



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1146/Corr. 1

**Andry Adriantseheno
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Jean-François Neven, Presiding Judge Graeme Colgan Judge Dimitrios Raikos
Case No.:	2021-1513
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Mr. Adriantseheno: George G. Irving

Counsel for Secretary-General: Noam Wiener

Reissued on 02 December 2021 for technical reasons

JUDGE JEAN-FRANÇOIS NEVEN, PRESIDING.

1. Mr. Adriantseheno is alleged to have sexually harassed two staff members in violation of paragraph 1.3 of ST/SGB/2008/5 and was separated from service. In Judgment No. UNDT/2020/195 dated 20 November 2020, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that the alleged behavior did not amount to sexual harassment and that the Administration had failed to adduce clear and convincing evidence to sustain a finding that Mr. Adriantseheno had violated any rule or regulation. Consequently, the UNDT ordered rescission of the dismissal decision or, alternatively, payment of two years' net base salary.

2. For reasons set out below, we reverse the UNDT Judgment and uphold the contested decision.

Facts and Procedure

3. Mr. Adriantseheno was a Statistician at the P-4 level under a continuing appointment with the United Nations Economic Commission for Africa (ECA), in Addis Ababa, Ethiopia. He joined ECA in 2004, and was separated from service effective 20 August 2019 after the completion of a disciplinary process.

4. The present case has its genesis in an interoffice memorandum dated 6 July 2018 titled "COMPLAINT OF HARASSMENT COMMITTED BY MR ANDRY ADRIANTSEHENO". A staff member of ECA (VO1) addressed this complaint to the Executive Secretary of ECA, in which she requested the establishment of a fact-finding investigation into the "harassment [she] suffered as a direct result of the action of Mr. Andry Adriantseheno" before and during the annual Management Development Programme training (MDP-2018) from 25 to 28 June 2018. ECA had organized the MDP-2018 for the ECA staff members at the P-4 and P-5 levels as well as staff from other organizations such as the Economic and Social Commission for Asia and the Pacific (ESCAP) based in Bangkok, Thailand. The MDP-2018 took place at the Kuriftu Resort, Debre Zeyit, some 55 kilometers outside of Addis Ababa. VO1 was the event coordinator, and Mr. Adriantseheno was a participant. In her complaint of 6 July 2018, VO1 also reported that, during the MDP-2018, Mr. Adriantseheno had "targeted and sexually harassed" another female participant from ESCAP (VO2).

5. Below is a summary of VO1's accusation of Mr. Adriantseheno's "unwelcome behavior" and "unlawful conduct".

6. According to VO1, after she had signed Mr. Adriantseheno up for the MDP-2018, he came to her office one day and said to her that "we will have a good time" during the training. Then on either 20 or 21 June 2018, at the ECA headquarters, while VO1 was walking with a colleague on an overpass connecting the Niger Building to the ECA Conference Centre, Mr. Adriantseheno grabbed her in an inappropriate manner, but she "just thr[e]w his hand" and she told him "Please stop it. If you are not going to stop then I will report you for harassment". Again, according to VO1, during the MDP-2018 at the Kuritfu Resort, Mr. Adriantseheno repeatedly asked her for her room number. When he asked her for the third time, she became "scared of his intention". So, she rushed to the resort reception to give instruction not to give out her room number to anyone under any circumstance. Furthermore, as the training coordinator, VO1 had to frequently leave the training room to take care of administrative and logistical matters. Whenever she wanted to step out, Mr. Adriantseheno would come in front of her and block her egress. His behavior upset her so much that on the last day of the training she screamed at him in the training room.

7. In respect of VO2, VO1 stated that at dinner in the evening of 27 June, after Mr. Adriantseheno heard that the participants from ESCAP had decided not to return to Addis Ababa after the training but to remain at the Kuritfu Resort for the night of 28 June, he asked VO2, in the presence of some other participants, to share her room with him for the night of 28 June and cook Thai food for him.

8. VO1 further stated that Mr. Adriantseheno had failed to apologize for his "unwelcome behavior" to either her or VO2, though he had been instructed to do so.

9. Upon receipt of VO1's complaint, ECA contacted ESCAP to understand VO2's version of events. According to ESCAP, VO2 did not want to press formal charges against Mr. Adriantseheno at that time, but asked ECA to ensure that Mr. Adriantseheno be made aware of his transgressions and that he not participate in Module II of the MDP-2018.¹

¹ The MDP-2018 consisted of two modules, the first one took place from 25 to 28 June 2018 and the second one from 18 to 21 September 2018. Mr. Adriantseheno did not attend Module II.

10. On 14 August 2018, the Executive Secretary of ECA referred the “complaint of sexual harassment ... and abuse of authority against Mr. Andry Adriantseheno” to the Under-Secretary-General for the Office of Internal Oversight services (OIOS) for guidance and appropriate action, pursuant to the Secretary-General’s message that all sexual harassment reports were considered as Category 1 and should be investigated by OIOS.

11. The Investigations Division of OIOS launched an investigation. The OIOS investigators interviewed individuals including VO1, VO2 and Mr. Adriantseheno. In an investigation report dated 31 December 2018, the OIOS investigators found that there was no evidence to substantiate VO1’s allegations that Mr. Adriantseheno had made having-a-good-time comments to her in her ECA office or that he had repeatedly blocked her egress in the training room during the MDP-2018. But they found that Mr. Adriantseheno had briefly hugged VO1 against her wishes on the overpass in June 2018, and he had asked VO1 for her room number on three to four occasions during the MDP-2018. In respect of VO2, the OIOS investigators established that Mr. Adriantseheno had also asked VO2 for her room number on the first day of the MDP-2018 and, moreover, he had asked VO2 whether he could stay in her room and if she could cook Thai food for him and made gender and ethnic insensitive comments to her, after VO2 had replied in the negative. In the view of the OIOS investigators, both VO1’s and VO2’s testimonies were credible, as they were both corroborated by the testimony of other witnesses and their descriptions were corroborated by each other.

12. In a memorandum dated 18 March 2019 (Allegations Memorandum), the Assistant Secretary-General for Human Resources (ASG/HR) charged Mr. Adriantseheno with having “engaged in conduct of a sexual nature with respect to VO1 and/or VO2 in a work-related context”. The ASG/HR warned Mr. Adriantseheno that his conduct, if established, would constitute discrimination, harassment and/or sexual harassment under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

13. On 1 May 2019, Mr. Adriantseheno filed comments on the allegations of misconduct against him. He “categorically” denied the charges, arguing that he was “fully innocent without sexual connotations towards [VO1 and VO2]”. Specifically, he stated that he did not remember having hugged VO1 as alleged. He also stated that he had never asked VO1 for her room number, though he did ask her, “totally innocent” without any other meaning, where her room was and whether it was facing garden or lake, as he did not need her room number

in order to find her through the hotel staff. He might have asked VO1 the same question multiple times because she had refused to answer his query. Furthermore, he stated that he had no recollection of ever blocking VO1's path or making any other inappropriate conduct towards her during the MDP-2018. Regarding VO2, Mr. Adriantseheno recalled that he had had one beer in the evening of 27 June and that he did ask VO2 to invite him to sleep on the couch outside her room, but not on the couch inside the room, and that he asked her "only in jest" and "did not mean this as a sexual advance toward VO2", because he could not stay for another night at the Kuritfu Resort, as he needed to return to Addis Ababa with another participant after the training. According to Mr. Adriantseheno, his comments about Thai food were meant as a "compliment" for its quality and variety. Mr. Adriantseheno expressed his sincere regret for his words or actions that VO1 and/or VO2 considered hurtful.

14. In a letter dated 20 August 2019 (Sanction Letter), the ASG/HR informed Mr. Adriantseheno of the decision to separate him from service with compensation in lieu of notice and with termination indemnity in accordance with Staff Rule 10.2(a)(viii). The decision had been taken on the basis of a review of the entire record including Mr. Adriantseheno's comments and the conclusion that the allegations had been established by clear and convincing evidence, and that he had committed misconduct in violation of Staff Regulation 1.2(a), Staff Rule 1.2(f), and paragraph 2.1 of ST/SGB/2008/5.

15. On 29 October 2019, Mr. Adriantseheno filed an application with the Dispute Tribunal contesting his separation from service.

16. In Judgment No. UNDT/2020/195 dated 20 November 2020, the Dispute Tribunal found for Mr. Adriantseheno, holding that the alleged behavior did not amount to sexual harassment, and that the Administration had failed to adduce clear and convincing evidence to sustain a finding that he had violated any rule or regulation. Consequently, the UNDT ordered rescission of the dismissal decision or, alternatively, payment of two years' net base salary. The UNDT denied Mr. Adriantseheno's request for additional compensation. It also denied his motion for anonymity.

17. The Dispute Tribunal characterized the Administration's case as a case of sexual harassment only, as that was specifically pursued and Mr. Adriantseheno had responded only to the charge of sexual harassment. The UNDT then analyzed each alleged misconduct. It found, in respect of VO1, that Mr. Adriantseheno's attempt to hug her in public view did not

on its own qualify as an unwelcome sexual advance, request for sexual favor, or verbal or physical conduct or gesture of a sexual nature, because, in her interview with the OIOS investigators, VO1 did not convincingly say that Mr. Adriantseheno had attempted to hug her, but the investigators had tried to steer the evidence toward a hug. Likewise, the UNDT did not find Mr. Adriantseheno's asking for VO1's room number on multiple occasions to constitute sexual harassment, considering that VO1 was the focal point for all matters concerning the smooth running of the training programme, that any notice or signal from VO1 to Mr. Adriantseheno that his behaviour was unwelcome was absent, and that VO1 had not reported her complaint to the relevant authorities. Moreover, the UNDT concluded that the facts did not support the allegation of Mr. Adriantseheno blocking VO1's way out of the conference room, because no one witnessed those incidents, no senior member at the training, her supervisor or any member of the hotel staff had knowledge of those incidents, and VO1 did not give Mr. Adriantseheno any notice or warning of the unwelcome nature of his alleged behavior.

18. The Dispute Tribunal then analyzed the allegations of sexual harassment of VO2, but found that the alleged incidents failed to meet the elements of sexual harassment as set forth in ST/SGB/2008/5. The UNDT did not find Mr. Adriantseheno's asking VO2 for her room number on the first day of the MDP-2018 as sexual harassment, because he had asked VO2 and her colleague for room numbers generally upon their first meeting before the training had commenced and VO2 was then not a known work colleague to Mr. Adriantseheno, and she herself had stated to the OIOS investigators that she had felt "uncomfortable" with Mr. Adriantseheno's question about their room numbers when they did not know each other, but regarded this initial interaction as "just a friendly exchange". Likewise, the Dispute Tribunal did not find Mr. Adriantseheno's asking VO2 to allow him to sleep in her room and to make Thai food for him as meeting the elements of sexual harassment, because no similar conduct was reported by VO2 or any other person after he had been warned and made an apology, and also because Mr. Adriantseheno's utterances on the last evening of the training did not interfere with work, or were made a condition of employment, or created an intimidating, hostile or offensive work environment.

19. The Dispute Tribunal also found that the OIOS investigators had not conducted the investigation in good faith and Mr. Adriantseheno's right to be presumed innocent had been breached, as the investigation had been skewed toward finding a case of sexual harassment

regardless of the inadequacy of evidence with a litany of leading questions, misrepresentations and misinterpretations. Notable examples were that the investigation report referred to VO1's reaction to Mr. Adriantseheno's attempted hug by removing the latter's hands around her, when she repeatedly stated that she had removed Mr. Adriantseheno's hand. The investigation report referred to VO1's reporting the incidents to senior colleagues participating in the MDP-2018 when it had been made in the context of sharing her experience with VO2 when VO2 had reported an incident to her as the training coordinator.

20. On 19 January 2021, the Secretary-General appealed the UNDT Judgment to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). Mr. Adriantseheno filed an answer to the appeal on 9 March 2021.

Submissions

The Secretary-General's Appeal

21. The Secretary-General requests that the Appeals Tribunal vacate the impugned Judgment, affirm the contested decision and dismiss Mr. Adriantseheno's UNDT application in its entirety.

22. The Secretary-General submits that the Dispute Tribunal erred in fact and law by holding that Mr. Adriantseheno had not sexually harassed VO1 and VO2. Specifically, in respect of VO1, the UNDT provided no explanation as to how her description during her interview did not constitute a hug, as the UNDT's conclusion ignored the testimony of VO1 and other witnesses and was a misapplication of the legal framework. The facts clearly establish that Mr. Adriantseheno physically embraced VO1 and held her close to him, without asking for permission and against her will. Both VO1 and the witness considered it as inappropriate and clearly unwelcome. It was sexual harassment within the broader definition of ST/SGB/2008/5. Likewise, the UNDT's findings that neither Mr. Adriantseheno's repeated requests for VO1's room number nor his repeated blocking of VO1's egress from the training room constituted sexual harassment are wrong, because his insistence for VO1's room number cannot be reasonably understood as his innocent need to find her for training related matters, especially in the context where he had already hugged her against her will before the MDP-2018 and after he had told her that he had wanted her room number in order to visit

her at night. Mr. Adriantseheno's insistence frightened VO1 so much that she asked the reception not to give her room number to anybody. The Dispute Tribunal's finding regarding Mr. Adriantseheno's repeated blocking of VO1's egress failed to consider the context of the conduct and the fact that it would be absurd to require a victim to warn a perpetrator not to engage in an inherently inappropriate behavior.

23. The Secretary-General also submits that the UNDT erred in assuming that sexual harassment required a report to relevant authorities. There is no source of law that suggests that conduct that would have constituted sexual harassment stops being so if it was not reported by the victim or if it was only reported when a victim feels safe to report it with the support of other victims. Whether a victim comes forth on her own or whether the harassment she suffered is discovered during an investigation makes no difference as to the fact that sexual harassment occurred.

24. The Secretary-General further submits that the UNDT's holding, in respect of VO2, is an error in both fact and law. A 20-minute session, during which a male staff member tried again and again to convince a female staff member to let him sleep in her room, despite her express and repeated assertions that she was not interested, constitutes sexual harassment. Such repeated requests of a sexual nature are clearly an unwelcome sexual advance. The unwelcome nature of Mr. Adriantseheno's conduct was clear not only to VO2 but also to other persons present. Moreover, Mr. Adriantseheno's conduct did interfere with work, as VO2 found menacing the manner in which Mr. Adriantseheno approached her the next morning on the last day of the MDP-2018.

25. The Secretary-General contends that the UNDT erred in ignoring the totality of Mr. Adriantseheno's humiliating and threatening behavior towards his victims (asking for room numbers) and a pattern of sexual harassment against VO1 (starting with the hug and continuing during the three-day training).

26. The Secretary-General also contends that the UNDT's holding that Mr. Adriantseheno was charged with sexual harassment, but he was not charged with harassment was an error in fact. Of the five documents cited as the basis for this holding, the first three documents (an internal memorandum from OIOS to OHRM, the OIOS investigation report, and the "pre-interview information sheet" provided to Mr. Adriantseheno) were work product of OIOS, which has no authority to determine what charges of misconduct are to be raised

against staff members, whereas the other two documents (the Allegations Memorandum and the Sanction Letter) both specified that Mr. Adriantseheno's conduct, if and when established, would constitute harassment and/or sexual harassment, among other things.

