

UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D 'APPEL DES NATIONS U

Judgment No. 2024-UNAT-1449



Counsel for Appellant: Sètonджи Roland Adjovi & Anthony Kreil Wilson

Counsel for Respondent: Angélique Trouche

a. Staff Regulation 1.2(b): by holding a female individual closely to his body while she was seated on his lap facing him and gyrating in a sexually suggestive manner in a UN vehicle and by failing to cooperate with a duly authorized OIOS investigation, Mr. Antoine failed, by each act and together, to uphold the highest standards of efficiency, competence and integrity.

b. Staff Regulation 1.2(f): by holding a female individual closely to his body while she was seated on his lap facing him and gyrating in a sexually suggestive manner in a UN vehicle, and by failing to cooperate with a duly authorized OIOS investigation, Mr. Antoine failed, by each act and together, to conduct himself at all times in a manner befitting his status as an international civil servant.

c. Staff Regulation 1.2(q): by holding a female individual closely to his body while she was seated on his lap facing him and gyrating in a sexually suggestive manner in a UN vehicle, Mr. Antoine failed to use the property of the Organization – i.e., the UN vehicle – only for official purposes and failed to exercise reasonable care when utilizing that property, in violation of Staff Regulation 1.2(q).

d. Staff Regulation 1.2(r): by failing to cooperate with the OIOS investigation, in particular his refusal to identify F01, Mr. Antoine failed to respond fully to requests for information from officials authorized to investigate the possible misuse of funds, waste or abuse – in the instant case, the UN vehicle featured in the clip – Mr. Antoine acted in violation of Staff Regulation 1.2(r).

e. Staff Rule 1.2(c): by failing to cooperate with the OIOS investigation, as stated (...) above, Mr. Antoine violated Staff Rule 1.2(c).

f. Staff Rule 1.2(g): by failing to cooperate with the OIOS investigation, as stated (...) above, Mr. Antoine disrupted or otherwise interfered with an official activity of the Organization, including the Organization's official activity in connection with the administration of justice system, in violation of Staff Rule 1.2(g).

14. The Sanction Letter informed him that in determining the appropriate sanction, the USG/DMSPC had considered the past practice of the Organization in matters of comparable misconduct.¹⁶ The USG/DMSPC considered that the reputational harm to the Organization resulting from Mr. Antoine's conduct and the fact that, in light of his comments which attempted to downplay his behavior as "quite minor" and blame the Organization for exaggerating, had shown no remorse and had accepted no responsibility for his acts constituted aggravating factors. The USG/DMSPC considered Mr. Antoine's long period of service with the Organization as a mitigating factor. The USG/DMSPC maintained, however, that his acts of misconduct were of such a serious nature that this factor could not alter the sanction. The USG/DMSPC found, moreover, that a lack

¹⁶ Annex to the Sanction Letter, paras. 45-49.

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that the sanction had been fully justified and proportionate , considering only count one.²⁸ Continuation of his employment relationship with the Organization could not be tolerated, since that required mutual trust and confidence . Considering the dissemination of the video clip and damage to the Organization's reputation, the case isunprecedented.²⁹ SD's conduct and role in

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Denial of an oral hearing by the UNDT

39. During the UNDT prehearing process, Mr. Antoine formally requested a hearing to call the other male passengers of the United Nations vehicle during the conduct in question as witnesses, as well as F01's lawyer, the individuals from OIOS related to the investigation, the USG/DMSPC, the ASG/OHR/DMSPC, D/OHR/DMSPC, I01, an expert witness regarding data storage on phones, and himself.

40. In Order No. 041 (NBI/2023), the Dispute Tribunal denied the request for an oral hearing on the basis that Mr. Antoine "did not specify the reasons for hearing the witnesses" and that the hearing "cannot be a -2.9 (i).6 (b)-9.2 y (s (e)-3.1 (x)2.4 (r)-7.1 (ag)-11.5 (--0.6 (as)]TJ 0 -6.9 (

and probabilities of the relevant testimony”.⁴⁰ Further, as a factual finding of misconduct is of serious import, the determination of misconduct should preferably be done in an oral hearing.⁴¹

45. However, we have also held that “an oral hearing and cross-examination will not be required in all disciplinary cases”.⁴² Further in *Shumba*, the Appeals Tribunal held that whether an oral hearing will be required “will depend on the circumstances of the case before the UNDT. For example, there may be documentary, audio or video evidence or circumstances surrounding the parties or witnesses that may support the deci8220x.6 (1-1.7 (n) .3 (a)6.7 (rti)2e2[(th)-2c)o()6.8 supp1-1.7 (n) .3

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disseminated causing further reputational harm for the Organization. Mr. Antoine's acts of serious misconduct

70. As correctly noted by the Dispute Tribunal, the Secretary-General has broad discretion in

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Judgment

80. Mr. Antoine' appeal is dismissed, and Judgment No. UNDT/2023/059 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)

Judge Sand