



## Background

1. The Applicant commenced service with the Organization in 2007. At the time of his separation from service on 20 May 2019, he served as Chief of Technology Development, Design and Planning Section, at the P-5 level, at the United Nations Global Service Centre (“UNGSC”) in Valencia.

2. On 17 July 2019, he filed an application with the United Nations Dispute Tribunal in Nairobi challenging the Respondent’s decision to dismiss him from service for serious misconduct with compensation *in lieu* of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii) (“contested decision”). The events giving rise to the contested decision occurred when the Applicant was serving as Chief of Communications and Information Technology (“CITS”) and Geospatial Information and Telecommunication Technologies Services (“GITTS”) at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”) between 2014 and 2017.

3. The Respondent filed his reply to the application on 15 August 2019.

4. The Tribunal heard the case on 23, 24, 25 November 2020; 15 and 16 December 2020; and on 13 April and 17 May 2021 where oral testimony was received from:

- a. The Applicant;
- b. Mr. Annandavel Kannan, GIS Officer, MINUSCA;
- c. Mr. Milan Trojanovic, then MINUSCA Director of Mission Support;
- d. Mr. Joseph Parareda, Chief Communications Officer, MINUSCA;
- e. Mr. Lawi Ooko, then Chief of GITTS Operations, MINUSCA;
- d. Mr. Alhaji Kemokai, Information Management Assistant, GITTS/  
MONUSCA;



recruitment irregularities and/or used his position of authority as the Chief/GITTS to unduly influence the recruitment of complainant;

c. Evidence that a sexual relationship existed between the Applicant and Ms. FM, which contributed to the Applicant using his position of authority as the Chief/GITTS to unduly, and continuously, influence the recruitment of Ms. FM; and,

d. Evidence that the Applicant, as well as other key witnesses, actively and unduly tried to influence the course of the OIOS investigation.

9. On 16 April 2018, OIOS finalized its Investigation Report and referred the report to the Department of Field Support for its consideration.<sup>4</sup>

10. On 21 December 2018, the Applicant received a memorandum from the Assistant Secretary-General for Human Resources Management (“ASG/HRM”) charging him with misconduct.<sup>5</sup> Specifically, it was alleged that:

a. between 2014 and 2017, he used his position of authority as Chief/GITTS, MINUSCA, to unduly influence the continued employment of Ms. FM at GITTS, MINUSCA;

b. between 2015 and 2016, he used his position of authority as Chief/GITTS, MINUSCA, to unduly influence the recruitment of complainant as an individual contractor at GITTS, MINUSCA, by forwarding her resume for consideration, and providing interview questions to her before the job interview;

c. between 2014 and 2017, he failed to disclose a conflict of interest arising from his sexual relationship with Ms. FM and his continued involvement in her recruitment at GITTS, MINUSCA; and/or

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<sup>4</sup> Reply, annex 2.

<sup>5</sup> Application, annex 2; reply, annex R/3.

d. between December 2016 and December 2017, he attempted to interfere with the OIOS investigation into his conduct by asking possible witnesses to gather and share information pertaining to the alleged misconduct, and giving them suggestions on how to respond to the investigators during their interviews.

11. The Applicant responded to the allegations on 6 March 2019 having been granted extensions of time to do so.<sup>6</sup> He filed additional responses to the allegations on 30 April 2019.<sup>7</sup>

12. On 20 May 2019, the Applicant was informed of the contested decision<sup>8</sup> and effective 28 May 2019, he was separated from service.

### **The Applicant's case**

13. The Applicant's case may be summarized as follows:

- a. The facts have not been established with clear and convincing evidence.
- b. The witnesses were unreliable and lied throughout their testimonies.
- c. He did not commit any irregularity in the recruitment of Ms. FM.
- d. He did not commit any irregularity in the recruitment of the complainant.
- e. He did not interfere with the investigation.
- f. The investigation was biased, incompetent, and a "fishing expedition".

14. The Applicant prays the Tribunal to: (i) overturn the administration's sanction on the grounds that his due process rights were violated; (ii) conclude that the sanction was not based on any clear and convincing evidence; and (iii) overturn the decision to

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<sup>6</sup> Application, annex 3; reply, annex R/5.

<sup>7</sup> Application, annex 4; reply, annex R/9.

<sup>8</sup> Application, annex 9; reply, annex R/5.

separate him or alternatively to find that the sanction is disproportionate.

**The Respondent's case**

15. There was clear and convincing evidence establishing that: i) between 2014 and 2017, the Applicant used his position of authority as Chief/GITTS, to unduly influence the continued employment of Ms. FM at GITTS; and ii) between 2014 and 2017, the Applicant failed to disclose a conflict of interest arising from his sexual relationship with Ms. FM and his continued involvement in her recruitment at GITTS.

16. There was clear and convincing evidence establishing that, between 2015 and 2016, the Applicant used his position of authority as Chief of GITTS to unduly influence the recruitment of the complainant as an individual contractor at GITTS by forwarding her resume for consideration and providing interview questions to her before the job interview.

17. There was clear and convincing evidence establishing that, between December 2016 and December 2017, the Applicant attempted to interfere with the OIOS investigation into his conduct by asking possible witnesses to gather and share information pertaining to the alleged misconduct and giving them suggestions on how to respond to the investigators during their interviews.

18. The Applicant's actions amounted to serious misconduct under Chapter X of the Staff Rules. His conduct exhibited a serious

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## Considerations

### *Legal issues*

#### *The role of the UNDT in disciplinary cases*

19. Jurisprudence of the United Nations Appeals Tribunal (“UNAT”)<sup>9</sup> establishes that the standard for judicial review of a disciplinary sanction requires the examination of:

- a. whether the facts on which the sanction is based have been established;
- b. whether the established facts qualify as misconduct under the Staff Regulations and Rules; and
- c. whether the sanction is proportionate to the offence.

20. Part of the test in reviewing decisions imposing sanctions is whether due process rights were observed.<sup>10</sup> The Tribunal will therefore, also examine whether there were any due process violations in the investigation and the disciplinary process leading up to the disciplinary sanction against the Applicant.

21. It is “only if the sanction imposed appears to be blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity that the judicial review would conclude in its unlawfulness and change the consequence”.<sup>11</sup>

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<sup>9</sup> *Majut* 2018-UNAT-862, para. 48; *Ibrahim* 2017-UNAT-776, para. 234; *Mizyed* 2015-UNAT-550, para. 18, citing *Applicant* 2013-UNAT-302, para. 29; see also *Diabagate* 2014-UNAT-403, paras. 29 and 30; and *Molari* 2011-UNAT-164, paras. 29 and 30.

<sup>10</sup> *Applicant* 2012-UNAT-209, para. 36.

<sup>11</sup> See *Portillo Moya*, UNAT-2015-523, para. 21; see also *Sall*, 2018-UNAT-889, para. 41.





thereafter brought her to GITTS, MINUSCA on “special measures” using a TJO from January to June 2015.<sup>16</sup>

26. Further evidence is that objections were raised by the Human Resources Section against Ms. FM’s recruitment on the TJO at the FS-4 level because she did not have the requisite work experience. Mr. Parareda consulted the Applicant over the issue but he still thought that Ms. FM had very strong expertise. She was appointed to the TJO in 2017.

27. The Applicant admitted that he applied special measures when he selected Ms. FM for the TJO FS-4 level position (i.e. brought her in for a short period of time without going through the whole process of selection), even though a minimum of six years of

**Applicant:** “I can coach you.”

**Ms. FM:** “I think they want to lower the chance.” “Competency-based interview.”

29. They again exchanged the following messages on 14 October 2015;

**Ms. FM :** “Please include the UNV in your next budget.”

**Ms. FM :** “For me.”

**Applicant:** “Okay.”

30. The above messages render the Applicant’s explanation that Ms. FM had the six years of relevant work experience in 2015, but that it was just not highlighted in her resume unconvincing, and they constitute clear and convincing evidence tha6ork “I (evid13(usghli)1

required by the staff member's status as an international civil servant and that when an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization.

34. Mr. Trojanovic's testimony that the Applicant neither disclosed to him any conflict of interest in the context of a recruitment exercise at the Mission nor recused himself from any recruitment process at the Mission corroborates the Applicant's admission that he did not raise the issue of the potential conflict of interest with anyone in those recruitment processes.

35. It is in evidence that the Applicant actively sought and succeeded in getting Ms. FM recruited even when she didn't meet the job requirements. Clearly, the Applicant's personal interests of providing his sexual partner with employment directly interfered with his responsibility to act with integrity, independence and impartiality required by his status as an international civil servant.

36. The Tribunal finds that the fact that the Applicant failed to disclose a conflict of interest arising from his sexual relationship with Ms. FM and his continued involvement in her recruitment at GITTS, MINUSCA has been proved by clear and convincing evidence.

**Whether the fact that between 2015 and 2016, the Applicant used his position of authority as Chief of GITTS, MINUSCA, to unduly influence the recruitment of the complainant as an individual contractor at GITTS, MINUSCA has been established by clear and convincing evidence.**

37. The impugned decision was based on evidence that in October 2014, the complainant sent her friend Ms. FM, her resume. Ms. FM sought advice from the Applicant about the resume, and they exchanged messages in which she asked him to send her interview questions for the complainant, which the Applicant did on the same day.

38. In his testimony, the Applicant confirmed that the complainant was referred to

him by Ms. FM, and that the referral was in terms of her resume which he gave to Mr. Kannan. Also, that he gave advice to Ms. FM on the complainant's resume, and that prior to the interview Ms. FM asked him to send to her interview questions for the complainant.

39. Their exchanges went as follows:<sup>19</sup>

**Ms. FM:** “[the complainant] has interview on Friday.” “Any advice.”  
“Can we prepare her.”

complainant.<sup>23</sup>

43. Mr. Kannan's further evidence was that the complainant performed well during the interview and she was recommended for the post of GIS Technician. On 19 January 2016, she was deployed to Bangui as GIS Technician. According to Mr. Kannan, the complainant's performance was not up to standard. He therefore requested other GIS staff to train her.<sup>24</sup>

44. Around this time, Mr. Ooko heard the complainant say that her background was not GIS, and that she had studied geology. She was also heard saying that when she was being recruited, she had indicated that she had no background in GIS, but the chief (the Applicant) had said that she would be trained, and he sent her the interview questions.

45. The Applicant admits the material facts which formed the basis of the Respondent's complaint. His admission lends credence to the evidence of Mr. Kannan, Mr. Ooko, aspects of Ms. FM and the recorded messages above.

46. Ms. FM's evidence that the questions which the Applicant sent to her for onward transmittal to the complainant were generic and available on the United Nations intranet, and that they related to United Nations core values is belied by the specific nature of the questions which are reproduced below:<sup>25</sup>

1. "In what GIS software you are experienced the most and what is the depth of your expertise. Explain technic. n tec( )] Ts -1c2f the mtst

was to transmit the questions to the complainant. Ms. FM's assertion that she only used the questions to prepare the complainant for the interview contradicts the stated plan of sending questions to the complainant, and is rejected. Mr. Ooko's evidence that he overheard the complainant tell Mr. Kannan that the Applicant had sent her questions before her interview resonates with the information in the messages the Applicant exchanged with Ms. FM.

48. The Tribunal finds that the Applicant sent interview questions to the complainant, and that there is clear and convincing evidence that the Applicant used his position of authority as Chief of GITTS, MINUSCA, to unduly influence the



to the house and the timelines), and they talked about what Mr. Kemokai should tell the OIOS investigators about his relationship with Ms. FM, and that the Applicant told him not to disclose his (the Applicant's) relationship with Ms. FM to the investigator, leaves no doubt that the setting up of the drive was for the purpose of enabling, gathering and sharing of information in preparation for witness interviews.

56. Mr. Kumar's testimony that the Applicant told him that they were putting all relevant information in the Google drive so that they could all access it, further that the Applicant informed him that he will be interviewed, and asked him to ask Mr. Kemokai to grant him access before his interview leaves no doubt that the purpose of setting up the drive was to ensure that witnesses align their interview statements.

57. The Tribunal considers that the Applicant's admissions are corroborated by the evidence of the above witnesses. The timing of the setting up of the Google drive and the fact that it was shared with all house mates who were potential witnesses leaves no doubt that it was set up to gather information to which witnesses were to refer, to ensure that they aligned their responses to the investigator's questions. The evidence that before their respective OIOS interviews, Messrs. Kumar and Bah asked Mr. Kemokai for access to the Google drive in order for them to view the files and information therein galvanises the above finding.

58. The Applicant's evidence in chief in which he contradicts his admissions is against the weight of evidence and is rejected. The Tribunal finds that the allegation that between December 2016 and December 2017, the Applicant attempted to interfere with the OIOS investigation into his conduct by asking possible witnesses to gather and share information pertaining to the alleged misconduct, and gave them suggestions on how to respond to the investigators during their interviews has been established by clear and convincing evidence.

**Whether the Applicant's actions amount to misconduct.**

59. The Applicant's argument that his actions did not amount to misconduct are premised on the assertion that there is no clear and convincing evidence to support the





harassment, including sexual harassment, and abuse of authority) is based on the fact that the OIOS expanded its inquiry to include new allegations which came to light during the investigations following a report of sexual abuse. It is however not true that the allegations letter of 4 December 2017 in which the Applicant was informed that OIOS was also pursuing allegations of abuse of authority in the recruitment process



irrecoverably breached the trust of the Organization, which is essential in maintaining the employment relationship.

72. The Tribunal agrees with the submission that in similar cases involving recruitment irregularities, measures at the stricter end of the spectrum have normally been imposed by the Organization.<sup>33</sup>

73. Cases involving cheating on, or assisting in the cheating on, an examination resulted in disciplinary sanctions ranging from a fine to separation from service.<sup>34</sup>

74. The Tribunal determines that the sanction of separation from service with compensation *in lieu* of notice and with termination indemnity is reflective of the gravity of the Applicant's misconduct and consistent with the past practice of the Organization. The Applicant's reliance on his history of satisfactory service with no disciplinary record does not constitute a mitigating factor, since the Charter of the United Nations requires staff members of the Organization to demonstrate "the highest standards of efficiency, competence and integrity."

75. Refraining from misconduct, therefore, reflects the most basic and minimum standard that staff members are expected to meet. For the same reason, the Applicant's positive performance is not a mitigating factor. As a Chief heading a Section, the Applicant was expected to conduct himself as a role model and hold himself to a higher standard of conduct. He breached this fundamental duty as a manager by his conduct.

76. It is also correct to say that the sanction imposed on the Applicant was not the most severe sanction available to the Respondent, i.e. a sanction of dismissal under staff rule 10.2(a) (ix).

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<sup>33</sup> See Compendium of disciplinary measures, lines 437 (1 July 2017-31 December 2017), 398 (1 July 2016-30 June 2017), 309, 311 (1 July 2015-30 June 2016). The practice of the Secretary-General in disciplinary matters shows that in cases in which a staff member offered to assist an individual external to the United Nations with securing United Nations employment in exchange for payment resulted in termination of the staff member's employment.

<sup>34</sup> See Compendium of disciplinary measures, lines 286, 310 (1 July 2015-30 June 2016), 411 (1 July 2016-30 June 2017).

Case No.: UNDT/NBI/2019/108

Judgment No.: UNDT/2021/078