27. The Secretary-General further contends that the UNDT erred in holding that the Administration had failed to respect Mr. Adriantseheno's right to due process. In his view, the supporting examples that the UNDT made (reference to hands rather than hand, failure to expand on the meaning of "intentions") border on the absurd, as none of them show that the OIOS investigation was conducted in a manner that predetermined the outcome or affected his due process rights. Not a single case in the large body of the UNAT jurisprudence suggests that a staff member's due process rights were infringed because the investigators asked witnesses questions in a manner contrary to the liking of the UNDT Judge. Once the disciplinary proceedings commenced, the Administration informed Mr. Adriantseheno of the allegations of misconduct and gave him the entirety of the evidence and Mr. Adriantseheno had ample opportunity to contest the allegations of misconduct during the disciplinary process.

Mr. Adriantseheno's Answer

28. Mr. Adriantseheno requests that the Appeals Tribunal dismiss the appeal in its entirety. He also requests that the Appeals Tribunal award him USD 5,000 as cost for the Secretary-General's abuse of process.

29. Mr. Adriantseheno submits that the present appeal is an attempt to reargue the case that has been fully presented to the Dispute Tribunal and correctly adjudicated, and it includes arguments that have been rejected by the UNDT.

30. Mr. Adriantseheno recalls that VO2 never filed a complaint against him, and VO1 filed a complaint of harassment, and not sexual harassment. He was never advised of any element of the allegations that constituted harassment or asked to respond to them as such. The Secretary-General now tries to re-frame his argument to include a different or lesser infraction. This is an abuse of process.

31. Mr. Adriantseheno also submits that the Dispute Tribunal reasonably concluded that there was no clear evidence of sexual harassment in respect of his encounter with VO1 on the overpass at the ECA headquarters.

32. Mr. Adriantseheno further submits that the Dispute Tribunal did not err in finding that his conduct during the MDP-2018 did not constitute sexual harassment, as the Administration had failed to prove, by clear and convincing evidence, a key element of sexual harassment that the conduct was of a sexual nature. The context of the exchanges between him and Vo1 and Vo2 shows that they occurred outside work and did not affect the working environment. His exchanges, however clumsy and inappropriate, did not have any hidden meaning and did not rise to the level of sexual harassment.

33. Mr. Adriantseheno contends that the Dispute Tribunal was entitled to conclude that in their rush to judgment the investigators had failed to follow the relevant law and jurisprudence and violated his presumption of innocence during the investigation.

34. Mr. Adriantseheno states that the UNDT's award of two years' net base pay is fully warranted for the harm caused by the unjust allegations.

Considerations

Legal framework

Basic rights and obligations of staff – prohibition of discrimination, harassment, including sexual harassment, and abuse of authority

35. Staff Regulation 1.2 provides that:

(a) Staff members shall uphold and respect the principles set out in the Charter, including faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Consequently, staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them.

36. Staff Rule 1.2(f) provides that:

(f) Any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form at the workplace or in connection with work, is prohibited.

37. ST/SGB/2008/5 states that:

Section 1

Definitions

1.2. Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. Harassment normally implies a series of incidents. Disagreement on work performance or on other work-related issues is normally not considered harassment and is not dealt with under the provisions of this policy but in the context of performance management.

1.3. Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. While typically involving a pattern of behaviour, it can take the form of a single incident. Sexual harassment may occur between persons of the opposite or same sex. Both males and females can be either the victims or the offenders.

Section 2

General principles

2.1 In accordance with the provisions of Article 101, paragraph 3, of the Charter of the United Nations, and the core values set out in staff regulation 1.2 (a) and staff rules 101.2 (d), 201.2 (d) and 301.3 (d), every staff member has the right to be treated with dignity and respect, and to work in an environment free from discrimination, harassment and abuse. Consequently, any form of discrimination, harassment, including sexual harassment, and abuse of authority is prohibited.

2.2 The Organization has the duty to take all appropriate measures towards ensuring a harmonious work environment, and to protect its staff from exposure to any form of prohibited conduct, through preventive measures and the provision of effective remedies when prevention has failed.

2.3 In their interactions with others, all staff members are expected to act with tolerance, sensitivity and respect for differences. Any form of prohibited conduct in the workplace or in connection with work is a violation of these principles and may lead to disciplinary action, whether the prohibited conduct takes place in the workplace, in the course of official travel or an official mission, or in other settings in which it may have an impact on the workplace.

38. In *Mbaigolmem*, this Tribunal decided:²

... Sexual harassment is a scourge in the workplace which undermines the morale and well-being of staff members subjected to it. As such, it impacts negatively upon the efficiency of the Organization and impedes its capacity to ensure a safe, healthy and productive work environment. The Organization is entitled and obliged to pursue a severe approach to sexual harassment. The message therefore needs to be sent out clearly that staff members who sexually harass their colleagues should expect to lose their employment. The sanction imposed by the Administration in this case was accordingly proportionate. It follows that the appeal of the Secretary-General must succeed.

Grounds

Did the UNDT err in considering that Mr. Adriantseheno was charged only with sexual harassment and not with harassment?

39. The UNDT decided that “despite the multiplication and generalisation of the violations in the memorandum of allegations and the sanction letter, it is only the allegation of sexual harassment which was specifically pursued and which the Appellant answered to”.³ The UNDT referred to the OIOS documents, the Allegations Memorandum and the Sanction Letter.

40. Even if the ECA referred the case to OIOS as per the Secretary-General’s message for an expedited investigation of sexual harassment complaints by OIOS, OIOS has no authority to determine what charges of misconduct are to be raised against staff members. Furthermore, paragraph 31 of the Allegations Memorandum provides that “If established, your conduct would constitute discrimination, and/or harassment, and/or sexual harassment”, and the Sanction Letter similarly provides, in paragraph 35 of the Annex, that “Your actions, as established by evidence, constitute harassment and sexual harassment of VO1 and VO2”.

41. Consequently, the UNDT erred in deciding that Mr. Adriantseheno had been charged solely with sexual harassment.

² *Mbaigolmem v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-819, para. 33.

³ Impugned Judgment, para. 32 (internal citations omitted).

Did the UNDT err in deciding that the investigators tried to steer the evidence and that the incident involving attempted hugging was not established and did not constitute sexual harassment?

42. On either 20 or 21 June 2018 (at approximately 11:00 a.m.), VO1, the first victim, was on her way with a colleague of hers to the conference center at the UNECA complex in Addis Ababa, Ethiopia, when they ran into Mr. Adriantseheno. The transcript of the interview of VO1 shows that VO1 and Mr. Adriantseheno were not close colleagues, that they had met a few weeks earlier because Mr. Adriantseheno had been invited to the MDP-2018 that VO1 was responsible for coordinating, that, upon their chance encounter, Mr. Adriantseheno put his arm around VO1's back and was close to her when she pushed him away. VO1's colleague confirmed during his interview with the OIOS investigators that VO1 had told Mr. Adriantseheno that his behavior was harassing and inappropriate.⁴

43. The UNDT noted that, even according to VO1, the manner in which Mr. Adriantseheno had grabbed her could have been seen by an independent bystander as something that either related persons, husband and wife, lovers or close friends could do. It accordingly found that his attempt to hug VO1 could not reasonably be concluded as an unwelcome sexual advance or conduct of a sexual nature within the meaning of ST/SGB/2008/5. We do not agree.

44. Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behavior of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another. While typically involving a pattern of behavior, it can take the form of a single incident. It does not require that the alleged harasser was aware of the offending character of his or her behavior and was put on notice, which would otherwise preclude a single incident from constituting sexual harassment.

45. We find that physically enveloping a woman without her permission and against her will, as Mr. Adriantseheno did, constituted sexual harassment, even if it was a single incident that occurred in public. Sexual harassment is not something that only happens in private or hidden spaces. What is important in this case is that VO1 was offended and humiliated and felt harassed by Mr. Adriantseheno's behavior. The testimony of the witness, a colleague of

⁴ Interview of Mr. E. T., 18 September 2018, lines 92-95.

both VO1 and Mr. Adriantseheno, confirmed that VO1 told Mr. Adriantseheno that his behavior was inappropriate and he could not do it. The witness added that VO1 was blushed and shaking, and that he, himself, felt ashamed by Mr. Adriantseheno's behavior.

46. The UNDT also found that the Investigator tried to steer the evidence toward VO1 confirming a hug. But the UNDT also stated that this did not come out clearly. Thus, it is not established that the Investigator displayed bias or preconceived notions during the interviews or already presumed Mr. Adriantseheno guilty of sexual harassment during the investigation of the attempted hug incident. In this regard, the fact that the investigation report referred to VO1's reaction to Mr. Adriantseheno's attempted hug by removing his hands from around her, when she repeatedly stated that she had removed his hand, is an irrelevant and inconsequential factual error.

47. We conclude that the UNDT erred in deciding that Mr. Adriantseheno's behavior toward VO1 on 21 June 2018 did not constitute sexual harassment.

Did the UNDT err in deciding that Mr. Adriantseheno's conduct during the MDP-2018 did not constitute sexual harassment of VO1?

48. The transcript of VO1's interview and the witness statements establish that during the MDP-2018, between 25 and 28 June 2018, Mr. Adriantseheno asked VO1 for her room number on multiple occasions. The UNDT found that his behavior did not constitute sexual harassment because it could be understood to be non-sexual in nature, VO1 did not respond with an explicit verbal protest, but only tried to avoid him, and did not report the incident to relevant authorities until after she heard that VO2 had complained that Mr. Adriantseheno had also sexually harassed her. We do not agree with the UNDT's reasoning.

49. Contrary to UNDT's finding, VO1 testified that Mr. Adriantseheno had asked her for her room number so he could visit her at night, and that, "scared of his intention", she requested the reception at the resort where the MDP training was taking place not to give her room number to anybody. Her testimony was largely corroborated by a statistician colleague of Mr. Adriantseheno's, who confirmed that, after hearing Mr. Adriantseheno ask VO1 for her room number and noticing that she looked shocked by the question, he intervened and questioned Mr. Adriantseheno why he had said that. This testimony confirmed that the statistician colleague considered Mr. Adriantseheno's conduct to be unwelcome and that

Mr. Adriantseheno should stop it. It also contradicted Mr. Adriantseheno's explanation that he had asked VO1 for her room number only because she was in charge of coordinating the MDP training.

50. In addition, there is no legal basis for suggesting that offensive or humiliating behavior ceases to be sexual harassment if the victim gives the perpetrator no warning or signal that the behavior is unwelcome and reports it to the appropriate authorities only when she feels safe to report it with the support of other victims. Thus, we cannot follow the UNDT's finding that, absent an explicit verbal protest and immediate reporting to authorities, the conduct cannot constitute sexual harassment.

51. We find that the UNDT erred when it found that the repeated requests for VO1's room number did not constitute sexual harassment.

Did the UNDT err in deciding that Mr. Adriantseheno's conduct during the MDP-2018 did not constitute sexual harassment of VO2?

52. On 25 June 2018, Mr. Adriantseheno asked VO2, the second victim, for her room number when he met her for the first time. Our case law confirms that sanctioned conduct of the staff member must be work-related.⁵ In this case, the UNDT held that this incident was not work-related as, at that time, Mr. Adriantseheno did not know that VO2 was participating in the MDP training. Because participation in the training was a professional requirement for Mr. Adriantseheno, we find that the incident may constitute sexual harassment and the UNDT erred in determining that it was "irregular for VO2, or any person on her behalf, to claim to have been sexually harassed by an individual she had never met before in her life".⁶

53. Additionally, on the evening of 27 June 2018, at the resort where the MDP training took place, Mr. Adriantseheno joined a group of staff members, including VO2. The UNDT found that, at that time, Mr. Adriantseheno engaged in "unwelcome verbal conduct of a sexual nature because of the connotations ascribed to [his] utterances, for instance, that he would sleep in VO2's room or on the veranda to her room and that she should make him Thai food".⁷ The UNDT held that "the utterances did create a reasonable expectation or

⁵ *Bagot v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-718, para. 52.

⁶ Impugned Judgment, para. 59.

⁷ *Ibid.*, para. 61.

perception to cause offense or humiliation to another”,⁸ but that the incident failed to meet the elements of sexual harassment that the conduct must interfere with work or made a condition of employment or create an intimidating, hostile or offensive work environment.⁹

54. VO2’s testimony is corroborated by a witness who described the scene and confirmed that it was really uncomfortable for everyone present, that VO2 said she was scared to stay an extra day, and that the staff members present all agreed that someone should talk to Mr. Adriantseheno, who should apologize.¹⁰

55. The fact that the “course coordinator assured VO2 that there was nothing to worry about [and] that [Mr. Adriantseheno] would not sleep in her room”¹¹ or that the next morning, after several senior staff members had spoken to him about the seriousness of his conduct, Mr. Adriantseheno no longer accosted VO2 does not change the unwelcome nature of his conduct and does not exclude this conduct from being sexual harassment. The totality of the circumstances must be considered. In this case, we find that the UNDT should have considered the repetition of the unwelcome behavior in a very short period of time to be of greater weight than Mr. Adriantseheno's apology made after he had been instructed to do so.

56. Furthermore, as noted above with respect to the incident of 25 June 2018, because participation in the MDP training was a job requirement for Mr. Adriantseheno and VO2 and part of the execution of their duties as staff members, UNDT erred in determining that the unwelcome behavior on 27 June 2018 was not work-related.

Did the UNDT err in deciding that the Administration did not respect Mr. Adriantseheno’s due process rights?

57. The essential question regarding procedural fairness is whether a staff member was adequately apprised of any allegations of misconduct and had a reasonable opportunity to make representations before action was taken against him. The Tribunal is generally satisfied that the key elements of the rights of due process are met when the staff member was fully informed of the charges against him, the identity of his accusers and their testimony

⁸ *Ibid.*, para. 62.

⁹ *Ibid.*, para. 63.

¹⁰ Interview of Mr. A. C., 17 September 2018, lines 86-107.

¹¹ Impugned Judgment, para. 62.

and as such, was able to mount a defense and to call into question the veracity of their statements.

58. In this case, the Administration informed Mr. Adriantseheno of the allegations of misconduct. He responded to the Allegations Memorandum and received the entirety of the evidence on which the allegations were based, including the questions asked of witnesses, and the answers provided. Mr. Adriantseheno was also given the opportunity to discuss, and if necessary challenge, the manner in which the interviews had been conducted.

59. In paragraph 65 of the impugned Judgment, the UNDT mentioned what it considered to be leading questions, misrepresentations or misinterpretations, including:

- The Investigation Report mentioned that VO1 removed Mr. Adriantseheno's "hands" while the transcript of the interview with VO1 revealed that he grabbed her with one hand;
- The Investigation Report mentioned that Mr. Adriantseheno several times asked VO1 for her room number, but failed to indicate what VO1 thought of Mr. Adriantseheno's intentions;
- The Investigation Report mentioned that VO1 reported the incidents to senior colleagues participating in the MDP-2018, but failed to mention that her report was made in the context of sharing her experience after VO2 had reported an incident to VO1;
- The Investigation Report stated clearly that VO2 "expressed that she did not wish to submit an official complaint against [Mr. Adriantseheno]".

The UNDT found that all this tainted the investigation's findings and undermined the credibility of the process. We do not agree.

60. Staff members' due process rights are not violated if only minor details, such as those mentioned in paragraph 65 of the UNDT Judgment, are not reflected to their liking in an investigation report and if they were given the opportunity to have all such details corrected. In this case, Mr. Adriantseheno was given the opportunity to raise any contestations regarding the Investigation Report.

61. Consequently, we find that the UNDT erred in considering that Mr. Adriantsehenó's due process rights were violated.

Judgment

62. The appeal is granted, the contested administrative decision is upheld, and Judgment No. UNDT/2020/195 is reversed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Neven, Presiding
Brussels, Belgium

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 17th day of November 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar