UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. The Applicant contests the "Administration's finding of misconduct and

and AA's mother have accused the Applicant of having sexually abused AA, who was a minor at the relevant time.

7. On 17 June 2012, after having previously left his job in New York, the Applicant began his employment with a United Nations agency based in Geneva.

8. In June 2018, the Applicant was selected for and accepted a position at the United Nations Headquarters in New York.

9. By email of 9 July 2018, AA's mother wrote the Applicant as follows, which is translated from its original language to English in the investigation report dated 23 June 2020 of the Office of Internal Oversight Service ("OIOS"):

> I learned that you are planning to transfer to New York.
>
> And how do you imagine this? Working together with [AA's father], perhaps, crossing paths with me—I am also working at [

> On or about 1993, entering [AA's] bedroom while she was asleep, putting your hand under her nightgown and fondling her breast.
>
> Between 1994 and 1997, on one or more occasions, putting your hand under [AA's] shirt and fondling her back and/or belly when she was dozing on your sofa while babysitting your son.
>
> …
>
> Based on a review of the entire record, including your comments, the USG/DMSPC concluded that: (i) the allegations against you are established by clear and convincing evidence; (ii) through your conduct, you violated a former Staff Regulation 1.4 ; (iii) your conduct amounts to serious misconduct; and (iv) your procedural fairness rights were respected throughout the investigation and the disciplinary process.
>
> On the basis of the foregoing, and taking into account aggravating and mitigating factors, it has been decided to impose on you the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with Staff Rule 10.2(a)(viii), effective upon your receipt of this letter.

13. In an annex to the sanction letter, the ASG presented the facts on which the sanction was based as the following:

> It has been determined that it is established by clear and convincing evidence that: (a) on or about 1993, you entered [AA's] bedroom while she was asleep, put your hand under her nightgown and fondled her breast; and (b) between 1994 and 1997, you, on at least one occasion, put your hand under [AA's] shirt and fondled her back and/or belly when she was dozing on your sofa while babysitting your son.

14. On 22 March 2021, the Applicant was separated from service.

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).

21. The

23. The Respondent, in essence, contends that the facts were established by the applicable standard of proof and that the contested decision was a proper and lawful exercise of the Administration's authority in disciplinary matters.

24. In the following, for the sake of completion, the Tribunal will consider the Applicant's contentions as they were presented in his

unsurprising and only makes sense that the Applicant and AA's father, as well as their families, except AA, continued to participate in the same professional and private events. The Tribunal is convinced by the testimonies of AA's parents in which they effectively state that they showed up at these events in order to keep up an appearance at the workplace of the Applicant and AA's father and in their common social circles. Thus, despite the alleged incidents, the Applicant and AA's father remained colleagues and the two families continued to belong to the same national community.

41. Unlike what is submitted by the Applicant, none of the photos demonstrate anything further, and the fact that AA's mother is holding the Applicant's daughter (a baby, at that time) in one photo, if anything, only shows that she did not hold a grudge against the daughter. In another photo, the Applicant and AA's father can be seen playing music with some other people. AA's father convincingly testified that this photo was taken at a work event and that, as they were both hobby musicians and profoundly liked music, they a

redacted for privacy reasons] to translate it for the benefit of the Tribunal. The text, however, remains her own statement which she confirmed independently at the hearing".

43. To begin with, the Tribunal finds that the Applicant and his family indeed have significant work-related, personal and financial interests vested in the outcome of the present case. Their interests, *inter alia*, relate to the restoration of the Applicant's professional and private reputation in response to the sexual abuse accusations. This, for instance, entails the Applicant's possible return to work for the United Nations, liberating him from the severe sense of guilt expressed in his 9 July 2018 email and, possibly also, redeeming his standing in the national community. In addition, the Applicant's family have a direct financial interest in retrieving his daughter's education grant as reflected in the Applicant's reference thereto in his 9 July 2018 email.

44. Regarding the Applicant translating his wife's written statement to the

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to file a false sexual abuse complaint. Nor has the Applicant even provided any submissions on why AA should feel any bias, or other animosity, against him.

46. The Applicant contends that the "fact that AA's mother allowed AA to babysit the Applicant's son, and AA did so out of her own free will after the alleged New Year's Eve 1993 incident proves that the allegations are untrue and that neither AA nor her mother considered the Applicant a threat". AA's mother "testified that when AA told her that the Applicant had been in her room at New Year's Eve in 1993, she reassured her daughter that nothing inappropriate happened as he was a long-time friend of the family who could be trusted". AA "testified that she refused to go to a tennis class in 1993 alone with the Applicant but agreed to babysit the Applicant's son during the school year 1993-1994 at the Applicant's house (only a few months after the alleged 1993 episode), and in 1995 explaining that she had to continue as normal". If the Applicant "was indeed a threat why couldn't AA resort to other means to earn money (i.e., other babysitting opportunities or a different job)"? This "implies that the Applicant was not a threat, and AA was comfortable to babysit the Applicant's son". AA "also testified that she continued babysitting the Applicant's son one or two more times after the first alleged babysitting incident". This puts into question why AA would "continue to subject herself to the risk of sexual abuse if she deemed the Applicant a threat".

47. The Applicant submits that AA's mother "indicated that she first agreed with the Applicant that they were not going to tell AA's father what happened after AA babysat the Applicant's son". So "[h]ow could a relationship between the Applicant and AA's father be deemed more important for a mother than protecting her own child"? AA's mother's "weak and unconvincing response to these questions at the hearing was that it was so unimaginable that she did not want to admit it".

51. The Tribunal also finds that the Applicant's additional submissions regarding the veracity of the testimonies of AA and her mother are speculative, because none of them are proved by any evidence. Rather, the Tribunal finds that the testimonies of AA and her mother are convincing when, in effect, stating with regard to the alleged 1993 incident that they afterwards decided simply not to consider the matter any further and move on as if nothing had occurred. Their lack of knowledge of the concept of sexual abuse and its possibly severe traumatic implications for the victim can reasonably explain this, as well as their wish not to upset the close friendly relations with the Applicant and his family and their standing in the national community. The fact that AA has a detailed recollection of the events only proves that she still vividly recalls the alleged incident, and the Tribunal does not doubt the veracity thereof.

52. Regarding the alleged babysitting incident, the Tribunal notes that the issue of possible sexual abuse was only brought to the attention of AA's mother after AA confided in DD and EE about her alleged experiences. EE then told AA to tell her mother about them, which AA then did. This is, at least, what DD and EE explained to OIOS, and the Tribunal finds these statements convincing, even when taking into account the passage of time. In this regard, it is noted that a sexual abuse claim is a very serious and significant matter that any person could reasonably be expected to remember many years later. Also, neither DD nor EE had any reason to lie about their recollection of facts to OIOS. As for AA herself, the Tribunal observes that she was a minor at the relevant time and could not be expected to fully understand what was happening, while at the same time, she was also intending to protect her father's close friendship with the Applicant.

53. The Applicant contends that the "chronology of events completely discredits the allegations". The photographic evidence that "the friendship continued into 1999 refutes AA's parent's assertion that the friendship ended in 1997". This evidence "overturns the assumption of any abuse allegedly committed by the Applicant". If AA

as an assertive and self-confident witness, who was determined to rectify the harm which she perceived that the Applicant had inflicted upon her daughter.

60. The Applicant submits that the "sudden change of version about AA's initial mental struggles also reduces the credibility of her testimony

62. The Applicant contends that "AA's mother's attempts to influence superiors and staff members in the Applicant's Service, corroborated by witness CC, prove that her accusations were frivolous". AA's mother was "obviously seeking to justify and give more weight to her complaint". In the Applicant's final observations, he added that, "There is no doubt that the Applicant's fairness rights were seriously breached from the beginning, as [the USG] and the main decision-maker in the present case, had a confidential meeting with AA's mother before the investigation began, which pre-determined the USG's biased attitude towards the Applicant".

63. The Tribunal notes that it is convinced by the Applicant's contention that AA's mother brought the matter of the Applicant allegedly sexually abusing AA to the attention of the USG. This, however, does not prove anything else than AA's mother took the issue very seriously—by doing so, due to the severity of the accusations, she also put her own professional reputation and career at risk. In terms of the Applicant's right to a due process during the disciplinary proceedings, the Tribunal further finds that the Applicant has not as substantiated how involving the USG made a difference to the contested decision as per the "so-called 'no-difference' principle of law" (see *Allen* 2019-UNAT-951, para 38). The Tribunal recalls that "only substantial procedural irregularities can render an administrative decision unlawful" (see *Thiombiano* 2020-UNAT-978, para. 34, and similarly in disciplinary case in, for instance, *Sall* 2018-UNAT-889 and *Ladu* 2019-UNAT-956).

64. The Applicant submits that the "sanction letter completely disregarded the above elements and real intentions behind the complaint". The "contrast between the Applicant's consistent and coherent account, supported by his wife and colleagues' objective testimonies along with photographic evidence versus AA and AA's parents' contradictions, misrepresentations and embarrassment demonstrate the absence of clear and convincing evidence supporting the allegations".

65. As stated in the above, the Tribunal

her shirt". Unfortunately, "this event has never been fully clarified as AA's mother categorically refused to arrange a meeting with all the parties proposed by the Applicant to present his apologies to AA for making her feel uncomfortable".

68. The Applicant submits that "[i]n any case, the emails exchanged between the Applicant and AA's mother in 2018 do not constitute any admission to the accusations raised against him". In his email, the Applicant "only referred to the single babysitting episode mentioned above that made AA feel uncomfortable and requested forgiveness

Conclusion

80. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 30th day of September 2022

Entered in the Register on this 30th day of September 2022
(Signed)
Morten Michelsen, Officer-in-Charge, New York