



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1341

**Josef Reiterer
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Kanwaldeep Sandhu Judge John Raymond Murphy
Case No.:	2022-1680
Date of Decision:	24 March 2023
Date of Publication:	9 May 2023
Registrar:	Juliet Johnson

Counsel for Appellant: George G. Irving

Counsel for Respondent: Noam Wiener

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Josef Reiterer, a staff member of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the Administration's decision to impose upon him a disciplinary measure of "demotion by one grade with deferment, for one year, of eligibility for consideration for promotion and threatened reassignment". The UNDT dismissed his application and upheld the Administration's imposed disciplinary measure. Mr. Reiterer appeals to the United Nations Appeals Tribunal (Appeals Tribunal).

2. For the reasons set out below, we dismiss the appeal.

Facts and Procedure

3. As of June 2013, Mr. Reiterer acted as the Chief of Civil-Military Coordination Section (CMCS), OCHA.

4. In April 2017, he was promoted to the P-5 level as Chief, CMCS, OCHA.

5. On 31 January 2017, a Humanitarian Affairs Officer, OCHA (first complainant), filed a complaint of harassment and abuse of authority against Mr. Reiterer under Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). On 15 May 2017, a fact-finding panel (first panel) was appointed, and an investigation was conducted.

6. On 30 August 2017, another Humanitarian Affairs Officer, OCHA (second complainant), filed a complaint of harassment and abuse of authority against Mr. Reiterer. On 25 October 2017, a fact-finding panel (second panel), composed of different investigators than the first panel, was appointed, and an investigation was conducted.

7. On 31 January 2018, the second panel issued its investigation report.

8. By memorandum dated 30 March 2018 and following a review of the second panel's investigation report, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, OCHA (USG/OCHA), referred the matter for appropriate action to the Assistant Secretary-General, Office of Human Resources Management (ASG/OHRM), now the Office of Human Resources (OHR).

9. During its investigation, the second panel came across *prima facie* evidence related to Mr. Reiterer's involvement in the alleged irregular recruitment of a consultant and it recommended to separately investigate this matter. The same fact-finding panel was thus appointed and tasked to investigate that recruitment (third panel).

10. On 19 June 2018, the first panel issued its investigation report.

11. On 28 June 2018, the third panel issued its investigation report.

12. By memorandum dated 17 August 2018 and following a review of the first and third panel's investigation reports, the USG/OCHA referred the matter for appropriate action to the ASG/OHRM.

13. By memorandum dated 19 February 2019 and following a review of the three investigation reports and supporting documentation, the Officer-in-Charge, OHR informed Mr. Reiterer that the following formal allegations of misconduct had been issued against him:

(a) Between 2015 and 2017, Mr. Reiterer created a hostile, offensive and humiliating work environment for the second complainant by one or more of the following: (i) shouting at him in his office about a work assignment; (ii) instructing him not to move away from his desk during working hours, even after he raised concerns of being less productive following the instruction; (iii) replacing him with an intern in the emergency response to Hurricane Matthew; (iv) cancelling his training mission to the United Nations Disaster Assessment and Coordination (UNDAC) without consulting or informing him of such action; and/or

(b) In 2017, Mr. Reiterer abused his authority of Chief, CMCS, OCHA by one or more of the following: (i) facilitating the recruitment and an extension of a daughter of a friend, as a consultant, who had no special skills or knowledge in the areas of civil-military coordination training; and/or (ii) facilitating her official travels that were not included in her terms of reference, including the two-month mission to Jordan for the purpose of helping her gain field experience.

14. On 30 April 2019, the Office of Staff Legal Assistance (OSLA) submitted, on Mr. Reiterer's behalf, comments on the allegations of misconduct.

15. By letter dated 27 June 2019, the ASG/OHR informed Mr. Reiterer that based on the review of the entirety of the record, including his comments, it had been concluded that the allegations had been established by clear and convincing evidence; and decided to impose on him the disciplinary measure of demotion by one grade with deferment, for one year, of eligibility for consideration for promotion.

16. On 28 August 2019, Mr. Reiterer filed an application before the UNDT contesting the imposition of the disciplinary sanction.

17. On 27 September 2019, the Respondent filed his reply.

18. By Order No. 147 (GVA/2021), the Dispute Tribunal *inter alia* requested comments from the parties about its intention to hold a hearing on the merits. In response to this Order, the Secretary-General submitted that a hearing was not necessary, whereas Mr. Reiterer agreed with the holding of a hearing.

19. By Order No. 158 (GVA/2021), the UNDT *inter alia* confirmed to the parties the holding of a hearing and communicated to them a tentative hearing schedule.

20. On 8 November 2021, the parties filed a joint bundle of documents and a list of authorities for the oral hearing. That same day, Mr. Reiterer filed a motion for submission of evidence.

21. On 12 November 2021, the Secretary-General filed, at the UNDT's request, his response to Mr. Reiterer's 8 November 2021 motion.

22. By Order No. 168 (GVA/2021), the UNDT dismissed Mr. Reiterer's motion for submission of evidence.

23. The UNDT held hearings on 22, 23, 24, 26 and 29 November 2021 and heard testimony from the first and second complainant, from Mr. Reiterer, the former Head, Operations and Field Support Unit (OFSU), CMCS, OCHA, the current Head, OFSU, CMCS, OCHA, the Head, Training and Partnership Unit (TPU), CMCS, OCHA, the Head, Special Projects Unit (SPU), CMCS, OCHA, the Programme Assistant, CMCS Support Unit, OCHA and a former Director, OCHA.

24. The parties made oral closing submissions on 29 November 2021.

25. On 11 February 2022, the UNDT issued Judgment No. UNDT/2022/011, dismissing the application.

26. On 1 April 2022, Mr. Reiterer filed an appeal, and on 3 June 2022, the Secretary-General filed his answer.

Submissions

Mr. Reiterer's Appeal

27. Mr. Reiterer submits that the UNDT erred in procedure by not holding a case management hearing before proposing a witness list for the parties to comment upon. Instead, the UNDT proceeded to organize a hearing on the merits and proposed the witnesses to be called. Mr. Reiterer responded with an alternative list of witnesses including himself, his successive supervisors and the supervisor of one of the complainants. Two of the witnesses he requested were refused in spite of the relevant information in their witness statements which was overlooked in the investigation report. In addition, the UNDT erred in procedure by rejecting his motion to submit additional evidence. By excluding the testimonies of two witnesses requested by Mr. Reiterer (who were both eyewitnesses and in a position to comment as line managers on the specific allegations) and refusing to admit documentary evidence refuting several of the specific allegations of complainant 1 and relating to the need to hire outside expertise, the UNDT severely curtailed his right to present a defense demonstrating the mistakes and inadequacy of the investigation reports upon which the UNDT heavily relied.

28. Mr. Reiterer further submits that the UNDT erred in fact when it accepted at face value the claim that the office was divided into two groups and accepted as fact the negative opinions of two interviewees who later refused to be examined under oath. It ignored the overwhelming opinions of the Branch's leadership that there was no hostile working environment and that Mr. Reiterer's behavior was never confrontational but rather that he encouraged team building. The UNDT failed to consider that Mr. Reiterer's supervisors uniformly considered him an excellent manager and saw no signs of a divided or hostile environment. The Chief of the Emergency Services Branch confirmed a good working environment and little if any evidence of discontent prior to the filing of the complaints. He also confirmed the common practice of sharing some tasks with interns as needed. The testimonies confirmed Mr. Reiterer supported complainant 1 after negative feedback from a surge mission not to have a negative impact on his career. Mr. Reiterer approved the first

complainant moving to a higher grade level for more than a year. Both complainants received consistently excellent performance reports from Mr. Reiterer as second reporting officer.

29. Mr. Reiterer submits that the Secretary-General was unable to produce for examination two witnesses named in the investigation reports who were relied upon in support of the harassment allegations of the complainants. The UNDT ruled that despite their refusal to testify under oath, their statements to the investigators were admissible and determinative, although they consisted largely of repeating what the two complainants had told them. There was no independent corroboration of any instance of shouting. To the contrary, the supervisors of both complainants who were in close proximity denied such behavior ever occurred. The only testimony given in the hearings in support of the allegations in the complaint was the testimony of the two complainants themselves, one of whose similar complaints had previously been rejected and did not form part of the charges. Complainant 1 and complainant 2 who were friends seemed to have coordinated their complaints. Nevertheless, the UNDT relied upon the opinions of complainant 2 about Mr. Reiterer as convincing evidence.

30. Mr. Reiterer had argued persuasively that his actions and communications were motivated by serious issues of insubordination over attendance and team cooperation that were shared by other managers in the office. The isolated examples of correspondence cited by the UNDT have to be seen in the context of repeated requests that were ignored and outright insubordinate behavior. These problems were confirmed by several of the managers called to give testimony including the immediate supervisor of complainant 1, and the heads of the two training units and the Chief of the Branch, who had been consulted and who approved the suggestion of keeping the office doors open. Complainant 1's current supervisor explained why he himself eventually had to move into the office with complainant 1. In addition, the former Chief of Branch said in his investigation interview that the open-door policy was a branch practice and the complainants' behavior towards Mr. Reiterer could be seen as a lack of respect. This was ignored both by the investigators and by the UNDT.

31. Mr. Reiterer contends that the decision to replace complainant 1 on one training mission was explained and un rebutted. It was unrefuted that complainant 1 had the highest absence on sick leave in the Section. The need to make a decision on attending the training occurred when complainant 1 was on an extended sick leave of uncertain duration. By the time he returned, the arrangement had been put in place and in any case, similar training was available later. The UNDT ignored this and refused to admit the documentary evidence that complainant 1 was among the

most frequent travelers in the Section. Moreover, the UNDT refused to admit evidence that the use of an intern for the Hurricane Mathew preparation was motivated by his language skills since Dutch was needed at the time, and the evidence that complainant 1 remained the designated focal point.

32. Mr. Reiterer avers that the UNDT erred in its conclusions regarding the hiring of a consultant (the selected consultant) on a short-term contract. The UNDT ignored the fact that a six-month consultancy appointment does not require a formal competitive selection process under Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors) and, in any case, the evaluation process for short-term contractors is not the same as for staff recruitment. Moreover, the UNDT erred with regard to the nature of the selected consultant's duties when it erroneously found that she had indeed been hired as a consultant. Furthermore, the UNDT has relied on extensive gossip while ignoring the presumption of the regularity of administrative acts. The only source for asserting there was ample in-house capacity was a General Service staff member who wanted to go on training missions herself. This was contradicted by both heads of training. No report of irregular hiring and no financial audit ever raised this issue before the two complainants raised it after the fact based on rumors. Indeed, the selected consultant shared Mr. Reiterer's nationality and came from the same area although they had never met.

33. The charge of "facilitating the recruitment of a consultant" is both vague and nowhere defined as an act of misconduct. Both heads of training independently assessed the selected consultant and both testified that Mr. Reiterer would not have supported the hiring had they raised any doubt about her competencies. More importantly, there is no evidence Mr. Reiterer profited or benefited in any way from this transaction. Mr. Reiterer's only involvement was suggesting her name for the roster that the Section maintained. The decision on hiring her, requesting a brief extension of her contract and sending her on training missions was not done by Mr. Reiterer but by the heads of the two training services who both testified as to the procedures followed and their success. On the contrary, both supervisors were clear in their sworn testimony that the selected consultant was exactly what was needed for their training programmes and performed an outstanding job which led to a request for extension of her contract and more travel to help organize the training sessions. The UNDT ignored all this sworn evidence. It also refused to admit evidence that Mr. Reiterer had sought prior approval of the Chief of Branch for the hiring. The testimonies did not, contrary to what is asserted, confirm the conclusions of the investigation panel, which were based on a flawed understanding of the programme and its operational needs.

34. Mr. Reiterer further alleges that the UNDT committed errors in law. While the impugned Judgment gave deference to the discretionary authority of the Secretary-General in matters of conduct, insufficient attention was directed to the question of whether the alleged actions amounted to misconduct or were the result of inter-personal conflicts and whether the penalty imposed was proportionate to the alleged misconduct. The UNDT failed to analyze the penalty imposed pursuant to the guidance in *Kennedy*.¹ The UNDT failed to offer any explanation why alleged shortcomings in managerial competencies could not be addressed administratively. The UNDT failed to review the proportionality of the sanction; it did not consider factors such as the seriousness of the offence, the length of service, Mr. Reiterer's disciplinary record, his attitude, and his past conduct, as well the context of the violation and employer consistency. Mr. Reiterer had over twenty years of unblemished service with the Organization and no rationale has been provided why issues of management style, which had never arisen before, could not have been addressed through administrative rather than disciplinary action.

35. In addition, the UNDT erred in failing to adjudicate the issue regarding Mr. Reiterer's reassignment to a lower-level post. This administrative decision was taken pursuant to the disciplinary process and concurrently with the disciplinary measure and appears to be a new policy adopted in the United Nations Secretariat with no legal foundation. Demotion has always been regarded as a personal and financial penalty having nothing to do with the post or functions performed by the staff member. Mr. Reiterer's removal from his P-5 post essentially imposed an additional penalty not provided in the Staff Rules and turns the one-year exclusion of eligibility for promotion into a *de facto* longer-term consequence for his career. Mr. Reiterer continues to be placed against a P-4 post with no supervisory functions and no opportunity for promotion. As recounted in his application, Mr. Reiterer has suffered severe depression and stress from the handling of his case requiring medical attention.

36. Mr. Reiterer requests that the UNDT Judgment be reversed and the contested decision be rescinded, including removal of the censure from his file; that he be reinstated in his former grade and step with retroactive effect; and that he be awarded compensation for loss of career opportunities and for the moral damage to his personal and professional reputation and to his health and well-being.

¹ *Timothy Kennedy v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1184.

The Secretary-General's Answer

37. Mr. Reiterer has not explained how any of the alleged errors of procedure affect the Judgment and thereby warrants reversal. Other than listing that the UNDT took certain decisions, Mr. Reiterer does not set out why these decisions are erroneous or how these alleged errors have affected the Judgment. On this basis alone, UNAT should deny the appeal.

38. Nothing in either the UNDT Statute or the Rules of Procedure, nor in the jurisprudence of the Appeals Tribunal compels a presiding judge to hold a case management hearing. In this case, the UNDT issued Order No. 147 in which it considered appropriate to hold a hearing, included a list of witnesses and provided the parties an opportunity to opine on the necessity of holding a hearing and on the suggested list of witnesses. The UNDT then took into account the parties' submissions and in Order 158, accepted Mr. Reiterer's request to hear his testimony and the testimony of one of his previous supervisors, but denied the request to hear two other witnesses. The UNDT also denied the Secretary-General's request to adjudicate the case on the documents on the record without a hearing. The UNDT then held five days of hearings during which Mr. Reiterer had ample opportunity to advocate his position. His ability to challenge the contested decision was not prejudiced by the UNDT's decision not to hold a case management hearing. Consequently, UNAT should dismiss the contention that the absence of a hearing on case management constituted an error in procedure, such as to affect the decision.

39. The UNDT properly decided on the list of witnesses. The UNDT is under no obligation to hear every single witness proposed by the parties and it has broad discretion to limit oral evidence as it deems fit. The UNDT agreed to hear Mr. Reiterer's testimony as well as the testimony of his former supervisor. The UNDT, however, found that since Mr. Reiterer had not indicated the relevant issues on which the two additional witnesses would testify, it considered that their testimony was not relevant. Contrary to Mr. Reiterer's submission, the transcripts of the proposed witnesses before the panel support the finding that their testimony was unnecessary for the disposition of the case. The UNDT heard nine witnesses of which six (including Mr. Reiterer) were Mr. Reiterer's witnesses. The UNDT's decision to not hear two more witnesses who the UNDT believed would not provide information that was necessary for the disposition of the case, was not in error and did not prejudice Mr. Reiterer's case.

40. The UNDT properly denied Mr. Reiterer's motion to admit additional evidence. The documents Mr. Reiterer wished to submit as additional evidence had been created between April 2013 and 2017. He filed his application with the UNDT on 28 August 2019 and the Secretary-General filed the reply and all evidence on 28 September 2019. From September 2019, Mr. Reiterer had had more than two years to file the evidence, if he thought such evidence was necessary. He however elected to wait until 8 November 2021 to submit the motion, with no explanation as to the late submission and as to how the additional evidence would have aided the UNDT in the disposition of the case. Considering the late submission of the motion and the broad discretion the UNDT has in the administration of cases before it, the UNDT acted within the scope of its authority when it decided to deny the request to submit additional evidence.

41. The Secretary-General further submits that the UNDT did not commit errors of fact. Contrary to Mr. Reiterer's assertion, the UNDT's conclusions were not reached through willful ignorance of the evidence, but rather by intentional weighing of the whole of the documentary and testimonial evidence.

42. The UNDT correctly found that Mr. Reiterer created a hostile work environment. With regard to the allegations of abuse of authority and harassment of the second complainant, the UNDT relied on documentary evidence confirmed during the hearings by the testimonies provided by the first complainant, the second complainant, the former supervisor and the current supervisor of complainant 1, and the former Director of OCHA, Geneva. Mr. Reiterer's assertions that the testimonies of the first complainant and the second complainant are unreliable and that they are the only evidence provided in support of the allegations are inapposite. Mr. Reiterer provides no evidence in support of his claim that the first complainant and the second complainant conspired against him. Moreover, contrary to what Mr. Reiterer argues, the fact that the first complainant had previously filed a complaint against Mr. Reiterer which had not led to disciplinary measures does not mean that he lacked credibility. The UNDT was correct when it found that the testimony by the first and the second complainant provided sufficient roof on which the Secretary-General based the contested decision. Moreover, contrary to Mr. Reiterer's assertion, the UNDT the testimonies of the first and the second complainant were corroborated by significant evidence, both documentary and testimonial.

43. The former supervisor of the second complainant supported the latter's testimony. He testified that Mr. Reiterer was aggressive in his relationship to the second complainant; that he often cut him short during team meetings; that the second complainant was often away from his desk because his job entailed coordinating with the other humanitarian agencies in Geneva and that consequently Mr. Reiterer's instructions to him to remain at his desk for at least six out of eight hours when at the office, as if he was not working when not at his desk, were inapposite. He also agreed that the tone of the e-mail sent by Mr. Reiterer to the second complainant, instructing him to spend at least six out of eight hours a day seated at this desk, and limiting his lunch break to the hour between 12:30 to 1:30, was highly irregular, and that he had never seen anybody else send such an e-mail to a subordinate.

44. The testimonies by both the former supervisor of the second complainant and the former Director of OCHA, Geneva offered further corroboration. In particular, the former supervisor noted that the hallway outside the office of the second complainant was loud, that it was hence reasonable for him to close his door to concentrate and that Mr. Reiterer's instruction to never close his door was cantankerous. He further noted that Mr. Reiterer commonly allowed staff who returned after long field Missions to take a day off to readjust and that his refusal to grant the second complainant the same courtesy demonstrates his differential treatment. He additionally testified that the second complainant's portfolio included the Latin American and African region which OCHA is heavily engaged in. Consequently, the second complainant was required to travel frequently to conduct his work and Mr. Reiterer was well informed every time the second complainant travelled on mission. Moreover, he did not deny that Mr. Reiterer shouted at the second complainant. He merely testified that he did not hear such shouting. He also testified that he travelled extensively for work and was often away from the Office. In addition, the second complainant's current supervisor as well as the former Director of OCHA in Geneva testified that the September 2015 e-mail was highly irregular, that they had never given such instructions to their subordinates, and that they had never seen anybody give such an instruction to a subordinate.

45. The Secretary-General objects to Mr. Reiterer's contention that the UNDT should not have relied on the testimony provided by one colleague and one former colleague of the second complainant in the course of the investigation, because of their "refusal" to testify. The UNDT found that their statements to the panel corroborated the complainants' testimony that Mr. Reiterer had shouted at the first complainant and that he had created a fractious

atmosphere at the Section. Contrary to the Mr. Reiterer's argumentation, they did not "refuse" to testify. Both witnesses were not unwilling, but rather unable to participate. The former colleague of the second complainant could not appear as she had been deployed by her current employer in Mali. His current colleague was, at the time, on mission and could not be available, but offered to testify two weeks later. Moreover, Mr. Reiterer appears to confuse corroboration with repetition. The evidence provided by the two witnesses in their Panel interviews does not "repeat" the complainants' testimony and is not hearsay. They describe, from first-hand, their experiences. In light of the fact that their (under oath) interview testimony corroborates the testimony of the complainants, who testified before the UNDT, and in light of the UNAT jurisprudence that the inability of witnesses to appear, when the Organization is not at fault, should not be held against it, the UNDT had no reason to ignore the interview testimony of the two witnesses.

46. The UNDT correctly held Mr. Reiterer's cancellation of the second complainant's training was unjustified. Contrary to Mr. Reiterer's contention, the fact that the second complainant took more sick leave than his other colleagues is not a justification to cancel his travel. Taking sick leave is an entitlement. The second complainant was on sick leave for ten days in July 2017 and came back to work a month before he was scheduled to go on travel as a team leader at a training in late August. The second complainant showed no sign that he would not be able to participate in the scheduled training. Moreover, whether or not the second complainant was among the most frequent travelers in the section is irrelevant. Work travel is not a benefit, but rather, as testified by the second complainant's supervisor, a necessity of his responsibilities. The work travel requirements attached to the second complainant's position had nothing to do with the cancellation of his training mission. Consequently, the UNDT was correct to hold that the evidence does not support Mr. Reiterer's claim that his decision to cancel the second complainant's training was justified.

47. The UNDT correctly found that the evidence established that Mr. Reiterer abused his authority in connection with the hiring of the daughter of his friend, as a consultant and then sent her on mission to Jordan absent any operational necessity to "invest in her and expose her slowly to field operations". Contrary to his contention, Mr. Reiterer was responsible for every step in the selected consultant's recruitment. He instructed two of his supervisees to speak with the selected consultant to confirm her availability to be recruited as a consultant, before she had even submitted a personal history profile to the roster of consultants. In this context,

Mr. Reiterer's claim, that he randomly saw the selected consultant's profile on LinkedIn and did not instruct his supervisees to hire her because she was his friend's daughter, is a manifest lie. One of the supervisees testified before the Panel, and at the hearing, that Mr. Reiterer informed her that the selected consultant contacted him to ask him about work. After the two supervisees spoke with the selected consultant, it was Mr. Reiterer, as the Chief of Section, who requested his supervisor, the Director OCHA in Geneva to hire her.

48. Mr. Reiterer's attempt to argue that the two supervisees, P-4 level staff, are responsible for the selected consultant's hiring and that he "merely" suggested her name is unsupported by the facts before the UNDT. The evidence shows the influence Mr. Reiterer had exerted, as a Senior Humanitarian Coordination Officer and Head of his Section, to hire the selected consultant. Mr. Reiterer's argument that there was no fault in hiring her because selection of consultants for six months does not require a rigorous selection process comparable to that of a staff member, and that "[t]his is why a roster is kept" is both misleading and a non sequitur. The selected candidate had been put on a roster, after she had contacted Mr. Reiterer seeking a job, so that she could then be picked from the roster. Moreover, the fact that the selection process is less rigorous is not an excuse for managers to use funds to hire their unqualified family friends as consultants. Additionally, Mr. Reiterer provided no evidence in support of his claim that the UNDT erroneously held that no in-house capacity existed to accomplish the tasks assigned to the selected consultant.

49. Finally, it was manifestly clear to Mr. Reiterer that the selected consultant was recruited as a "consultant" and it is irrelevant whether Mr. Reiterer "reaped a benefit" from her recruitment. He was not charged with bribery or theft. He was charged with abusing his authority, as a manager, in that, while engaging in a conflict of interest, he hired an unqualified individual for work as a consultant, and for using that work to further enhance that individual's experience, with no operational need. Finally, the UNDT correctly found that Mr. Reiterer's efforts to send the selected consultant on mission to Jordan for two months to help her "gain experience" is further proof that his rationale, from the outset, was not to hire her because of the Section's needs, but rather in the selected consultant's interest. Consequently, the UNDT was correct to hold that Mr. Reiterer abused his authority in relation to the hiring of the selected consultant.

50. The UNDT did not commit an error of law in determining the proportionality. Mr. Reiterer errs both in the manner in which he cites the UNAT Judgment in *Kennedy* and in his representation of the impugned Judgment when he submits that the UNDT erred in law by not considering whether his conduct was severe enough to amount to misconduct warranting the disciplinary measure imposed on him, adding that the UNAT’s judgment in *Kennedy* required the UNDT to explain why Mr. Reiterer’s conduct could not be “addressed administratively”. Nothing in *Kennedy* suggests that the Secretary-General must explain why he chose not to consider a non-disciplinary response to misconduct. Moreover, contrary to Mr. Reiterer’s claim, the UNDT did address the proportionality of the disciplinary measure. The UNDT took Mr. Reiterer’s conduct into consideration, compared the disciplinary measure to past cases and found the disciplinary measure imposed could have been more severe. Contrary to Mr. Reiterer’s assertion, his demotion and reassignment to a new position with no managerial responsibilities was not “a new policy with no legal foundation”; rather, the Secretary-General imposed the disciplinary measure of demotion with deferment in line with Staff Rule 10.2(a)(vii).

51. The Secretary-General requests that the UNAT uphold the contested decision and the impugned Judgment and dismiss the appeal in its entirety.

Considerations

Whether the UNDT erred on a question of law or fact in establishing Mr. Reiterer’s misconduct

Standard of review in disciplinary cases

52. In disciplinary cases, the Tribunals will examine the following: (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. When termination is the sanction imposed, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable.² In all other cases preponderance of the evidence is sufficient.³

² *Mohammad Yahya Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1196, para. 56; *Abdulhamid Al Fararjeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1136, para. 11; *Samandarov v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-859, para. 21.

³ *Suleiman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1006, para. 10.

53. However, the Appeals Tribunal has also held that the Administration has a broad discretion in disciplinary matters which will not be lightly interfered with on judicial review.⁴ This discretion is not unfettered and can be judicially reviewed to determine whether the exercise of the discretion is lawful, rational, procedurally correct, and proportionate. But it is not the role of the UNDT to consider the correctness of the choice made by the Administration amongst the various courses of action open to it or to substitute its own decision for that of the Administration.⁵

54. The UNAT's task on appeal is to determine whether the UNDT did not apply the correct tests and whether the Dispute Tribunal could reasonably have reached the decisions it did about what happened.⁶

55. Furthermore, this Tribunal has held that in a system of administration of justice governed by law, the presumption of innocence has to be respected.⁷

56. It is in the context of these definitions and principles that Mr. Reiterer's appeal against the UNDT's conclusions must be assessed.

57. Applying the above-mentioned standards and criteria to the present case, we find that the facts on which the Administration based its decision to impose on Mr. Reiterer the challenged sanctions were established, in full respect of his due process rights. As the disciplinary sanction imposed in this matter was not termination but demotion by one grade with deferment, for one year, of eligibility for consideration for promotion, it is sufficient that the Tribunal find that there was a preponderance of evidence. The records show on a preponderance of evidence facts which amount to misconduct and these facts have not been successfully rebutted by Mr. Reiterer. The UNDT did not err in finding that Mr. Reiterer indeed created "a hostile, offensive and humiliating work environment" and abused his authority.

58. As the UNDT provided thorough and convincing reasoning, we do not find it necessary to repeat each and every detail except to refer to paragraphs 31 to 83 of its Judgment. We will, however, present the most important pieces of evidence on record and highlight those factual findings which clearly demonstrate that Mr. Reiterer committed misconduct. We begin by

⁴ *Ladu v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-956, para. 40.

⁵ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

⁶ *Sisay Negussie v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1033, para. 48.

⁷ *Ladu, op. cit.*, para. 16.

recalling the two formal allegations of misconduct levelled against Mr. Reiterer set forth in the 19 February 2019 charge letter, namely:

a. [Count 1:] Between 2015 and 2017, [he] created a hostile, offensive and humiliating work environment for [the second complainant], by one or more of the following: (i) shouting at him in his office about a work assignment; (ii) instructing him not to move away from his desk during work hours, even after he raised concerns of being less productive following the instruction; (iii) replacing him with an intern in the emergency response to Hurricane Matthew; and (iv) cancelling his training mission to UNDAC without consulting or informing him of such action”; and/or

b. [Count 2] In 2017, [he] abused [his] authority as Chief of [CMCS] by one or more of the following: (i) facilitating the recruitment and [a contract] extension of [the selected consultant], who was [the] daughter of [his] friend ... while she had no special skills or knowledge in the areas of civil-military coordination training; and/or (ii) facilitating [the selected consultant’s] official travels that were not included in her terms of reference, including [a] two-month mission to Jordan for the purpose of helping her gain field experience.

Whether Mr. Reiterer created a hostile work environment for the second complainant

59. In reviewing the Administration’s decision with respect to the first count, the UNDT had before it the documentary evidence on the record, including the investigation reports of all three panels and the testimonies of various witnesses together with that of Mr. Reiterer’s at the hearing before it.

60. The UNDT considered and screened all the material facts of the case at hand against the backdrop of the four alleged incidents giving rise to an intimidating and hostile work environment. At the outset, the UNDT Judge made reference to the findings and conclusions of the second panel and the witnesses’ statements gathered by it confirming a hostile, offensive and humiliating work atmosphere (testimonies of one current and one former colleague of the second complainant and a consultant in his office] as well as Mr. Reiterer’s demeaning treatment of the second complainant (testimonies of the first complainant, a consultant in the second complainant’s office and a former colleague).

61. Indeed, there is ample evidence in this material showing that Mr. Reiterer’s actions towards the second complainant with respect to the specific incidents complained about and mentioned above in paragraph 58 were inappropriate, caused unnecessary stress and contributed to an intimidating work environment. Hence, it is not necessary to explore the details of

Mr. Reiterer's such behavior. Some of these incidents (i.e., the matter related to Mr. Reiterer's reassignment of the Hurricane Matthew file to an inexperienced intern), taken isolated, might not appear serious incidents. But, looked at overall, in the context of other incidents, they support the UNDT's finding of Mr. Reiterer's "failure to create a harmonious work environment and of his inability to solve and prevent conflicts, foster team spirit and encourage others' views, as well as of his difficulty with hearing criticism and an inclination for favouritism".⁸ That finding is in line with and confirms the second panel's similar one, -referring to the reassignment of the Hurricane Matthew file to an inexperienced intern-, that "as an isolated incident it may not appear a serious incident, but if it is seen in the context of other incidents it supports the pattern of harassment and abuse of authority against [the second complainant]".⁹

62. Notably, as per the findings of the second panel concerning the four incidents of count one:¹⁰

... The panel reviewed the matter related to Mr. Reiterer's shouting at [the second complainant] when he wanted to seek clarification on an email dated 8 September 2015 addressed to [the second complainant] and four other addressees. The panel reviewed the email exchange between Mr. Reiterer and [the second complainant] and found the query raised by [the second complainant] to be appropriate. The panel have considered the statements of complainant, subject and the witness and is of the view that Mr. Reiterer shouting at [the second complainant] is inappropriate and demeaning. The panel is of the view that it is the supervisor's responsibility to guide and coach his team mates. Shouting by the supervisor when asked for clarification in the presence of others amounts to demeaning or humiliating treatment and can reasonably be considered as harassment.

... The panel reviewed the matter related to Mr. Reiterer's directions by emails to [the second complainant] to spend more time at his desk and to keep the office door open. The panel have considered the statements of complainant, subject and witnesses and is of the view that the corridor is a noisy place and the instruction to keep the door open affects efficiency, as does being required to remain in the office as acknowledged by Mr. Reiterer in his email copied to his superiors. Mr. Reiterer's instruction to keep the door open is unnecessary and reflects poor judgement. The panel considered the fact that Mr. Reiterer's actions were inappropriate and amount to exerting unnecessary pressure, causing stress and contributing to an intimidating work environment.

... The panel reviewed the matter related to Mr. Reiterer's decision to cancel a training mission of [the second complainant] on the pretext that he just returned from sick leave. The panel have considered the statements of complainant, subject and witnesses and has established that Mr. Reiterer's decision to cancel [the second complainant's] training

⁸ Impugned Judgment, para. 52.

⁹ Investigation report of the second panel, para. 100.

¹⁰ See, in particular, investigation report of the second panel, paras. 95 to 98 and 100.

mission without prior discussion was arbitrary, unfair and unjustified. The panel also noticed that since his return from sick leave, [the second complainant] has not been allowed to travel on as many missions and is concerned that this represents sidelining of the staff member. The only travel [the second complainant] made was in September as UNDAC team leader in Dominica and that was approved by his direct supervisor It would have been more appropriate, if Mr. Reiterer or [the second complainant's] direct supervisor discussed the matter with [the second complainant] before making a decision. The panel considers that Mr. Reiterer's actions have caused unnecessary stress and have contributed to an intimidating work environment.

... The panel reviewed the matter related to Mr. Reiterer's shouting at [the second complainant] on the subject of placing mobile phones on the table during a section meeting in the presence of other staff members. The panel have considered the statements of complainant, subject and all witnesses and is of the view that Mr. Reiterer used a harsh and insulting tone towards [the second complainant] in front of the entire section, which is inappropriate and humiliating. The panel is of the view that it is the supervisor's responsibility to take measures to maintain a positive environment free from all form of prohibited conduct. Mr. Reiterer's shouting at [the second complainant] in a section meeting on a very minor issue is inappropriate, meant to demean or humiliate [the second complainant] and constitutes an act of harassment in the context of the series of events.

...

... The panel reviewed the matter related to Mr. Reiterer's reassignment of the hurricane Mathew file to an inexperienced intern. The panel have considered the statements of complainant, subject and witnesses and is of the opinion that although as manager Mr. Reiterer can assign or reassign a task to any of his team members, taking away an important task and giving it to an inexperienced intern without prior discussion or any justification is uncalled for. The explanation given by Mr. Reiterer in his interview, that [the second complainant] was too busy does not seem to be true and appears to be an act to undermine or humiliate the supervisee. The panel considers that as an isolated incident it may not appear a serious incident, but if it is seen in the context of other incidents it supports the pattern of harassment and abuse of authority against [the second complainant].

63. There was indisputably a problem with Mr. Reiterer's style of management. As the UNDT rightly held, on the evidence on record, Mr. Reiterer exercised a management style characterized by ill-mannered behaviour where staff were shouted at, discretionary management authority was used to assign travels, tasks and interns, attendance and working hours were selectively monitored and enforced, coffee invitations were sent only to certain subordinates, and parties in the office to celebrate work success were organized only for some.

64. Likewise, the thorough and considered assessment of the witness statements of the second complainant, the first complainant, and the former Head, OFSU, CMCS, OCHA by the UNDT Judge are very revealing in this respect. As the UNDT correctly found they corroborate the occurrence of the above alleged incidents and support the pattern of harassment and abuse of authority against the second complainant by Mr. Reiterer. The UNDT did not err in relying on them and in finding all these testimonies to be credible and supportive of the second complainant's complaints. Notably, the UNDT Judge ascribed considerable evidentiary weight upon the latter's testimony, noting that he "was very esteemed in the field, and he was one of the most frequent travelers in CMCS, in many countries all over the world and often in emergency situations, which confirms his skills and experience"¹¹.

65. After carefully and thoroughly considering the evidence on which the Administration had based the sanction, along with its own observations and findings thereupon, the UNDT reached its final conclusion that the facts on which the impugned disciplinary measure had been based, in terms of count one, were established on a preponderance of evidence and constituted, "particularly in relation to the second complainant, harassment and abuse of authority and failed to uphold and respect the dignity and worth of a human person".¹²

66. Specifically, the UNDT, taking note, *inter alia*, of the fact that the second complainant was very esteemed in the field, and was one of the most frequent travelers in CMCS, in many countries all over the world and often in emergency situations, which confirmed his skills and experience, found that:¹³

... the Applicant did indeed shout at the second complainant (incident one, count one) and that his instruction to the second complainant to not move from his office (incident two, count one), even if this entailed less productivity, is neither normal nor justified, particularly bearing in mind that the Applicant himself acknowledged that there were no issues with the second complainant's performance, which is supported by the relevant performance evaluations. ...

... Concerning the Hurricane Mat[t]hew incident (incident three, count one), the evidence also shows that the Applicant did not discuss with the second complainant that he was replacing him with an intern.

... With reference to the training cancellation (incident four, count one), it results from the record that it was decided similarly without prior discussion with the second

¹¹ Impugned Judgment, para. 49.

¹² *Ibid.*, para. 55.

¹³ *Ibid.*, paras. 49-51.

complainant and, moreover, that its rationale, namely the second complainant's being on sick leave or returning shortly before the start of the training, was unreasonable as the training took place one month after the second complainant's return from sick leave.

67. These are accurate conclusions from the evidence on record and common knowledge and we find no reason to differ from them. The Dispute Tribunal has broad discretion under its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence. The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision, which is not the case here. This Tribunal is mindful that the Judge hearing the case had an appreciation of all the issues for determination and the evidence before it. We are satisfied that the UNDT's conclusion is consistent with the evidence. Mr. Reiterer has not put forward any persuasive grounds to warrant interference by this Tribunal.

68. In all the circumstances of the case, this Tribunal is satisfied with the detailed analysis of the totality of the evidence by the UNDT and agrees with its well-reasoned conclusion. Having regard to the factual findings made by the trial Judge, who is best placed to assess the nature and probative value of the evidence placed before him by the parties to justify his findings,¹⁴ the chronology of the critical events and the overall deductive reasoning process of his, this Tribunal shares the UNDT's view that the only reasonable conclusion available to the trial Judge, resulting from the evidence against Mr. Reiterer, uncovered by the investigation and the documentary evidence and notably the hearing before the first instance Judge, was that Mr. Reiterer had created a hostile, offensive and intimidating work environment for the second complainant. Therefore, we reject the arguments advanced by Mr. Reiterer to the contrary, and the appeal on this ground fails.

Whether Mr. Reiterer abused his authority by hiring the selected consultant and facilitating her official travels not included in her terms of reference

69. The legal framework governing the recruitment of consultants is ST/AI/2013/4, the relevant parts of which read as follows:

Section 2

Definitions

The following definitions apply for the purpose of the present instruction:

¹⁴ *Mohammad Yahya Al Othman op. cit.*, para. 77; *George M'mbetsa Nyawa v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1024, para. 63; *Ladu, op. cit.*, para. 26.

(a) A consultant is an individual who is a recognized authority or specialist in a specific field, engaged by the United Nations under a temporary contract in an advisory or consultative capacity to the Secretariat. A consultant must have special skills or knowledge not normally possessed by the regular staff of the Organization and for which there is no continuing need in the Secretariat. The functions of a consultant are results-oriented and normally involve analysing problems, facilitating seminars or training courses, preparing documents for conferences and meetings or writing reports on the matters within their area of expertise on which their advice or assistance is sought.

...

Section 3

Conditions for contracting

Terms of reference

...

3.2 The terms of reference are mandatory and shall form part of the individual contract. The terms of reference shall include the outputs to be delivered and the functions to be performed. The outputs and functions shall be specific, measurable, attainable, results-based and time-bound and include:

- (a) Tangible and measurable outputs, objectives and targets of the work assignment, as well as specific activities to achieve the required outputs and targets;
- (b) Specific delivery dates and details as to how the work must be delivered (e.g. electronic submission, hard copy). The dates and details shall be subdivided into “milestones” where appropriate;
- (c) Indicators for the evaluation of outputs (including timeliness, achievement of goals and quality of work);
- (d) Name and title of the supervisor(s).

...

Section 4

Selection process

4.1 Rosters of consultants and individual contractors should be utilized where available, as they provide easy access to a screened pool of individuals with a relevant track record. Candidates maintained on any roster should be screened for qualifications, references and prior work experience. Owing to the particular needs of the various offices of the Secretariat, every department, office and mission is required to develop its own roster of consultants and individual contractors based on its requirements. Executive, administrative or human resources offices shall start developing these rosters through the appropriate openings in the electronic platform provided for this purpose by the Office of Human Resources

Management and shall keep them centrally in the department, office or mission, including for monitoring and audit purposes.

...

4.3 In the process of selecting a consultant or individual contractor, heads of departments, offices and missions are responsible for instituting competitive selection procedures. The competitive selection procedure can take several forms, including the evaluation of individuals identified from a roster of qualified individuals maintained by the executive, administrative or human resources offices, through the issuance of a consultancy or individual contractor opening in the electronic platform provided for this purpose, through the department, office or mission website or through any other appropriate means. For each assignment, every effort shall be made to shortlist for consideration a minimum of three candidates from the widest possible geographical basis. Travel costs may be considered but may not distort the geographical balance in the awarding of contracts.

70. Coming to count 2, there is sufficient evidence on file establishing on a preponderance of probabilities that Mr. Reiterer abused his authority as Chief, CMCS, OCHA, in 2017 by hiring the selected consultant and facilitating her official travels not included in her terms of reference.

71. This conclusion handily results from the assessment of the third panel's findings and conclusions along with the witnesses' testimonies before it and in particular those of the Programme Assistant, CMCS Support Unit, OCHA; the Head, TPU, CMCS, OCHA; and the Head, SPU, CMCS, OCHA.

72. As the UNDT correctly held¹⁵, they clearly illustrate, *inter alia*, that the selected consultant was irregularly hired at the direction of Mr. Reiterer without having requisite skills and experience; there were in house competencies, especially for simple tasks that anybody could do; the choice of the selected consultant was made by Mr. Reiterer; the selected consultant had no specific competences being a photographer and not a French native speaker; an existing roster was not utilized; there was not an effective comparative procedure; although other candidates were available, their unavailability was a misrepresentation made at Mr. Reiterer's direction; Mr. Reiterer took responsibility to select and hire, as other persons involved in the process did not select or hire; and Mr. Reiterer was interested in the recruitment of a specific person.

73. Hence, it is a matter of record that Mr. Reiterer directly promoted the hiring of the selected consultant notwithstanding the existence of in-house capacity and the budgetary restrictions in force, imposed the decision to recruit her, -an individual who did not even file any application-,

¹⁵ Impugned Judgment, para. 61.

and directly selected her. There is also incontrovertible evidence that several travels/missions that the selected consultant undertook were out of the contract's provisions, in particular the mission to Jordan, and although carried out to perform official functions, their main rationale was to make the selected consultant "gain experience".

74. A review of the evidence on record, including the witnesses' testimonies at the hearing before the UNDT, reveals further the existence of a conflict of interest Mr. Reiterer faced due to his personal relationship with the selected consultant's family, which should have prevented him as a hiring manager to deal, even indirectly or through subordinates with said recruitment process. Instead, as the UNDT Judge rightly held, Mr. Reiterer "concealed his personal knowledge of the candidate, or at the very least was not clear in disclosing it to the Administration from the very beginning of the process and, moreover, he directly and personally led the recruitment process of the selected consultant and infringed the above-mentioned rules".¹⁶

75. In light of the above proven facts and absent any countervailing evidence from Mr. Reiterer, the UNDT was correct to hold that his conduct was incompatible with the standards of conduct expected from an international civil servant. We find that the conclusion reached by the Dispute Tribunal was open to it on the evidence and, accordingly, we find no error of law or fact such as would serve to undermine the Dispute Tribunal's overall conclusion on that issue.

76. In sum, the documentary evidence on file, as well as the strong circumstantial evidence and the inherent probabilities of the situation, taken cumulatively, suggest to the appropriate evidentiary standard of the preponderance of evidence, as correctly held by the UNDT, that Mr. Reiterer had committed the alleged misconduct. Therefore, his contentions to the contrary are rejected as being without merit.

Whether the established facts qualify as misconduct

77. This Tribunal agrees with the finding of the UNDT that the established facts amount to misconduct on the part of Mr. Reiterer, namely that he violated ST/SGB/2008/5 concerning count one and ST/AI/2013/4 concerning count two.

¹⁶ *Ibid.*, para. 79.

78. Notably, Mr. Reiterer's conduct in relation to the second complainant constituted harassment and abuse of authority under ST/SGB/2008/5 and also violated Staff Regulation 1.2(a) (by failing to uphold and respect the dignity and worth of the human person) and Staff Rule 1.2(f) (by engaging in harassment and abusive conduct at the workplace). While, his conduct relating to the hiring of the selected consultant etc. violated Staff Regulations 1.2(b) (by failing to uphold the highest standards of integrity, including impartiality and fairness), 1.2(f) (by engaging in an activity that is incompatible with the proper discharge of his duties as the manager of the section), 1.2(g) (by using his office or his knowledge gained from his official functions for the selected consultant's private gain), and 1.2(m) (by failing to disclose an actual conflict of interest arising from his personal connection to the selected consultant's family in connection with his facilitation of her appointment).

Whether the sanction was proportionate to the offence

79. The Appeals Tribunal has previously held that:¹⁷

The matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and for the actions and conduct of the staff member involved. This appears as a natural consequence of the scope of administrative hierarchy and the power vested in the competent authority. It is the Administration that carries out the administrative activity and procedure and deals with the staff members. Therefore, the Administration is best suited to select an adequate sanction able to fulfil the general requirements of these kinds of measures such as a sanction within the limits stated by the respective norms, sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the Tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity. This rationale is followed without any change in the jurisprudence of this Tribunal. The Secretary-General also has the discretion to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.

80. Further, as we stated in *Samandarov*:¹⁸

... [D]ue deference [to the Administration's discretion to select the adequate sanction] does not entail uncritical acquiescence. While the Dispute Tribunal must resist imposing its own

¹⁷ *George M'mbetsa Nyawa op. cit.*, para. 89 (internal footnotes omitted); *Ganbold v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-976, para. 58; *Ladu, op. cit.*, paras. 39 and 40.

¹⁸ *Samandarov op. cit.*, paras. 24-25.

preferences and should allow the Secretary-General a margin of appreciation, all administrative decisions are nonetheless required to be lawful, reasonable and procedurally fair. This obliges the UNDT to objectively assess the basis, purpose and effects of any relevant administrative decision. In the context of disciplinary measures, reasonableness is assured by a factual judicial assessment of the elements of proportionality. Hence, proportionality is a jural postulate or ordering principle requiring teleological application.

... The ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline. As already intimated, an excessive sanction will be arbitrary and irrational, and thus disproportionate and illegal, if the sanction bears no rational connection or suitable relationship to the evidence of misconduct and the purpose of progressive or corrective discipline. The standard of deference preferred by the Secretary-General, were it acceded to, risks inappropriately diminishing the standard of judicial supervision and devaluing the Dispute Tribunal as one lacking in effective remedial power.

81. In the present case, given the nature and the specific facts surrounding Mr. Reiterer's misconduct, the sanction of demotion by one grade with deferment, for one year, of eligibility for consideration for promotion, was not unreasonable, absurd, or disproportionate. The Appeals Tribunal finds that it was a reasonable exercise of the Administration's broad discretion in disciplinary matters; a discretion with which it will not lightly interfere. The UNDT, thus did not err in finding the sanction proportionate to the disciplinary offenses in the present case.

82. This conclusion renders it unnecessary to examine the other grounds of appeal advanced by Mr. Reiterer that the UNDT erred in law by not considering whether his conduct was severe enough to amount to misconduct warranting the disciplinary measure imposed on him and that the UNDT did not explain why his conduct could not be addressed administratively.

83. At any rate, Mr. Reiterer's contentions are devoid of merit for the following reasons. The UNDT was alive to the UNAT jurisprudence on the matter at issue and fully complied with it. It applied the correct legal standards in considering the proportionality of the imposed disciplinary sanction and striking the right balance between the lawful exercise of the Administration's discretion to select an adequate and proper sanction and Mr. Reiterer's right to judicial protection.

84. Specifically, in addressing the proportionality of the disciplinary measure the UNDT held that Mr. Reiterer's conduct "fail[ed] to uphold and respect the dignity and worth of the human person", and that he, thereby, engaged in harassment and abuse of authority and that his conduct in relation to the consultancy suffered from lack of integrity and, by failing to disclose an actual conflict of interest, was incompatible with the proper discharge of Mr. Reiterer's duty. The UNDT

then compared the disciplinary measure imposed to past practice and found that “the level of sanction imposed on the Applicant... is proportionate even if it had only been applied to [just one] of the two counts levelled at him”.¹⁹

85. Therefore, the UNDT took Mr. Reiterer’s conduct into consideration and compared the disciplinary measure to past cases. Notably, the UNDT, in assessing the proportionality of the imposed sanction, *ex abundante cautela* took into consideration sanctions listed in the Compendium of disciplinary measures reflecting the practice of the Secretary-General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2020 (the Compendium). This is so because in the context of exercising its judicial review of proportionality of the imposed disciplinary sanction and molding its value judgment in this regard, the UNDT – and eventually the UNAT on appeal – may recur to and take stock of decisions rendered in similar cases in the past. However, in light of the unique circumstances of each case, it is well within the discretion of the Tribunals to reach different conclusions from case to case, as they should, depending on the factors considered, even though the type of harassment or abuse of authority may be the same.²⁰ Again, in determining the proportionality of a sanction, the UNDT should observe a measure of deference. Even supposing the UNDT did not agree with the administrative decision, this would not change the reasonableness of the decision.

86. Consequently, we see no error in that approach and in the determination of the facts. As already noted, we are satisfied that the UNDT’s conclusions are consistent with the evidence. Mr. Reiterer has not put forward any persuasive grounds to warrant interference by this Tribunal. Therefore, we reject the arguments advanced by Mr. Reiterer to the contrary, and the appeal on this ground fails.

Due process grounds of appeal

87. Mr. Reiterer raises a variety of challenges to the fairness of the UNDT’s general approach and management of his case, which he asserts compromised the proceedings. Notably, Mr. Reiterer submits that the UNDT erred by: (i) not holding a case management hearing before proposing a witness list for the parties to comment upon; (ii) agreeing to hear only two of the four

¹⁹ Impugned Judgment, para. 91.

²⁰ *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1216, para. 60.

witnesses proposed by Mr. Reiterer; and (iii) denying Mr. Reiterer's motion to submit additional evidence into the record.

88. It is our settled case-law that the UNDT has broad discretion under its Rules of Procedure to determine the admissibility of any evidence and the weight to be attached to such evidence.²¹ Our jurisprudence has consistently held that the Appeals Tribunal will not lightly interfere with the broad discretion conferred on the first instance tribunal in the management of its cases to enable cases to be judged fairly and expeditiously and for dispensation of justice. We will intervene only in clear cases of denial of due process of law affecting a party's right to produce evidence.²²

89. In the instant case, we do not accept Mr. Reiterer's argument that this threshold has been met.

90. With regard to the number of witnesses, the UNDT issued Order No. 147 in which it considered appropriate to hold a hearing on the merits. A list of witnesses was included, and the parties were provided with an opportunity to opine on the necessity of holding a hearing and on the suggested list of witnesses. Subsequently, the UNDT took into account the parties' submissions and in Order No. 158, accepted Mr. Reiterer's request to hear his testimony and the testimony of one of his previous supervisors but denied the request to hear two other witnesses. The UNDT also denied the Secretary-General's request to adjudicate the case on the documents on the record without a hearing. Following the issuance of the case management orders, and the submission of the Joint Bundle, the UNDT held five days of hearings during which Mr. Reiterer had ample opportunity to advocate his position.

91. While, with regard to Mr. Reiterer's motion to submit additional evidence, the UNDT found that there were no grounds to grant the motion, namely to accept such evidence - which Mr. Reiterer sought to introduce less than two weeks before the commencement of the hearings on the merits of the case though he had ample time to do so before that time - and noted that the

²¹ *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 43; *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 37, citing *Ljungdell v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-265, para. 26.

²² *Abdeljalil*, *supra*, para. 43; *Uwais v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-675, para. 27, citing *Wu v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-597, paras. 34 and 35.

period for the introduction of evidence closed with the submission of the Joint bundle approximately two weeks before the start of the hearing.²³

92. Under Article 2(1)(d) of its Statute, the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the Dispute Tribunal in which it is asserted that the latter has committed an error in procedure, such as to affect the decision of the case. It follows that a party, in order to be successful on appeal, not only has to assert and show that the Dispute Tribunal committed an error in procedure but also that this error affected the decision on the case.²⁴ Hence, even if there was a procedural error Mr. Reiterer would need to show that this error would have had an impact on the decision of the case, which, in the present case, he has not done.

93. Indeed, we find that Mr. Reiterer failed to demonstrate in what way the alleged violations of his due process rights prejudiced him within the context of the present case and impacted the outcome of his case. Additionally, we take note that due process rights of a staff member are complied with as long as s/he has a meaningful opportunity to mount a defense and to question the veracity of the statements against her/him. The Appeals Tribunal is satisfied that the key elements of Mr. Reiterer's right to due process were met, and that the interests of justice were served in this case.

94. Moreover, the Appeals Tribunal has gone itself through the evidence on file and found the UNDT's management of the case at hand correct. Again, we recall that due process does not always put the UNDT under an obligation to hear every single witness proposed by the parties and that it has broad discretion in this context. Mr. Reiterer has not persuaded us that the way in which the UNDT addressed the witnesses issue in the present case, namely by hearing only two out of the four witnesses, amounts to a denial of due process of law warranting our intervention. Further, Mr. Reiterer's ability to challenge the contested decision was not prejudiced by the UNDT's decision not to hold a case management hearing which at any rate fell within its discretion. An objective review of the impugned Judgment reveals that the UNDT Judge meticulously and carefully examined the existing evidentiary material and weighed the credibility of the witnesses' testimonies in a proper way. As evident, on the face of the impugned Judgment, read as a whole,

²³ Order No. 168 (GVA/2021), para. 6.

²⁴ *Nimer v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-879, para. 33, citing *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr.1, para. 31.

he took stock of the totality of the evidence, including the testimonies of the witnesses for the defense who had given written statements and correctly exercised his discretion to determine the admissibility of any evidence and the weight to be attached to such evidence.

Request for compensation

95. Mr. Reiterer's claim for compensation is rejected. Since no illegality was found, there was no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".²⁵

96. For the foregoing reasons, we find that Mr. Reiterer has failed to establish that the UNDT made any error of law or failed to exercise its competence in its review of the disciplinary measure imposed by the Secretary-General. It follows that the appeal must fail.

²⁵ *Appellant op. cit.*, para. 62; *Verma v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-829, para. 33.

Judgment

97. Mr. Reiterer's appeal is dismissed, and Judgment No. UNDT/2022/011 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Murphy

Judgment published and entered into the Register on this 9th day of May 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar