



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

Judgment No. 2023-UNAT-1400

Lanla Fatma Kamara-Joyner

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Leslie F. Forbang Judge Abdelmohsen Sheha
Case No.:	2022-1754
Date of Decision:	27 October 2023
Date of Publication:	7 December 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant: George Irving

Counsel for Respondent: Rupa Mitra

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Kamara-Joyner (the Appellant) challenged three administrative decisions of the Secretary-General (the Respondent), namely: i) the issuance of a written reprimand for alleged conflict of interest, ii) the removal of job functions due to the alleged conflict of interest, and ultimately, iii) the non-renewal of her fixed-term appointment (the contested decisions).
2. In Judgment No. UNDT/2022/089 (impugned Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed Ms. Kamara-Joyner's application.
3. For the reasons set forth herein, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. There is little dispute about the underlying facts of this case.
5. Prior to her separation from service, Ms. Kamara-Joyner was a Conflict Resolution Officer at the P-4 level with the Office of the United Nations Ombudsman and Mediation Services (UNOMS). She had worked in UNOMS since 2004.
6. Ms. Kamara-Joyner was also a founding member of the United Nations People of African Descent (UNPAD), which was established in April 2016 to “act as a platform for the Secretary-General to engage staff on conditions of service relating to people of African descent in the United Nations (...)”.¹ She served as President of UNPAD from its inception until her resignation on 26 August 2021.
7. In October 2019, a staff member requested UNOMS' assistance with a workplace concern and the matter was assigned to the Appellant as a Conflict Resolution Officer.
8. On 7 October 2019, Ms. Kamara-Joyner contacted the Assistant Secretary-General for Human Resources (ASG/HR) advocating for the reinstatement of that staff member who had been recently terminated and providing medical information about the staff member in relation to this request.² Ms. Kamara-Joyner states in the e-mail that she was requesting that office and the

¹ UNPAD Constitution, Article 2.1.

² Secretary-General's Annex 1 (7 October 2019 e-mail, Subject: Re termination of UN S/M (...) Request for your kind consideration).

Administration to review the staff member's case with the view of possible restoration to service and revisiting of earlier salary recovery.

9. This e-mail followed a previous e-mail to the ASG/HR dated 20 September 2019 wherein Ms. Kamara-Joyner requested a discussion with the Administration on UNPAD. On 8 October 2019 she sent other e-mails on this staff member's behalf advocating for his case.

10. This communication with the ASG/HR came to the attention of the Ombudsman, who spoke to Ms. Kamara-Joyner, and then followed-up with an e-mail regarding her concerns. The Ombudsman wrote, in part:³

In your capacity as UN PAD president you contacted several senior level UN official's [*sic*] on behalf of a UN employee.

- One of the senior official[s] indicated that they would contact me upon their return from official travel, which indicates that your request was associated with UNOMS.
- You have been previously instructed not to contact senior officials directly regarding cases. (...)

...

As you are well aware, we are the only designated neutrals within the Administration of Justice system. We operate on four basic principles, informality, independence, neutrality and confidentiality. We do not decide right and wrong and we do not advocate on behalf of any one individual employee. (...)Your role as president of UN PAD undermines the neutrality and independence of the office. It is confusing to management as well as potential visitors to the office. It is clearly a conflict of interest in this case and is a potential conflict of interest in future cases. As communicated to you verbally 22 October, it is my decision that you may not hold a leadership position within UN PAD.

11. On 4 November 2019, the Director of the Division of Healthcare Management and Occupational Safety and Health (DHMOSH) contacted the Ombudsman, notifying her that DHMOSH was engaged in discussions with Ms. Kamara-Joyner about the same former staff member. The Ombudsman advised that Ms. Kamara-Joyner was not representing the Office of the Ombudsman in this matter, and that she did not have the authority to be discussing private sensitive issues of the separated staff member.⁴

³ Secretary-General's Annex 2 (24 October 2019 e-mail, Subject: Participation in UN PAD).

⁴ Secretary-General's Annex 3 (5 November 2019 e-mail, Subject: Re: [] and Lanla).

12. On 6 December 2019, Ms. Kamara-Joyner verbally requested the Ombudsman to allow her time to work on UNPAD to get it recognized by the Secretary-General, following which, she would resign from her position. The Ombudsman said that this was not possible.⁵

13. From 1 April 2020 to 31 March 2021, Ms. Kamara-Joyner was on a temporary assignment as a Legal Advisor with the Economic Commission for Africa (ECA). During this period, she maintained her position as President of UNPAD.⁶

14. Shortly before Ms. Kamara-Joyner's return to UNOMS, the Ombudsman wrote to the Ethics Office seeking an opinion on whether Ms. Kamara-Joyner's role as President of UNPAD represented a conflict of interest with her duties as a Conflict Resolution Officer in UNOMS. The Ombudsman provided the e-mail communications from October 2019 regarding Ms. Kamara-Joyner's intervention on behalf of the separated staff member.

15. On 12 March 2021, the Director of the Ethics Office provided their views. First, the Director noted that they did not have any information regarding the status of UNPAD, including whether it was established as a staff-related group or whether it was established under Staff Regulation 8.1. Nonetheless, the Director opined:⁷

From an ethics perspective and in view of the above, we note that engagement as President of UNPAD (despite having laudable goals) while serving as a conflict resolution officer at UNOMS gives rise to a situation of a conflict of interest. More specifically, the official duty of a UNOMS staff member to remain independent and neutral would conflict with leading and representing UNPAD and its staff special interest, though commendable. From the applicable framework cited above, we note that it is for the Head of Entity to assess whether a particular act or omission raises a potential conflict of interest. Staff are obliged to disclose even possible conflicts and to follow instructions on how to resolve the situation, including to avoid and remove the conflict or the circumstances that make it a possible conflict. A highly visible conflict of interest situation could undermine the image of UNOMS as an independent and neutral office.

16. In mid-April 2021, Ms. Kamara-Joyner had discussions with the Deputy of UNOMS about her work plan. Before these were concluded, the Ombudsman wrote to her and reiterated that she had determined that there was “a conflict of interest between the work of a Conflict Resolution

⁵ Impugned Judgment, para. 10.

⁶ *Ibid.*, para. 11.

⁷ Secretary-General's Annex 4 (12 March 2021 e-mail, Subject: RE: Participation in UN PAD). Emphasis in original.

Officer in UNOMS and the neutrality and/or appearance of neutrality it requires and [her] position as President of UNPAD”. The Ombudsman asked Ms. Kamara-Joyner to tell her whether she was still serving as President of UNPAD.⁸

17. On 28 April 2021, the Ombudsman sent an e-mail following up on her verbal conversation with Ms. Kamara-Joyner, confirming her understanding that Ms. Kamara-Joyner was still the President of UNPAD and would not step down. The Ombudsman further stated:⁹

If I am wrong or misunderstood please let me know in writing by COB Friday, April 30th. In the absence of any clarity on your part, in writing, I will have to proceed to take the administrative actions that I deem appropriate.

18. On 30 April 2021, Ms. Kamara-Joyner sent an e-mail to all of UNOMS in the Secretariat about a project that she had discussed with the Deputy of UNOMS earlier in the month (the “Feedback Methodology” project). The Ombudsman immediately responded to all recipients and advised: “Please ignore this email and take no action”.¹⁰

19. That same day, the Ombudsman told Ms. Kamara-Joyner that because her status with UNPAD was unclear, they could not complete any discussions about work assignments. She asked Ms. Kamara-Joyner to “cease communicating with UNOMS staff around a project that has not been assigned to [her]”.¹¹

20. On 12 May 2021, the Ombudsman sent an official letter to Ms. Kamara-Joyner, reviewing the history of their exchanges regarding her continuation as President of UNPAD while being a Conflict Resolution Officer in UNOMS. She stated that her letter “follows [their] recent exchange on the matter, including the comments [Ms. Kamara-Joyner] provided on the matter on the April 30, 2021 [*sic*]”.¹² The Ombudsman noted that Ms. Kamara-Joyner’s response had failed to address the issue of her presidency of UNPAD directly,¹³ and the Ombudsman concluded that she remained in the post.

⁸ Secretary-General’s Annex 5 (23 April 2021 e-mail, Subject: Status with UNPAD).

⁹ Secretary-General’s Annex 6 (28 April 2021 e-mail, Subject: Follow up April 27th conversation).

¹⁰ Appellant’s Annex 6 (30 April 2021 e-mail, Subject: Re: Feedback Methodology).

¹¹ Appellant’s Annex 7 (30 April 2021 e-mail, Subject: Work assignment).

¹² Appellant’s Annex 9 (12 May 2021 letter from Ombudsman to Ms. Kamara).

¹³ These comments from the Appellant are not in the record, as noted by the UNDT, see impugned Judgment, para. 50.

21. The Ombudsman stated that due to the conflict of interest between these roles, Ms. Kamara-Joyner had not been given any assignments as a Conflict Resolution Officer and would not receive any until the conflict no longer existed. The Ombudsman concluded that: “given your continued engagement with UNPAD as its president, I have decided to reprimand you for the continuation of the conflict of interest”. This communication was placed in Ms. Kamara-Joyner’s Official Status File.

22. On 16 June 2021, a Human Resources (HR) Officer in the Department of Operational Support (DOS) advised Ms. Kamara-Joyner that the Ombudsman had decided not to renew her fixed-term appointment, which was expiring on 31 August 2021. Ms. Kamara-Joyner replied, including by copy to the Secretary-General’s office, that she was surprised to learn of this decision from DOS, and not from the Ombudsman directly. She stated: “If this decision is by any chance shown to be related to my involvement in UNPAD, I would hereby call upon the Secretary-[G]eneral to abide by the assurances that (...) all such retaliatory actions against staff for speaking out against racism will be swiftly addressed”.¹⁴

23. The HR Officer told Ms. Kamara-Joyner that the Ombudsman’s “decision not to renew [her] appointment is based on the ongoing conflict of interest with [her] role as President of UNPAD, which is in conflict with [her] position as a conflict resolution officer requiring neutrality as per the mandate of the Office of the Ombudsman. (...) Due to this conflict of interest, [the Ombudsman] indicated that she has not been able to assign [Ms. Kamara-Joyner] any work related to conflict resolution, the role for which [she was] recruited.”¹⁵

24. On 29 June 2021, Ms. Kamara-Joyner requested management evaluation of the decisions “to deny her the opportunity to perform her assigned work and the issuance of an unwarranted letter of reprimand”.

25. On 16 August 2021, Ms. Kamara-Joyner requested management evaluation of the decision not to renew her fixed-term appointment.

¹⁴ Appellant’s Annex 10 (16 June 2021 e-mail, Subject: Fwd: Notification of the Ombudsman: Non-renewal of your Fixed-Term Appointment).

¹⁵ *Ibid.*

26. On 20 August 2021, Ms. Kamara-Joyner filed an application of suspension of action with the Dispute Tribunal with respect to the non-renewal decision. By Order No. 78 (NY/2021), the UNDT rejected the application for suspension of action.

27. In that Order, the UNDT also rejected the Secretary-General's argument that Ms. Kamara-Joyner's challenge to the non-renewal decision was not receivable. The Secretary-General had maintained that as the contested non-renewal decision was communicated on 16 June 2021, the 60-day statutory period for filing a request for management evaluation expired on 15 August 2021, and thus her submission, filed on 16 August 2021, was one day late. The UNDT held that as 15 August 2021 was a Sunday, and Ms. Kamara-Joyner filed her request on the next working day, the request was timely, and the application was receivable.¹⁶

28. On 3 September 2021, the Chief of the Management Evaluation Unit (MEU) informed Ms. Kamara-Joyner that her request for management evaluation of the non-renewal decision was time-barred and, as such, not receivable.¹⁷

29. On the same day, the Under-Secretary-General for Management Strategy, