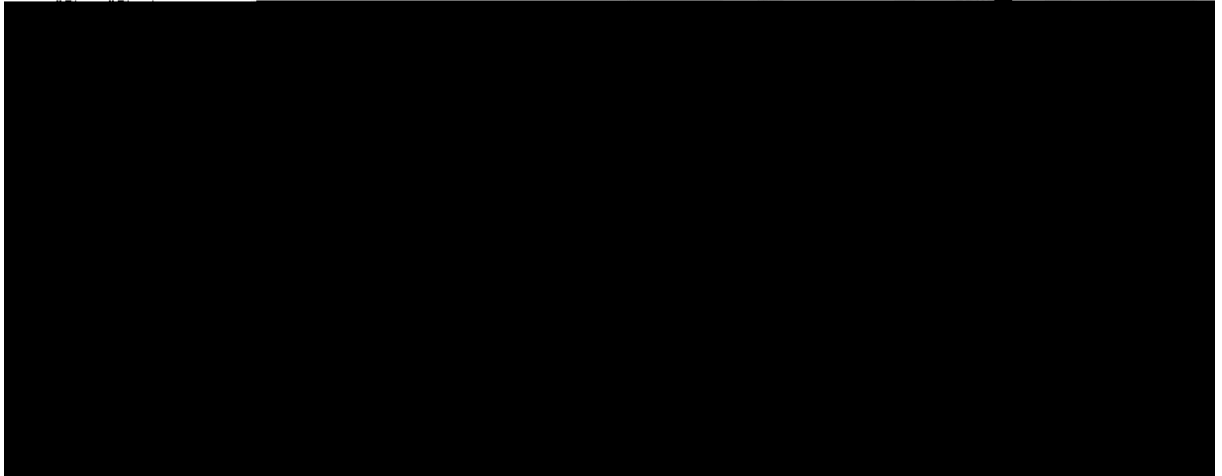




Judgment No. 2014-UNAT-486



Counsel for Appellant: Salim U. Shaikh

Counsel for Secretary-General: John Stompor

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Alamgeer Khan of Judgment No. UNDT/2013/140, issued by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in

6. The OSI, in consultation with WFP's Pakistan Country Office in Islamabad (CO), conducted interviews in Quetta with the complainants in January 2010.

7. On 7 April 2010, the OSI advised Mr. Khan in writing that he was being investigated for violating WFP's Harassment Policy, as well as WFP's Directive Pertaining to Usage of Network Services and Internet (Directive). Mr. Khan was informed of complaints by the following WFP staff members: (i) Ms. A. A. (sexual harassment); (ii) Ms. H. G., a Field Monitor (sexual harassment); (iii) Ms. M. K., a Field Monitor (sexual harassment); (iv) Ms. S. K., a Field Monitor (sexual harassment); (v) Ms. T. R. (sexual harassment); (vi) Ms. S. A. (sexual harassment and abuse of authority); (vii) Mr. I. A. (harassment); (viii) Mr. R. I. (harassment); and (ix) Mr. Z. A. (abuse of authority).

8. The OSI interviewed Mr. Khan in April 2010. In May 2010, the OSI interviewed WFP staff members in SO Quetta and CO and also interviewed witnesses identified by Mr. Khan, including persons he previously worked with at the World Health Organization in Pakistan. The OSI interviewed more than 40 witnesses and examined documentary and physical evidence.

9. On 14 June 2010, the OSI issued its Investigation Report, in which it concluded that "it is more probable than not" that Mr. Khan violated WFP's Harassment Policy by: sexually harassing Ms. T. R. and Ms. A. A.; harassing Messrs. I. A. and R. I.; and abusing his authority regarding Ms. S. A. and Mr. Z. A. Based on these conclusions, the Investigation Report recommended that administrative or disciplinary action should be taken against Mr. Khan and "[c]areful consideration should be given as to whether [his] future service at WFP in any capacity would be in the best interest of the organization".

10. On 6 August 2010, the D/HRD sent Mr. Khan a "charging memorandum", with the Investigation Report attached, and Mr. Khan acknowledged receiving the documents on 12 August 2010. The charging memorandum alleged that Mr. Khan had: (i) "[s]olicited a sexual relationship with [Ms. T. R.] in exchange for renewing her employment contract with WFP"; (ii) "[s]olicited a sexual relationship with [Ms. A. A.] in exchange for renewing her employment contract with WFP"; (iii) "[s]tated to [Mr. I. A.] in the presence of other staff members[,] 'don't tell your father how to fuck your mother' or words [to] that effect, which [Mr. I. A.] found to be offensive"; (iv) "[s]houted at [Mr. R. I.] in the presence of other staff members, behaviour that [Mr. R. I.] found to

tutor [his] children during working hours in the Quetta SO or at [his] private residence and upon her refusal threatened to terminate he

telephone records of Ms. T. R.. The Agency concluded that the foregoing conduct by Mr. Khan was in violation of WFP's Harassment Policy, which prohibited sexual harassment, harassment and abuse of authority, and that Mr. Khan had "failed to meet the high standard of personal conduct expected of employees in a supervisory position."

21. Mr. Khan submits that his “separation from service was not warranted by the evidence advanced to OSI which was of little probative value and the so-called facts and evidence relative to alleged charges were not solidly established. Elements of doubt, inconsistencies and contradictions to each other did exist and that the Judgment of the UNDT was full of errors of law, errors of facts and procedural flaws.” (Emphasis in original.)

22. Mr. Khan requests that the Appeals Tribunal vacate the UNDT Judgment, rescind the contested decision and reinstate him, and award him unspecified monetary compensation for moral and career damage and order “initiation of disciplinary measure on perjury against the complainants and breach of the standard of conduct by Dr. Kamran Ahmad and his accomplices”.

The Secretary-General’s Answer

23. The UNDT correctly concluded that the facts established sexual harassment by clear and convincing evidence. The statements by Ms. T. R. and Ms. A. A. show ongoing sexual harassment coupled with threats to their employment with WFP unless they submitted. Ms. T. R.’s statements were corroborated by Ms. A. A., who detailed several instances of sexual harassment coupled with threats by Mr. Khan that were similar to those submitted by Ms. T. R. Ms. T. R.’s statements were also corroborated by two other female staff members, to whom she confided about Mr. Khan’s overtures. Additionally, Ms. T. R.’s and Ms. A. A.’s

in Quetta and that he asked Ms. S. A. to supervise her. Abuse of authority is also supported by Mr. Z. A.'s statements, in which he stated that Mr. Khan directed him to access and monitor other staff members' email and telephone records and threatened his job unless he complied. The UNDT aptly found that Mr. Khan's allegation that Mr. Z. A. had a bad motive in making his statements was not supported by the evidence. Additionally, the UNDT correctly found that Mr. Khan's claims of clan bias by Ms. S. A. and Mr. Z. A. were without merit.

26.

Were the Facts Established by Clear and Convincing Evidence?

Ms. T. R. and Ms. A. A.

33. The UNDT properly required the Agency to establish by clear and convincing evidence the facts supporting its decision to separate Mr. Khan from service, as set forth in the separation letter dated 30 November 2010.

34. The evidence shows that Mr. Khan offered Ms. T. R. his “friendship” and asked for her “friendship,” which she understood to mean a sexual relationship. In two conversations in November and December 2009, Mr. Khan demanded sex with Ms. T. R. and, when she declined, Mr. Khan threatened to end her appointment unless she had sex with him. Ms. T. R. also stated that on one occasion, Mr. Khan “kissed [her] hand” and on another occasion he “kissed [her] on the face and hugged [her]”. Such physical contact by Mr. Khan was offensive to Ms. T. R. In June 2009, Mr. Khan asked Ms. T. R. to meet him at a hotel, and suggested he had “the right to [have] sex” with her.

35. From the start of his appointment as the Head of the SO in Quetta, Mr. Khan asked Ms. A. A. for her “friendship”, which she understood to mean a sexual relationship. She refused and started avoiding Mr. Khan in different ways, such as asking another supervisor to get documents from him and refusing to go into the office on weekends. In April 2009, shortly before her wedding, Mr. Khan asked her “to meet him somewhere for [a] sexual purpose”. She refused, and after her wedding, “he called [her] into his office and said ... [‘]you didn’t meet me somewhere before your wedding, but now as the way is open you should accept my proposal.[’]”

Messrs. I. A. and R. I.

36. The UNDT refused to consider the charge of harassment based on the use of offensive language toward Mr. I. A., finding it was time-barred and not part of a continuing pattern of behavior, within the meaning of paragraph 29 of WFP’s Harassment Policy. The Secretary-General has not filed a cross-appeal raising this issue. Thus, this charge is not properly before the Appeals Tribunal.

37. The UNDT did consider the evidence offered by Mr. R. I., who stated that, on one occasion, after a conversation with a Senior Logistics Assistant (SLA) with whom he disagreed, the SLA used offensive language toward him and he told the SLA he did not appreciate that type of language. According to Mr. R. I., Mr. Khan later summoned him to his office and shouted at him that he should give respect to the SLA, and the shouting could be heard by others in the office. The UNDT found that this incident constituted harassment under WFP's Harassment Policy and Staff Regulations and Rules. The Appeals Tribunal disagrees. This isolated incident does not amount to misconduct constituting grounds to sanction Mr. Khan.

Ms. S. A. and Mr. Z. A.

38. The evidence shows that in January 2009, when Ms. S. A. asked Mr. Khan for ten days leave, to go on a pilgrimage with her family, he told her that she had to teach his son "all of his academic subjects especially computer" if she wanted him to approve the request for leave. Similarly, Mr. Khan directed Ms. S. A. to teach his son and daughter in July 2009. She taught them and another girl for three days "in the office during the official hours ... inside the server room". This prevented her from performing her usual work duties. When she was asked to teach them at his home, she "had to go [to] his home from office and come back [to the] office on official vehicle during the official hours". Ms. S. A.'s statement is corroborated by a WFP driver, who drove her to and from Mr. Khan's house. Around August 2009, Mr. Khan telephoned Ms. S. A. one night at her home and asked her: "Do you want your job or not[?] ... If yes, then you have to come regularly [to] my home to teach my children as the

THE UNITED NATIONS APPEALS TRIBUNAL

50. First, Mr. Khan claims that the staff members' complaints were not receivable by the Agency because they were given to Mr. Ahmad, who forwarded them to the D/HRD. Under WFP's Harassment Policy, "[c]omplainants have the right to choose either informal or formal channels for resolving a dispute"⁸. The formal process provides that "[t]he complainant must submit a complaint in writing to the Director ADH, the Inspector General, the local human resources officer at the duty station, a peer support volunteer, a staff counsellor, or the confidential WFP Hotline operated by ODSI".⁹ "Whatever route is used, the complaint must immediately and confidentially be notified to the Director ADH."¹⁰ This process was followed, as the UNDT correctly determined. Moreover, as the UNDT also correctly found, Mr. Khan failed to prove that Mr. Ahmad had animus toward him; allegations are not the same as proof.¹¹

51. Second, Mr. Khan attacks the Administration for placing him on administrative leave during the investigation.¹² However, Staff Rule 10.4 (ST/SGB/2009/7) provides for administrative leave during the investigatory process. Moreover, based on his detailed response to the charging memorandum and In

stage of the investigation, he had no right to cross-examine witnesses and, as the UNDT noted, he waived his right to cross-examine the witnesses during the prosecutorial stage at an oral hearing.

53. Finally, Mr. Khan claims that the investigation by OSI was not fair or was predetermined against him. As the UNDT correctly found, there is no merit to this claim. The OSI conducted a thorough investigation. It interviewed more than 40 witnesses, including Mr. Khan and witnesses he identified. And the OSI interviewed the complainants

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar