RG[100912 0 61

13. By memorandum dated 22 October 2018 _____ s _____, the Director of the Division of Human Resources presented the Applicant with the allegations of misconduct to which he was invited to provide comments. In particular, the Applicant was asked to provide comments in response to the following allegations:

a.

(iii) [He] accepted to share a hotel room with [AA] while traveling on official mission to Nairobi in May 2017 because [he] did not see a problem with the arrangement, not out of concern for health or security;

(iv) [He] had an altercation with [AA] during an official mission to Ankara in August 2017 after making comments on the physical appearance of a female colleague;

(v) [His] relationship to [AA] deteriorated significantly after the altercation in Ankara.

16.

of the standards of conduct required of [him] as a manager and supervisor and he failed to comply with his obligations under staff regulations 1.2(b) and (f), para. 4.3 of Policy

19. In conclusion, the High Commissioner imposed the disciplinary measures of loss of three steps and deferment, for a period of four years, of eligibility for consideration for promotion. The High Commissioner also requested that appropriate managerial action be taken to provide him with training and coaching in matters related to professional conduct.

20.

Portillo Moya 2015-UNAT-523, *Wishah* 2015-UNAT-537, *Turkey* 2019-UNAT-955,
Ladu 2019-UNAT-

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Judgment

35. Regarding the incident in Ankara, it is undisputed that the Applicant and AA

discriminatory or absurd in its sev see, *Portillo Moya* 2015-UNAT-523, paras. 19-21; and also *Sall* 2018-UNAT-889, *Nyawa* 2020-UNAT-1024). The Appeals Tribunal has further But 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

Tribunal further explains that this means that the Disp

(*Samandarov* 2018-UNAT-859, para. 24).

52. Before deciding the proportionality of the imposed measures, the Tribunal managerial action to provide him with training and coaching is not receivable on the grounds that it is not an administrative decision with direct legal consequences on his contract of employment and he failed to request a management evaluation of such decision.

53. This claim is without merit. Staff rule 11.2(b) provides that a staff member wishing to disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process it not required to request a management nagerial action is a non-disciplinary measure imposed following the completion of a disciplinary process and therefore the Applicant can challenge it, along with disciplinary measures, without requesting a management evaluation.

54. In this case, the High Commissioner imposed the disciplinary measures of loss

Conclusion

73. In light of the foregoing, the Tribunal rejects the application.

(Signed)