
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/006

Judgment No.: UNDT/2020/185

Date: 28 October 2020

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MODEY-EBI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

George G. Irving

Counsel for the Respondent:

Elizabeth Brown, UNHCR
Francisco Navarro, UNHCR

GB, Associate Protection Officer, to help with her private academic work and to complete a homework assignment for her child. On 4 December 2017, the IGO opened an investigation into the matter. The scope of the investigation was subsequently expanded to encompass new allegations of abuse of authority and office, breach of oath of office, creation, maintenance and failure to disclose conflicts of interest, engaging in unauthorized outside activities, continuously abusing UNHCR human and other resources to further her private interest, and making discriminatory and harassing comments towards several staff members.⁴

8. During the scope of its investigations, the IGO interviewed the Applicant and the following UNHCR staff members:⁵

- a. Mr. GB;
- b. Mr. BK;

- i. Ms. ES, Assistant Programme Officer, UNHCR/CO South Africa;
- j. Ms. SS, Chief Programme Section of the Central Emergency Relief Fund (öCERFö);
- k. Ms. CR, Assistant Representative Protection, UNHCR Branch Office (öBOö) Addis Ababa;
- l. Ms. BD, Deputy Representative, UNHCR, Kigali, Rwanda;
- m. Mr. AT, Senior Regional Registration Officer;
- n. Ms. SGW*ñB1.4n/

d. whether the sanction is proportionate to the offence.

Part of the test in reviewing decisions imposing sanctions is whether due process rights were observed.¹⁰

(A) Whether the facts on which the disciplinary measure was based have been established.

15

(1) Allegation that the Applicant harassed Ms. DC.

17. The Applicant denied the above charge pointing out that there is no record of the meeting at which it is alleged that she harassed Ms. DC, let alone a record of what was said. She maintained that Ms. DC had òmotive and maliceö due to the Applicant having refused to recruit Ms. DC's husband to

[HM]ö and that the comments made Ms. [DC] feel humiliated and embarrassed were established to the level of clear and convincing evidence.

(2) Allegations that the Applic

the decision rescinded.²⁴

32. Vj g'Tgur qpf gpv'ci tgguy kj 'vj g'Cr r rlecpw'u'cuugt vqp'dw'o clpvcpu'vj cv'y j kg" other officers such as Ms. SC were initially involved in the scheme, the Applicant was the only one who actively continued to lobby and seek audiences with the pertinent ministries of the South African Government. In this regard, the Respondent cites the Applicant's comment that "the [South Africa] Office can still fight as we cannot give up612 7

experience working in Africa, to head UNHCR offices in South Africa²⁹

35. At some stage Mr. Tapsoba reached out to Mr. George Okoth-Obbo, Assistant High Commissioner-Operations, who advised him on the content of the memorandum that should be sent to him requesting the rescission of Ms. CR's appointment, so that he could take it up with the High Commissioner.³⁰

36. Mr. Tapsoba relayed this advice to the Applicant, who prepared the memorandum together with Mr. GK.³¹ Mr. Tapsoba submitted the memorandum to Mr. Okoth-Obbo on 15 April 2016³². Mr. Okoth-Obbo forwarded the memorandum to Ms. Karen Farkas (then Director of DHR) and expressed his support for the Bureau's request to rescind Ms. CT's appointment and have Mr. GK appointed instead.³³

37. While the Tribunal agrees that the Applicant was deeply emotionally invested in the conspiracy and exhibited overzealousness in the pursuit of the desired result, (she for example responded to Ms. ZS who advised that the issue be raised with the High Commissioner, that, "Thank you [ZS], the needful will be done")³⁴ and she called the Deputy Minister of Home Affairs and committed to seek a written note from Mr. PM, Chief, Director of Human Rights and Humanitarian Affairs at the Department of International Relations and Cooperation during a lunch-time appointment two days later, the other officers' roles as demonstrated above were not of any lesser significance.

38. Since the conspiracy complained about was orchestrated by a number of people at different levels of the Organization, apportioning blame for the whole scheme on the Applicant on the basis of her role does not serve the ends of justice. The facts and circumstances surrounding this particular complaint do not persuade the Tribunal that the facts relating to the allegations were established to the level of clear and convincing

²⁹ Ibid., page 28.

³⁰ Ibid., page 71..

³¹

evidence.

(5) *Allegations that the Applicant abused her authority by instructing Mr. GB to do her eight-year-old child s homework.*

39. Mr. GB informed the investigators that, on one Friday afternoon, the Applicant asked him to make a colourful poster with pictures and talking points on the life cycle of dogs, which request made him feel belittled. He told the Applicant that he had to leave the office but she told him that he had to stay and finish the assignment. He prepared the poster but refused to draft any talking points.³⁵

40. The Applicant maintained that this allegation is false and that she did not ask Mr. GB to draft talking points for her child's school presentation. She only requested that he

assistance. We will develop the rest, together with little Veronica!³⁹ whose authenticity the Applicant does not challenge, go to support the credibility of the complaint.

43. The Tribunal rejects the Applicant's explanation that she simply asked Mr. GB to provide technical assistance in accessing an image on the computer, since it is contradicted by the available documentary evidence which confirms that Mr. GB sent the Applicant a full document containing a picture and different text boxes. The Applicant even acknowledged his assistance and noted that she would do the rest together with her daughter.

44. The Tribunal finds that the available testimonial and documentary evidence sufficiently established the facts relating to the allegation that the Applicant abused her authority by instructing Mr. GB to do her eight-year-old daughter's homework, to the required standard of proof.

(6) Allegation that the Applicant abused her authority by instructing Mr. GB and Mr. MK to accompany her during grocery shopping, to push her shopping cart, to carry her groceries to the car and to carry her groceries inside her house.

45. It is alleged that in June 2017, the Applicant went on official mission travel to Swaziland with Mr. GB and Mr. MK, Senior Driver. Mr. GB⁴⁰ and Mr. MK⁴¹ informed the investigators that, upon their return to Pretoria on a Sunday afternoon, the Applicant instructed Mr. MK to drive her to a shopping centre, bringing Mr. GB along. At the shopping centre, the Applicant had Mr. GB push her shopping cart, carry her groceries to the car, carry her groceries inside her house together with Mr. MK and blow up balloons for her children's birthday party. Mr. GB felt compelled to do as the Applicant said in order to keep the peace. The Applicant made Mr. GB go to buy an electricity token. She did not buy groceries and that Mr. GB did not

³⁹ Annexes 12, 51 and 52 of the Investigation Report.

⁴⁰ Reply, annex 2(A), at page 131.

⁴¹ Reply, annex 6, pages 6 and 7.

electricity bill and took her daughter to see a doctor sufficiently proves the facts relating to those allegations. With respect to the allegations that the Applicant requested Ms. ON to fix her shoes and to take her daughter shopping, Ms. ON explained that she did not feel in a position to decline the Applicant's requests since the Applicant did not like it when Ms. ON turned down her requests. Ms. ON's interview statement account was coherent and detailed. She moreover had nothing to gain from fabricating allegations against the Applicant and, she stated she had already left UNHCR and could not have been pressured or coerced into giving false testimony against the Applicant.

50. The Tribunal believes her evidence and finds that the facts relating to the allegations that the Applicant abused her authority by requesting Ms. ON to fix her shoes, take her child shopping, take her child to the doctor and pay her utility bills were established on the basis of clear and convincing evidence.

(8) Allegation that the Applicant abused her authority by instructing Mr. GK, Mr. SD and Ms. MA to prepare motivation letters for UNHCR vacant positions for which she intended to apply.

51. The Applicant asserts that Mr. GK, Mr. SD and Ms. MA only assisted her to review her original motivation/letter of interest. The motivation letters were her original drafts which her colleagues only reviewed. The allegation was premised on nine emails which were retrieved from the Applicant's UNHCR email account⁴³. The emails show that the Applicant instructed different staff members to draft, review or amend letters of motivation for her job applications at UNHCR as follows:

- a. Mr. SD, then Senior Regional Resettlement Officer, wrote a draft motivation letter for an unspecified vacancy.⁴⁴
- b. Mr. GK drafted the Applicant's motivation letters for the positions of Deputy Director (D-1) in New York, Deputy Representative (D-1) in Beirut,

⁴³ Annex 31 of the investigation report.

⁴⁴ Reply, annex 2(D), at page 3.

Representative (D-1) in Ottawa and Director of the Ethics Office (D-1).⁴⁵

c. Ms. MA, Protection Officer, drafted a motivation letter for the position of Representative (D-1) in Tehran.⁴⁶

52. The emails show that the motivation letters were in fact prepared by the officers in the Ottawa office. Ms. MA's assertion that she drafted the letters herself and only asked them to review and format them as a professional courtesy. Mr. SD for example wrote to the Applicant in the following terms: "Dear Veronica, Please find attached the draft motivational letter for your review and required amendments." ⁴⁶

drafts of their self-assessment and achievements on the agreed objectives

while in the village in Meru.

He promised to discuss with you so you could divide the work between you. He said he will re-work some portions like the Methodology, timelines and address some of the questions of kvm but that you will do the literature review with the authors and information as each links with the chapters and sources since you were they [sic] one that read/did the annotations of the sources that we will be using and which of the authors/sources speaks to what chapters.

I am surprised that both of you have not yet spoken and time is of the essence now since the absolute deadline as given by **kvm is the 31st of October just some 6 days from today** (emphasis in original).

Our brother suggested that you could take one day and dedicate it to this re-working and it is doable!

Kindly write to him and find out what it is and what portion he wants you to work on.

I know you will be having the visit of the Presidld -6(e)4(s)-10(i)18(dl4)-109(t)-21(h)20(e)4I5-(e

Case No.: UNDT/NBI/2019/006

Judgment No.: UNDT/2020/185

any UNHCR instructions.

71. The Applicant's explanation that she sent e-mails to relevant staff members to assist in obtaining or following up on her applications for Police clearance because their assistance would not be different from the official letters issued to staff members when applying for administrative documents for opening of bank account, medical hospitalization, bills and visas however contradicts her assertion that she did not instruct, but requested the recipients for assistance. This is because once she viewed the assignment as an official piece of work (which her explanation suggests), it was no longer a request but an instruction.

72. That she reminded the Sierra Leone office that United Nations staff members were not supposed to pay any fee and requested them to submit an official application via *Note Verbale* when they advised her that the fee for the Police clearance letter was approximately USD80, supports the position that she viewed the assignment as an official piece of work. This was why she requested them to send her the originals by the UNHCR official pouch. She used the official pouch to send the documents required for the issuance of the letter in Uganda⁶⁷ and once the clearance letters from Sierra Leone and Kenya were obtained, she requested them to send her the originals by the UNHCR official pouch.⁶⁸ The email exchanges included in Annex 31 to the investigation report show that the Applicant followed up multiple times while casting the matter as being urgent and a priority.

73. The Applicant also requested Mr. BK to prepare the ewttlewnwo "xkcg"*öEXö+" that she included in her application for a United States of America green card. Specifically, the Applicant wrote:

Dear [BK], Pls (sic) use this information to prepare for me a good CV to be use/or application (sic) for a Green Card un the USA, draft a nice and modern CV for me as the Immigration Lawyer handling my case has requested for my CV. I prepared a CV last in I997 when I was job

⁶⁷ Reply, annex 2(D) , page 292.

⁶⁸ Ibid., at page s 180 and 272.

hunting! Talk you later. Best regards.⁶⁹

74. The evidence supports a finding that the facts relating to the allegation that the Applicant requested staff members in the UNHCR offices in Uganda, Iran, Tanzania, Kenya, Pakistan and Sierra Leone to obtain Police clearance letters on her behalf through diplomatic channels for the purposes of her application for a United States green card, and to submit them via the UNHCR pouch, were established to the level of clear and convincing evidence.

(13) Allegation that the Applicant breached the duties of neutrality, independence and impartiality of an international civil servant and the Oath of Office in her application for permanent residence in South Africa.

75. In the process of applying for permanent residence in South Africa, the Applicant included a letter of motivation in which she stated, inter alia, that;

í "I will be willing to invest more of 8 G[()] TJ anll appl

and so she shared that e-mail with her spouse for his support, advice and guidance as regards the security and displacement situation in Cato-Ridge, Isipingo and Phoenix temporal displaced Camps for persons of concern in Durban, KwaZulu-Natal province.

79. As she does not contest the allegation but only gives explanations of why she acted in the way she did,

MR⁷³, Mr. GK⁷⁴ and to Mr. OO, UNHCR Senior Administrative/Finance Officer in Yangon, Myanmar, whom she told that NA had been referred to the IGO for investigation of breast grabbing, forced kissing and indecent touching of [M] by [NA] and [NA] counter claim of a sexual consensual relationship.⁷⁵ She also told NA that the non-renewal of his contract in Botswana was his own doing, for starting a despicable relationship despite being a married man and informed him that the issue and all the various emails between him and the other staff member involved had been forwarded to the IGO by Ms. ZS and that an investigation was still ongoing.⁷⁶

82. The Applicant maintains that her e-mails to NA and to Mr. OO carried no potential to jeopardize the IGO investigation since she was just expressing her disappointment with PC's behaviour. Her explanations however do not negate the established fact that she disclosed the confidential information in issue.

83. The Tribunal finds that the facts relating to the allegation that the Applicant disclosed confidential IGO information to UNHCR staff who had no need to know that information, including sharing information with a complaint of sexual misconduct with the

4.4.1 provides that "the aggrieved individual may opt for an informal or a formal process as detailed in sections 4.5 and 4.6 of the present policy. This position was clarified in *Mapuranga*⁷⁷ where it was held that the reference to unwelcome conduct does not require that the alleged offender be put on notice that his or her conduct is as abuse of authority under paragraph 5.4 of the Policy which stipulates that,

Abuse of Authority is any improper use of a position of influence, power or authority by an individual against another person. This is particularly serious when an individual misuses his/her influence, power or authority to negatively influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. It can include a one-off incident or a series of incidents. Abuse of authority may also include conduct that creates a hostile or offensive work environment, which includes - but is not limited to - the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.

90. The Applicant's application that the consideration of her conduct as harassment, in this and the other instances, is the result of a culturally and racially biased perception of her management practices is disingenuous and lacks merit given the nature of comments she made. The comments would go to show that the Applicant's conduct was abusive and in violation of the applicable test in such a context in the case of *Applicant*⁷⁸, where the Appellant was a

arbitrarily and treated him unfairly on the basis of his German nationality, associating him with the Apartheid regime and noting that it was insensitive to have him in South Africa. This was contrary to paragraph 5.1 of the Policy which provides that:

Discrimination is any unfair treatment or arbitrary distinction based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability, age, language, or social origin. Discrimination may be an isolated event affecting one person or a group of persons similarly situated, or may manifest itself through harassment or abuse of authority.

92. With regard to the Applicant having Mr. GB, Mr. MK and Ms. ON do her private chores, the Tribunal is in agreement with the Respondent that it is highly unlikely that they would have simply complied with her requests had it not been for the disparity of power in their professional relationship. The Applicant therefore improperly used her position of authority to have them perform duties which were entirely unrelated to UNHCR work or their official functions, and, in the cases of Mr. GB and Mr. MK, after returning from mission on a Sunday afternoon. The Tribunal agrees with the Respondent that since Ms. ON had to pay utility bill in December 2015 and was not reimbursed until February 2016, the Applicant effectively borrowed money from her in contravention of the Standards of Conduct for the International Civil Service, published in 2013 by the International Civil Service Commission (the Standards of Conduct), which provide at paragraph 17 state:

Managers and supervisors serve as role models and they have therefore a special obligation to uphold the highest standards of conduct. It is quite improper for them to solicit favours, gifts or loans from their staff; they must act impartially, without favouritism and intimidation. In matters relating to the appointment or career of others, international civil servants should not try to influence colleagues for personal reasons.

93. By falling short of the Standards of Conduct expected of an international civil servant, the Applicant also breached her obligations under staff regulation 1.2(t). By committing harassment (allegations 1, 2, 5, 6 and 7) the Applicant violated her basic obligations under staff regulation 1.2(a) and (b), and staff rule 1.2(t). In addition, the Applicant's conduct was in breach of her obligations under paragraph 4.2(a) of the

Policy, which provides that:

UNHCR Personnel, including Staff Members and Affiliate Workforce, are expected to maintain a harmonious working environment for other colleagues by behaving in a manner which is free of disrespect, intimidation, hostility, offence and any form of discrimination, harassment, sexual harassment or abuse of authority.

94. Moreover, as the UNHCR Deputy Regional Representative (Protection) the Applicant was a senior manager and had additional obligations under the Policy, which she also violated. In particular, pursuant to paragraph 4.3 of the Policy:

Managers and supervisors are also expected to:

a) act as role models by upholding the highest standards of conduct in order to achieve an environment free from discrimination, harassment, sexual harassment and abuse of authority, in which hurtful and destructive behaviour have no place;

b) facilitate, inspire and help to create a harmonious working environment free of disrespect, intimidation, hostility, offence and any form of discrimination, harassment, sexual harassment and abuse of authority.

95. The Tribunal finds that the established facts in allegations 1, 2, 5, 6 and 7 legally amount to misconduct under the cited Rules and Regulations.

96. In respect to the allegations that the Applicant abused her authority by instructing Mr. GK, Mr. SD and Ms. MA to prepare motivation letters for UNHCR vacant positions for which she intended to apply, the Tribunal is in agreement with the

Managers and supervisors serve as role models and they have therefore a special obligation to uphold the highest standards of conduct. It is quite improper for them to solicit favours, gifts or loans from their staff;

Case No.: UNDT/NBI/2019/006

Judgment No.: UNDT/2020/185

that I can make a critical and substantial contribution to South Africa national interests if my application is granted.

The Tribunal is in agreement with the submission that the Applicant would serve South Africa in whatever possible way and her expressed willingness to make a substantial contribution to South Africa's national interest was in blatant breach of her basic obligations under the Charter of the United Nations and her Oath of Office.

109. Article 100.1 of the Charter provides that:

In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

The Applicant breached the Oath she took under staff regulation 1.1(b) which requires staff members to make the following written declaration witnessed by the Secretary-General or his or her authorized representative:

I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations.

equally to those on secondment from Governments and to those whose services have been made available from elsewhere. International civil servants should be constantly aware that, through their allegiance to the Charter and the corresponding instruments of each organization, member States and their representatives are committed to respect their independent status.

Vj g"Cr r decpvs statement to the South African authorities was thus in contravention of her obligations under article 100.1 of the United Nations

G-5), Ms. NL (South African, G-5) and Ms. SG (Egyptian member of the affiliate workforce). It is clear that cultural and racial influences did not influence the investigation.

118. The complaint that the investigator did not interview the people whom the Applicant had proposed but only those who were put forward as critics was satisfactorily explained first that the Applicant did not explain the relevance of the testimonial evidence that those witnesses could provide. Secondly, that the Respondent had no authority to interview some of the witnesses who the Applicant named, Mr. Montwedi for example is a high-ranking official of the South African government, and Ms. SC retired from service on 1 April 2018. Her evidence was not even required given that there was sufficient documentary evidence. Mr. MK was interviewed and he fully corroborated the allegations.

119. There is no evidence proving that there was solicitation of evidence and a coordinated effort to tarnish the Applicant's reputation since the IGO investigator spent time in Pretoria interacting with staff and witnesses before she was informed about the charges. Most of the allegations against the Applicant were corroborated by uncontested email conversations between her and other persons.

120. Turning to the investigative process, the Respondent informed the Applicant in a timely manner and to an adequate extent of the allegations against her was not denied. Nor were the assertions that the IGO duly updated this information as new allegations came to light and the scope of the investigation expanded. That the Applicant was aware that she was the subject of an investigation prior to her interview, that the interviews were duly recorded and shared with her for her comments and signature, that the IGO gave her the opportunity to provide her comments on the draft investigation report, that she was fully notified of the charges levied against her in a detailed manner, including the rules that she was charged with breaching, and was informed of her right to be assisted by counsel as soon as this right legally arose were not challenged.

were:

- a. tj g"Cr r rlec pwa"r quklqp"cu"e"ugplqt"o cpci gt"cv\j g"F -1 level carried a heightened responsibility to act as role model and uphold the highest standards of conduct in order to achieve an environment free from discrimination, harassment and abuse of authority;
- b. she committed a wide range of misconduct, breaching numerous obligations under the United Nations Charter, the Staff Regulations and Rules and other administrative issuances over a substantial period of time, aggrieving multiple staff members and members of the UNHCR affiliate workforce;
- c. she repeatedly placed her interests above WPJ ET's interests; and
- d. she did not fully comply with her obligation to cooperate with the investigation and made untruthful submissions to the IGO.

126. The Tribunal looks at the totality of the circumstances, including mitigating factors in considering the question of proportionality.⁸¹ Harassment and discrimination on the bas

