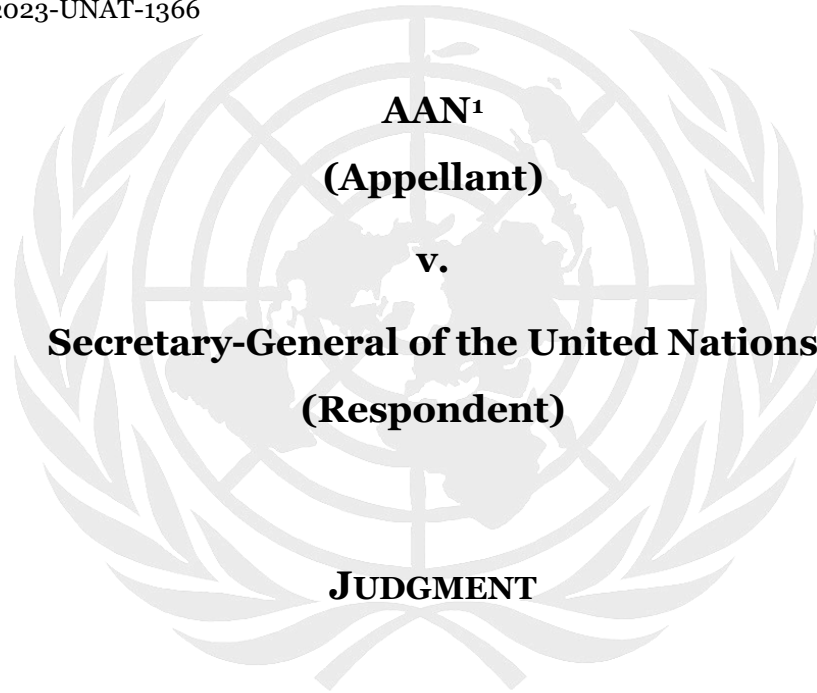




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1366



Before:	Judge Graeme Colgan, Presiding Judge Kanwaldeep Sandhu Judge Sabine Knierim
Case No.:	2022-1732
Date of Decision:	30 June 2023
Date of Publication:	31 July 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Steven W.S. Kayuni
Counsel for Respondent:	Francisca Lagos Pola

¹ This unique three-letter substitute for the party's name is used to anonymise the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

JUDGE GRAEME COLGAN, PRESIDING.

1. The Appellant², a former staff member of the United Nations Children’s Fund (UNICEF) contested the decision to separate him from service, with compensation in lieu of notice, and with termination indemnity (contested Decision). The Appellant was separated from service for sexual harassment and effectively also for sexual assault at the same event, of two United Nations staff members, Vo1 and Vo2 (Complainants).
2. By Judgment No. UNDT/2022/073,³ the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) rejected the Appellant’s application (impugned Judgment). The Appellant has appealed the impugned Judgment to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
3. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. The following are the relevant facts established by the UNDT, albeit following what amounted only to a desktop review of documents and submissions filed by the parties who are recorded as having agreed at a case management discussion with the UNDT that there was “no need for a hearing on the merits”.
5. The Appellant joined UNICEF in April 2012 as an Emergency Specialist at the P-4 level. While remaining at the same level and with the same functional title, he transferred to several Country and Regional Offices. From October 2017, he held a fixed-term appointment.
6. In January 2020, AAN was offered (and was expecting to take up) a position at the Cox’s Bazar Field Office (CBFO) of UNICEF in Bangladesh. In February 2020, he accordingly attended an all-staff retreat in Bandarban (also in Bangladesh) before the scheduled deployment to his new role in March. At a social event on 7 February 2020, during this all-staff event, a very alcohol intoxicated AAN forcibly embraced two women, Vo1 and Vo2.

² The Appellant was granted anonymity by the UNDT Order No. 70 (GVA/2022) dated 1 July 2022.

³ *Applicant v. Secretary-General of the United Nations*, Judgment dated 21 June 2022.

