UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1298

Leontine Geertina Petronella Specker

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Kanwaldeep Sandhu Judge Martha Halfeld
Case No.:	2021-1628
Date of Decision:	28 October 2022
Date of Publication:	23 December 2022
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Amanda Stoltz

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Leontine Geertina Petronella Specker is a former staff member of the United Nations Development Programme Country Office in Turkey (UNDP Turkey). She appeals against Judgment No. UNDT/2021/105 of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) upholding the decision of the Administration to impose on her the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity equivalent to four months' salary (contested decision).

2. For the reasons stated below, the appeal is rejected and the UNDT Judgment is affirmed.

Facts and Procedure

3. Ms. Specker joined UNDP in 2010. At the relevant time, she was employed as a Technical Specialist at the P-4 level at UNDP Turkey. Prior to her separation, she was a Senior Resilience Advisor at the P-5 level.

4. On 1 September 2017, Ms. Specker married a colleague, AA, who was also employed at UNDP Turkey.

5. In January 2017, some nine months before he married Ms. Specker, AA was shortlisted by the United Nations Children's Fund Turkey Country Office (UNICEF Turkey) for a national professional officer position and was invited to a written test on 17 January 2017. On the same day, AA e-mailed Ms. Specker informing her that he had been shortlisted for the position and stated that "there will be an exam, can we make it together?" Ms. Specker responded stating: "Of course, we will work on this together!".

6. Later that day AA received an e-mail from UNICEF Turkey with a written test comprised of two questions to be completed in two hours. He immediately forwarded the test to Ms. Specker's UNDP e-mail account. She then provided AA with answers to the questions drafted by her, which AA used with minor modifications in his response to UNICEF Turkey.

7. On 17 January 2017, AA received another e-mail from UNICEF Turkey informing him that he had been shortlisted for another national professional officer position and was again invited to a second written test on 20 January 2017. On 20 January 2017, AA received an

e-mail from UNICEF Turkey with a written test comprised of three questions, which he once again forwarded to Ms. Specker immediately. She then drafted answers to the second written test and provided them to AA in several e-mails. She then also reviewed and corrected AA's draft answer prior to his submitting it.

8. Ms. Specker conducted all the communication with AA in relation to the two written tests using her UNDP e-mail account.

9. In 2018, the UNDP Office of Audit and Investigations (OAI) investigated allegations that Ms. Specker had improperly assisted AA during the recruitment process for the two positions. During an interview with OAI, Ms. Specker essentially admitted her misconduct when she stated:

> As a UN staff member, I'm well aware that that's against the rules so just to state that, I mean it happened. In terms of why, I think there's a long story behind it in terms of the history in this office and the opportunities that are provided to different people. I did help him simply because we were together at that time already, not married, but we were together and I think he deserved a fair chance. The full story is that he was not hired for this position and also afterwards for the second application, I think he withdrew his application in the end. … it's not a justification but I have a long list of people that have done much worse in these types of situations. So, in this case I admit I helped the person that I was with. I know I have the capacity to write quickly and he doesn't. I know he's very good in what he does but I know in the written test sometimes he doesn't come through but I know in an interview he would be great and I know as a staff member he is really good in what he does so I wanted to give him an opportunity to get at least to the interview.

10. On 14 May 2019, OAI issued an investigation report in which it concluded that the allegations against Ms. Specker were substantiated.

11. By letter dated 25 July 2019 (charge letter), Ms. Specker was charged with misconduct for misrepresenting information to a United Nations agency by preparing answers to two competitive recruitment exercises that AA was to undertake and for misusing official UNDP resources by using her UNDP e-mail account to assist AA in cheating on a UNICEF recruitment exercise. In her response to the charge letter, Ms. Specker again acknowledged her wrongdoing but described her conduct as "a one-off lapse of judgment" for which she was prepared to take full responsibility but asked that mitigating factors be considered and taken into account.

12. In a sanction letter dated 5 December 2019, the Administration imposed the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity equivalent to four months' salary.

13. The UNDT held on the basis of Ms. Specker's admissions that the facts on which the disciplinary measure was based were not in dispute and accordingly that the misconduct had been proven by clear and convincing evidence. Considering that Ms. Specker was a senior staff member, that she had a personal interest in the outcome of the tests (in that the person she assisted was her partner), and that the assistance that she provided was significant as she had provided AA with full written answers to the test questions, which he then almost completely copied and submitted, the UNDT concluded the nature and gravity of her misconduct was serious and thus the disciplinary measure of separation imposed in this case was in line with the past practice of the Organization. It accordingly dismissed the application and upheld the decision of the Administration.

Submissions

Ms. Specker's Appeal

14. Ms. Specker submits that the UNDT erred in concluding that the sanction imposed was proportionate. She conceded that she made a grave error of judgment, admitted her misconduct, and expressed remorse.

15. She maintains in essence that her remorse and long period of service justified progressive or corrective discipline and not the ultimate penalty.

16. Ms. Specker, as she did before the UNDT, placed reliance on similar cases in which the Organisation applied a lesser sanction and argued that fairness and proportionality required historical consistency.

17. She requests that the Judgment of the UNDT be reversed.

The Secretary-General's Answer

18. The Secretary-General argues that the imposed sanction falls within the reasonable range of sanctions and was proportionate in the circumstances.

19. He maintains that the UNDT's approach was fully consistent with the well-established jurisprudence and that the Tribunal should not lightly interfere with the Administration's broad discretion in disciplinary matters. The evidence in this case does not show that the sanction in this case was arbitrary or overly severe.

20. The deliberate and repeated nature of the misconduct undermined the integrity of two recruitment processes and displayed an intentional disregard of the core values of the United Nations expected of staff members, as set forth in Article 101(3) of the Charter of the United Nations, including observing the highest standard of integrity.

21. The Secretary-General submits therefore that the UNDT correctly concluded that the imposed sanction was proportionate.

22. He requests that the appeal be dismissed and the Judgment of the UNDT be affirmed.

Considerations

23. In disciplinary cases, the UNDT is required to ascertain: (a) whether the facts on which the disciplinary measure was based have been established; (b) whether the established facts legally amount to misconduct; and (c) whether the disciplinary measure applied was proportionate to the offence.[1] The misconduct must be established by clear and convincing evidence, meaning that the facts must be established as highly probable.[2]

24. It is not in dispute that Ms. Specker committed the misconduct in question. The UNDT confirmed that Ms. Specker engaged in two counts of misconduct: (a) by assisting AA to misrepresent his answers on a competitive written exam in violation of her duties as a UNDP staff member, and (b) by misusing her UNDP e-mail account to assist AA in cheating on a UNICEF recruitment exercise. It did not err in rejecting Ms. Specker's claim that the second charge was duplicative of the first charge of misrepresentation. Staff Regulation 1.2(q) requires staff members to use the Organization's resources only for official purposes and the use of the

[1] *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East,* Judgment No. 2015-UNAT-537, para. 20; *Portillo Moya v. Secretary-General of the United Nations,* Judgment No. 2015-UNAT-523, para. 17; *Haniya v. Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East,* Judgment No. 2010-UNAT-024, para. 31; *Abu Hamda v. Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East,* Judgment No. 2010-UNAT-022, para. 25.

[2] *Ibrahim v. Secretary-General of the United Nations, Judgment No.* 2017-UNAT-776, para. 44; *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164, para. 30.

work e-mail account for improper purposes violated the relevant legal norms. The act of cheating did not necessitate the use of her UNDP e-mail address. Therefore, the improper use of the UNDP e-mail address was distinct from assisting AA in cheating.

25. Staff Regulation 1.2(b) provides that staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status. Staff Regulation 1.2(q) provides that staff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets.

26. The essential question is whether the sanction imposed was proportionate. The principle of proportionality requires that a disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct. The Administration has discretion to impose a disciplinary measure that it considers adequate to the circumstances of a case, and the Tribunal should not interfere with administrative discretion unless it is tainted by irrationality or is arbitrary.

27. In this case, UNDP imposed the disciplinary measure after considering a number of aggravating and mitigating factors. Most aggravating was the fact that Ms. Specker used her seniority and knowledge gained in her policy-related functions to accord AA a significant advantage over the other candidates. While she had a previously unblemished record, her actions were seen to be in complete disregard of fairness or transparency, two core values expected of UN staff members. UNDP also considered that her dishonest conduct "placed UNDP in a position of suffering significant reputational harm *vis-à-vis* UNICEF". Her actions displayed a serious lack of the core values required of international civil servants.

28. Ms. Specker's main argument is that the sanction imposed upon her displays an element of historical inconsistency in that lesser sanctions for similar misconduct have been imposed in other cases. The implication of that submission is that the failure to impose separation for this kind of offence in the past may have created an impression that a lesser sanction could be expected for such a contravention and that similar offences should attract similar sanctions. However, inconsistency may be justifiable where a contravention is of a particularly serious nature. The UNDT dealt fully with the issue of consistency and concluded that the offence in question was of a particularly serious nature and thus separation was the

appropriate sanction. Past practice revealed that the disciplinary measures imposed for cheating, or for aiding another person in cheating, varied but included in some instances separation from service, with notice or compensation *in lieu* of notice, and with or without termination indemnity.

29. Ms. Specker's argument misses an essential point. Dishonesty of this order, and the use of her position and knowledge to improperly advance the interests of an intimate partner, fatally compromised the necessary relationship of trust between the employer and employee. Ms. Specker's conduct on two separate occasions undermined the integrity of two recruitment processes. The deliberate, intentional and repeated nature of the misconduct by a senior staff member for such a venal purpose revealed a level of unreliability that contaminated the trust relationship to a degree that rendered the continuation of the employment relationship intolerable. Separation from service was the most suitable and necessary means by which the legitimate aim of integrity and probity could be assured within the Organisation in accordance with the requirements of Staff Regulation 1.2(b) in the circumstances of this case.

30. In the premises, the UNDT did not err in concluding that the sanction fell within the reasonable range of sanctions and was proportionate. The appeal must accordingly be dismissed.

Judgment

31. The appeal is dismissed and Judgment No. UNDT/2021/105 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Murphy, Presiding	Judge Sandhu	Judge Halfeld

Judgment published and entered into the Register on this 23rd December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar