
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/016

Judgment No.: UNDT/2023/072

Date: 19 July 2023

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

KENNEDY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

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aware of his obligation as a staff member to protect the property and assets of the Organization, including resources such as the email correspondence that he printed and lost. The Applicant knew, or was supposed to know, that as a staff member performing safety and security-related functions, he was obliged to ensure the safety and security of the Organization, and to prevent the misuse of its property and assets. However, the Applicant acted contrary to his obligations and what was expected of him.

25. The Applicant points out that the lapse of judgment occurred not as part of his official functions as a security officer, but rather in his attempt to carry out protected activities as a staff representative, since the misplaced documentation was relevant to issues that had been raised by the staff associations previously. He argues that his role in the Staff Union, rather than being an aggravating factor, should have served to mitigate the penalty; and cautions that the Administration's actions could have a "chilling effect on staff representation as a whole". The Applicant also maintains that the contested decision strikes at the heart of the protections afforded to staff representatives in performing their duties by failing to take into account that this occurred in the course of carrying out staff representational activities protected under staff rule 8.1(e) and enshrined in the Standard of Conduct of the International Civil Service.

26. The Tribunal considers that the Applicant's arguments regarding his role as a staff representative are not relevant to the issue at hand. The fact that he had "printed out an email trail of communications emanating from his role as Vice-President of the 18/s0 G3aVice

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33. It is the USG/DMSPC's position that thk

37. The USG/DMSPC concedes that this is the first violation the Applicant has committed.

38. The Applicant submits that his entire record of service before and after the incident has been exemplary, but that this was not factored into the penalty imposed on him. He asserts that no new letter of censure has been issued and that the loss of four steps in grade has not been explained or justified. He also argues that given his “long and exemplary record of service and the severity of the penalty imposed, the conclusion of retaliatory intent cannot be avoided”.

39. The Tribunal is satisfied that in determining the appropriate sanction for the misconduct, the USG/DMSPC took into consideration the Applicant’s long history of service with the United Nations, his expression of sincere remorse and the fact that he had no prior violation. The Tribunal is also not persuaded by the Applicant’s claim that there is a “retaliatory intent” behind the contested decision.

*Whether there are mitigating factors
history; whether the staff member has committed to taking steps to ensure there will
be no repetition or continuation of the misconduct*

40. The USG/DMSPC notes that the Applicant had more than 20 years of service with the Organization at the time the disciplinary measure was imposed, and that his supervisors had praised his work, as reflected in his performance evaluation documents. She takes into account the ration th

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49. In view of the foregoing, the application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 19th day of July 2023

Entered in the Register on this 19th day of July 2023

(Signed)

Isaac Endeley, Registrar, New York