7. Without invitation, encouragement or her consent, AAN unexpectedly grabbed VO1 (who was dancing to music) from behind, holding his hands tightly around her waist, causing the front of his body to come into close contact with her back. Separately, but at the same function, AAN persistently tried to engage in conversation VO2 who was selling raffle tickets, and then hugged VO2 tightly with both arms, front to front, and pressed his hand against one of her breasts before a colleague was able to separate them physically and take AAN away. This contact was similarly surprising to VO2, uninvited and resented by her. Both VO1 and VO2 were distressed by these interactions with AAN.

8. There was evidence that earlier in the evening a colleague of AAN had detected his state of inebriation and possibly his harassment of other women, and had at least once escorted him to his accommodation, advising him not to return to the party. AAN appears not to have heeded that advice.

9. There was evidence that AAN had no or insufficient recollection afterwards of his actions to be able to respond to what VO1 and VO2 or others had to say about what he had done.

10. After complaints were made and AAN was informed of these, he elected not to take up his new role in CBFO, thus avoiding being in close contact again with VO1 and VO2 and other staff there who had been involved in these incidents.

11. On 11 February 2020, the Office of Internal Audit and Investigations (OIAI) received a report of possible misconduct involving AAN.⁴ It was reported that, on 7 February 2020, AAN had sexually harassed several female staff members by “physically grabbing them” after having consumed alcoholic beverages and becoming intoxicated.

12. On 23 April 2020, AAN was informed that OIAI was conducting an investigation in relation to the reported matters and that he was the subject of the investigation.⁵ During the investigation, OIAI interviewed witnesses and gathered other evidence.⁶ AAN was interviewed on 6 May 2020. On 21 October 2020, OIAI completed its investigation and transmitted the investigation report to the UNICEF Deputy Executive Director, Management, (DED/M) for appropriate action.⁷

⁴ *Ibid.*, para. 5.

⁵ *Ibid.*, para. 7.

⁶ *Ibid.*, para. 8.

⁷ *Ibid.*, para. 9.

13. By letter dated 19 November 2020, DED/M informed AAN of the decision to initiate a disciplinary process against him and issue him with formal charges of misconduct.⁸ It was alleged in the charge letter that on 7 February 2020, during the gala night and raffle draw event held as part of the CBFO all-staff retreat, AAN:

(a) Grabbed VO1 from behind her and held her tight with his hands around her waist to the front of her body. He rested his head on her back while he pulled her back so that the front of his body rested against the back of her body. VO1 did not consent to him touching her; and

(b) Hugged VO2 from the front side of her body with his body pressed against her body. He hugged her with both his arms, and with one hand he pressed her breast. He held VO2 for a few seconds before a colleague took her away. VO2 did not consent to him touching her.

14. Following a review of AAN's response, on 20 January 2021, OIAI was requested by him to interview another witness, Ms. S.A., in relation to some of the matters raised in AAN's submission.⁹ Furthermore, OIAI received additional information (video recordings and photos from WhatsApp messenger) from witnesses it had interviewed previously in the context of the investigation. AAN was provided with the additional material that OIAI obtained, and he provided his response to the additional information.¹⁰

15. By letter dated 15 February 2021, DED/M informed AAN of the contested Decision.¹¹

The impugned Judgment

16. The UNDT found that the investigation had gathered clear and convincing evidence that supported the allegations. Both victims' statements were clear and consistent and did not reveal any bias against AAN. Moreover, their account of the events was corroborated by other witnesses who were interviewed by OIAI and from whom statements were taken, in a clear and objective manner, about AAN's behaviour at the retreat.¹²

⁸ *Ibid.*, para. 10.

⁹ *Ibid.*, para. 12.

¹⁰ *Ibid.*, para. 13.

¹¹ *Ibid.*, para. 14.

¹² *Ibid.*, para. 30.

17. Regarding incident (a) involving VO1, the UNDT noted that VO1's evidence was corroborated by WO1, a person interviewed by OIAI, who witnessed the incident and intervened by "pulling [AAN's] hands apart and freed VO1 from his hold".¹³ Regarding incident (b) involving VO2, VO2's evidence was corroborated by Mr. I.A., also a person interviewed by OIAI, who witnessed the incident and took VO2 away from AAN. AAN did not specifically deny the incidents. Mr. M., another witness interviewed by OIAI, confirmed that AAN was drunk and that, at a certain point, Mr. M. personally took AAN to his room and told him that it "was enough". The account of events made by both victims and witnesses left no room for doubt as to the nature of AAN's attitude that evening. AAN did not provide any evidence of the alleged collusion against him nor was there any evidence of bias from any of the victims or witnesses.

18. The UNDT was of the view that AAN's conduct towards his two female colleagues was of a sexual nature, against the victims' will, which made them feel offended, embarrassed and extremely uncomfortable.¹⁴ His conduct was unacceptable and constituted sexual harassment. While the incidents took place outside the office and after working hours, they occurred at a work-related event. AAN's behaviour amounted to misconduct.

19. The UNDT highlighted the "zero-tolerance policy" the Organization had adopted against sexual harassment.¹⁵ The impact on a victim of sexual harassment can have long lasting effects and is not quantifiable. In determining the appropriate sanction, the Administration considered the nature of AAN's actions, the past practice of UNICEF in matters of comparable misconduct as well as aggravating and mitigating circumstances. As aggravating circumstances, the Administration considered that his conduct was of a physical nature and involved two victims. It also noted that AAN expressed no insight into his actions, nor did he express any remorse. As mitigating circumstances, the Administration considered that he had served UNICEF, including in "hardship duty stations", for nine years. The sanction imposed was not the most severe disciplinary measure. It was adequate and proportional to the gravity of the offence.

20. The UNDT was satisfied that AAN's due process rights were fully respected throughout both the investigation stage and the disciplinary process.¹⁶ With respect to his proposed ten witnesses, he did not indicate their relevance other than having been present on the night of the

¹³ *Ibid.*, para. 37.

¹⁴ *Ibid.*, para. 52.

¹⁵ *Ibid.*, para. 59.

¹⁶ *Ibid.*, paras. 69–73.

incidents. OIAI interviewed six of those witnesses; the investigators considered that interviewing the rest would not add substantial information, given the consistency of the witness statements already obtained regarding AAN's behaviour. He subsequently requested that OIAI interview another witness, Ms. S.A., but OIAI was not obliged to do so as the evidence that he sought to adduce from her was not relevant to the allegations.

Submissions

Appellant's Appeal

21. The Appellant requests the Appeals Tribunal to reverse the impugned Judgment and order that he be reinstated, that he be removed from the register of so-called blacklisted candidates, paid the school fees in respect of his children, which were withheld during the disciplinary proceedings, paid a repatriation grant and a termination indemnity, and compensated for his costs related to this procedure.¹⁷

22. The Appellant argues that the UNDT erred in law when it applied the standard of review. The Respondent failed to prove that VO1 was grabbed from behind and that VO2 was hugged. Contradictions transpired in the accounts of witnesses. The facts before the UNDT were unclear and the evidence unconvincing.

23. The Appellant contends that none of the witnesses he suggested on 20 January 2021 were interviewed by OIAI. Whilst OIAI sought additional evidence, he was not provided the same opportunity. The fact that he was not granted the opportunity to clarify his side of the story with witness testimony, breached his due process rights. A reasonable tribunal would not dismiss a request for witnesses without first hearing those witnesses. OIAI was biased against him.¹⁸ The motivation and role of Ms. A., whom the Appellant repeatedly requested to be interviewed, cannot be understood with her not having been interviewed. She was angry at him for not having attained

¹⁷ He further requests that, if the Appeals Tribunal nevertheless finds that he committed misconduct, it replace the sanction by suspension without pay as per Staff Rule 10.2(a)(iv) for a period of 12 months effective on the date of his separation from service, i.e. 15 February 2021, and order that, following such period, he be placed on special leave with full pay.

¹⁸ The Appellant further submits that the investigators, for almost a year, failed to request the videos mentioned by a witness, of the alleged incident (it is not specified in the appeal, which witness) or to follow up on this information. The Appellant also maintains that, instead of a mere mistake, on two occasions, the investigators misrepresented a witness' testimony (it is not specified in the appeal, which witness testimony).

a post she had applied for. The UNDT erred in law and in fact when it failed to establish the violation of his due process and defence rights.

24. The Appellant submits that the UNDT erred in law when it held that the facts amounted to misconduct. The discretionary nature of Staff Rule 10.1 could be interpreted in his favour, considering his past conduct. The alleged acts were not in any way sexual in nature and not intended to cause offence or humiliation to VO1 and VO2.

25. The Appellant argues that the UNDT erred in law in examining the Administration's exercise of discretion, by failing to determine that the imposed sanction was disproportionate to the offence and by not considering the mitigating circumstances of the Appellant's long unblemished service. Not all misconduct has to result in termination of employment. The Respondent has produced no evidence to demonstrate any manner in which he may have negatively affected the image and reputation of UNICEF. At the time of the incident, the Appellant had no supervisory responsibility over VO1 and VO2. The fact that he cooperated with the investigators throughout the proceedings, should also be considered as mitigating circumstances. It was his first offence. He declined the post in CBFO not because of a guilty conscience but in consideration of the investigation and the work environment.

26. The Appellant contends that the termination indemnity in his case was processed unfairly. He was paid only for 1.5 months instead of 9 months as provided in Staff Regulation 9.5. If the amount of the termination indemnity is a matter of discretion, it brings into question the relevance of the rules. In addition, whilst the notice of separation mentions that he is entitled to a repatriation grant, and whilst an education grant in respect of his three children was paid in advance in the amount of USD 30,000 to their respective schools, these commitments were not honoured by the Respondent.

27. The Appellant points out that his right to employment and to earn a living has been permanently crippled. Being "blacklisted" in the United Nations and affiliated organisations and civil society organisations constitutes the most severe sanction. His numerous applications for posts in his field of experience have been unsuccessful.

The Secretary-General's Answer

28. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

29. The Secretary-General argues that the Appellant has not demonstrated any errors warranting reversal of the impugned Judgment. VO1 and VO2 provided clear and uncontroverted evidence of his conduct. Witness WO1 corroborated VO1's account and Mr. I.A. corroborated VO2's account; the Appellant's assertion that the incident took place on a stage is incorrect. The UNDT properly found that the facts amounted to misconduct. Whether he intended to cause offence or humiliation is irrelevant.

30. The Secretary-General maintains that the UNDT correctly found that the Appellant's due process rights had been respected. In the absence of any indication that the remaining five of the 11 witnesses¹⁹ proposed by him would have provided any additional evidence relating to the specific incidents in question, OIAI did not have an obligation to interview them. Furthermore, the evidence that the Appellant sought to adduce through the proposed testimony of Ms. S.A., related specifically to events that had occurred before and after the night of the gala and are unrelated to the allegations in question. Moreover, he chose not to request the UNDT to hear the remaining five witnesses.²⁰ On 26 January 2021, he was provided with additional material that OIAI obtained and on 1 February 2021, he provided his response to the additional evidence.

31. The Secretary-General contends that the UNDT correctly found that the disciplinary measure was proportionate to the offence. The practice of the Appeals Tribunal confirms that separation from service is a proportionate sanction for sexual harassment. The Administration considered that the Appellant had served nine years with UNICEF. The absence of a disciplinary record and fulfilling his obligation to cooperate with the investigation are not relevant mitigating factors.

¹⁹ The Secretary-General refers to the ten witnesses proposed by the Appellant originally and another witness, Ms. S.A., proposed by the Appellant on 20 January 2021. Of those 11, OIAI declined to interview five.

²⁰ The Secretary-General refers to Order No. UNDT/GVA/2021/026 on case management, dated 1 July 2022, para. 6.

Considerations

32. AAN's grounds of appeal are extensive and purport to include issues that were not the subject of decision by the UNDT. Without leave on limited statutory grounds having been granted, such extraneous issues cannot be considered on this appeal. Nor too can issues on which AAN simply disagrees with the UNDT's decision that he wishes re-litigated in the hope of a different decision from the Appeals Tribunal, at least without AAN establishing that one of the limited statutory grounds of appeal applies to such issues. No such leave has been sought or granted.

33. Some of the Appellant's grounds of appeal are inadmissible for reasons already set out. In the following considerations of each of them, we will indicate either their inadmissibility or otherwise address their merits. There are eleven identifiable claims, representing different grounds of appeal. The following are said by AAN to be grounds, individually and collectively, to overturn the impugned Judgment.

34. First, the Appellant says that the evidence relied on by the UNDT was so inconsistent and gap-ridden that it was insufficient to conclude to the relevant standard that he had sexually harassed the Complainants. The relevant standard of proof was that of clear and convincing evidence. Because of a combination of the Appellant's failure to recall the events in question and of the UNDT's decision (concurring in by the parties) not to hold an in-person hearing, the UNDT was required to assess whether that evidential standard had been met effectively by reference to the report of the OIAI investigation into the complaints against AAN.

35. The UNDT was correct that the embraces of VO1 and VO2 by the Appellant were sexual in nature. To embrace a woman dancing alone in the manner the Appellant did by suddenly, unexpectedly and tightly grasping her body forcibly into contact with his and failing or refusing to desist when it was apparent that this was resented by her, was an act of a sexual nature. When viewed in light of his actions at the same event in relation to VO2, which were also overtly and more seriously sexual, his intention in relation to both women was sexual as opposed to simply friendly or otherwise in the spirit of the event as he seems to contend. That the Appellant had to be physically and forcibly separated from his grasp on VO2 by another persons or others at the event who had observed his actions and her distress, reinforces the sexual nature of his behaviour.

36. From the accounts given by the Complainants and independent witnesses to these events and by the absence of any denial or credible and innocent explanation thereof by the Appellant when he was interviewed, the UNDT was well able to conclude as it did about his conduct to the clear and convincing standard. We reject this first general ground of appeal.

37. Second, AAN says there was insufficient evidence adduced to support the conclusion that he had violated his obligations under the United Nations Staff Regulations and Rules. The Appellant faces a significant difficulty in advancing this submission also. As he told the investigators, he had no or insufficient recollection of these events—we venture to suggest, probably as a consequence of his intoxication. He could therefore not contradict directly the accounts of the Complainants and other witnesses. He had to rely either on casting doubt upon the accuracy of their recollections, or relying on the observations of others who might have contradicted them. In relation to the first strategy of challenging the evidential accuracy of witnesses, the Appellant agreed that there would be no hearing of evidence by the UNDT required. He thus deprived himself of the opportunities of both presenting his own account of events and of cross-examining those witnesses, the conventional and probably most potentially successful method of impeaching their evidence. He was left with attacking the investigation report and calling witnesses himself to cast doubt on the Secretary-General's case. He effectively precluded this latter course by agreeing to the UNDT making its decision otherwise on the papers in circumstances in which he could have insisted that it hear him and his witnesses. So the Appellant was left with the difficult task of casting sufficient doubt on a comprehensive and well-structured investigative report and what strikes us as possibly his strongest ground of appeal, the investigators' alleged refusal to interview all the persons nominated by the Appellant.

38. The answer to that criticism of the OIAI's refusal to interview all the witnesses asked of it by AAN would have been to request the UNDT to hear from those persons whom the Appellant asserts had relevant exculpatory evidence but whom he says the investigators declined to interview.²¹ Had AAN wished to have relevant evidence from such witnesses, he could have asked the UNDT, at the pre-hearing case management discussion, to hear from

²¹ Article 16 of the UNDT's Rules of Procedure contemplates that a hearing before the UNDT will normally take place in relation to an appeal against a disciplinary measure, and Article 17 contemplates the receipt by the UNDT of oral evidence: cross-examination of witnesses by the parties and examination of witnesses by the UNDT. Indeed Article 17 provides that a party may call any witness the UNDT deems necessary, and the UNDT may require the personal appearance of a witness.

them.²² However, this course was not then taken by the Appellant.²³ There is nothing in this ground of appeal that persuades us that the UNDT erred in fact or law.

39. As to whether his conduct transgressed the Organisation's expectations of its employees, Staff Regulation 1.2 (Basic rights and obligations of staff) requires:

Core values

(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;

(b) 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;

...

40. Pursuant to Staff Rule 1.2 (Basic rights and obligations of staff), specific instances of prohibited conduct include:

...

(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.

...

41. UNICEF Executive Directive CF/EXD 2012-007 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority) provides the definition of sexual harassment and the prohibition of all its forms:

²² The UNDT's Order No. 70 (GVA/2022) on Case Management, issued on 1 July 2022 records that the parties, by their counsel, agreed that the case record was then complete and that there was no need for a hearing. A timetable was established for written closing submissions. We have also listened to the audio recording of the case management conference. For the avoidance of public scrutiny, the Judge suggested that AAN might wish to not expose himself to a hearing, although acknowledging that this could be held *in camera* and that the Judgment could be anonymised. The Judge, however, left it to the parties to address the UNDT on the issue as they did, counsel for AAN then accepting that he would not call *viva voce* evidence but would rely on the written evidence and submissions.

²³ See recent discussion of this issue in relation to disciplinary cases in *AAK v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1348, paras. 69–70, and *Appellant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1210, para. 57.

Section 1 (Definitions)

1.1. For the purpose of this directive, the following definitions apply:

...

(c) Sexual harassment is any unwelcome sexual advance, request for sexual favor, 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.

...

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 UN Staff Regulation 1.2(a) and UN Staff Rule 1.2 (e), every staff member has the right to be treated with dignity and respect, and to work in an environment free from harassment and abuse. Consequently, any form of discrimination, harassment, sexual harassment and abuse of authority is prohibited.

...

42. We find that the UNDT did not err in concluding that AAN's relevant conduct fell within these descriptions of unacceptable behaviour.

43. The third ground of appeal for overturning the impugned Judgement is that the disciplinary measure or sanction imposed was unreasonable, illegal and disproportionate in light of the circumstances of the case. We disagree. The sanction imposed fell several steps short of the most serious disciplinary outcome possible for United Nations staff members. We are satisfied that its imposition was within the reasonable range of sanctions open to the Secretary-General.

44. Even taking into account the Appellant's long record of service and the absence of similar disciplinary measures having been taken against him, we are satisfied that the UNDT was right that the sanction imposed was proportionate to the seriousness of the events which occurred, to the harm that was caused to the United Nations staff members affected, and also in view of the Appellant's personal circumstances. This ground of appeal must also fail.

45. Fourth, the Appellant says that mitigating circumstances were overlooked including that this was a "single day, drunken-state incident" and what are described as the Appellant's

“cultural inclinations which broadly accept hugging, touching and similar contact without sexual or other negative connotations”.

46. It is correct that these multiple events occurred on a single day (and even relatively closely together in time), and that there is no indication of a history thereof or similar interactions with other women. These mitigating circumstances had to be balanced by the Administration against a number of aggravating ones related to the same incidents. The Appellant was not only warned to leave the event but was at least once taken physically to his room and advised or told not to return to the party. We infer that this was a result not only of his obviously very inebriated state but also his attempted harassment of women there. It appears that this sensible advice or instruction was ignored by the Appellant. These were two separate incidents at the party, involving separate women. It must have been, or at least should have been, apparent to the Appellant after the first incident that his behaviour was neither invited nor appreciated and he should have ceased such activity, but he did not. The incident with VO2 was, in these circumstances, arguably more serious because it involved an overtly sexual act and required the physical intervention of another or others to separate her from AAN’s grasp. We are not persuaded that the Administration failed to balance these considerations, as it was obliged to, in determining a proportionate sanction for AAN’s conduct. Nor did the UNDT err in its conclusion that the Administration had done so.

47. Even accepting that there may have been different cultural factors affecting the Appellant’s behaviour, they must be balanced against the expectations for United Nations staff (under the relevant rules) and the perceptions of his actions by the Complainants. At the outset, we do not consider that the Appellant’s conduct towards the Complainants was so culturally acceptable that they should have endured what they clearly disliked and objected to. Their cultural expectations and notions of acceptable conduct were at least equally relevant and had to be respected by the Appellant. The Complainants and the Appellant were barely, if at all, known to each other—it is inherently unlikely that the Complainants could have perceived his actions as culturally appropriate.

48. Next, the Appellant was clearly not simply greeting the Complainants. One was dancing by herself and the other was working at the event. Until the Appellant embraced them, neither had expected any such interaction with him. Even if, as the Appellant now submits, “hugging” and “touching” of women by men but without sexual connotations, is culturally acceptable behaviour for him, these events went beyond that and his actions were clearly sexual in nature

and intent. In any event, the critical point is that his actions were not acceptable by or towards United Nations staff.

49. Finally, the Appellant's significant intoxication was most probably a significant driver of his actions rather than culturally appropriate collegiality. Although we note that the Appellant did not seek to justify his actions in this way when interviewed about them, we have no doubt that the Organisation took these factors into account both in setting its policies around sexual exploitation and abuse (including sexual harassment), and in considering the charges addressing his misconduct in this case.²⁴ Nor did the UNDT err in its review of the Administration's decision about the sanction imposed on AAN.

50. Considered in this balanced way, the Administration decided and the UNDT correctly confirmed, that the mitigating factors identified for the Appellant were outweighed significantly by the aggravating factors just described. We do not agree that the Administration erred, either in its assessment of the relevant rules and regulations addressing sexual misconduct, or in its assessment of the proportionality of the sanction in this regard. Nor did the UNDT err in its review of the sanctions imposed by the Administration. This ground of appeal likewise fails.

51. The fifth ground of appeal for overturning the impugned Judgement is the alleged overlooking of the further mitigating circumstance of the Appellant's long dedicated service to the Organisation with no disciplinary measures having been taken against him previously. While that is not to be underestimated, the converse of such a positive factor is that as a senior and experienced staff member, the Appellant should have known better than to have behaved as he did and to have known the likely consequences. It is relevant in this regard also that he had been removed from the venue and warned about his conduct by a colleague but, by returning and engaging in the behaviour he did, apparently ignored that sensible counsel. Although his better judgment may have been clouded by the alcohol he had consumed, the Appellant must ultimately be held responsible for what he did. Again, a balance is required to be struck between the Appellant's long record and seniority, and the nature of his behaviour and we do not agree that the Administration or the UNDT got that balance wrong.

²⁴ Section 1.3 of the Secretary-General's Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) makes it clear that the characteristics of harassment include that it is unwelcome and causative of offence.

52. Another mitigating circumstance argued to warrant overturning the impugned Judgement is described as “his family [implications]”. As we understand this submission, it is that the reputational stain from his dismissal in these circumstances may affect innocent members of his family. That, too, may be an unfortunate but inevitable consequence of his reprehensible behaviour but may be minimised significantly by his anonymisation in this and the UNDT Judgment. This ground of appeal does not avail the Appellant.

53. The seventh ground of appeal for overturning the impugned Judgement relates to one of the consequences of the sanctions imposed by the Organisation being, it is said, the Appellant’s listing on a register that “enables the Appellant [to] fail to get any further future job opportunities”. There was no information provided by the Appellant as to such a register and there is no reference to it in the UNDT’s Judgment. We assume that the Appellant may be referring to the following provision in ST/SGB/2019/8:

Section 1 (Definitions)

...

ClearCheck

1.17. ClearCheck is a centralized job candidate screening application. It captures information on sexual harassment offenders and alleged offenders that is provided by the entities of the United Nations System Chief Executives Board for Coordination.

54. While the inclusion in such a register and generally separation under the present circumstances may well make finding replacement employment difficult, this is a known consequence of sexual harassment and exploitation. If the Appellant’s consumption of alcohol and its consequences are a health issue, then steps can be taken by him to address this and prospective employers may be more sympathetic to him if this too is disclosed. This ground of appeal also fails.

55. Next, the Appellant claims school fees for his children, which he said were not paid during his period of administrative leave, leading to significant suffering by his children. This is a claim which was not before the UNDT and so is not admissible on this appeal. In any event, the claim could only be based on his success in challenging the lawfulness of his administrative leave.

56. Penultimately, the Appellant seeks, as a consequence of the overturning of the impugned Judgement, his reinstatement. This too is dependent upon the rescission of the

decision terminating his employment. Because of the Appellant's failure to upset the impugned Judgment, this relief is not available to him and does therefore not require us to consider it.

57. Finally, the Appellant seeks costs in the proceeding. This too depends on his success in his appeal but, even then, also on establishing the Respondent's manifest abuse of the process. Because of the decision we have reached, this relief is unavailable to the Appellant.

58. In the foregoing circumstances, the Appellant's grounds of appeal that are admissible on this appeal, do not avail him and the appeal must be dismissed.

Judgment

59. AAN's appeal is dismissed, and Judgment No. UNDT/2022/073 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 31st day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar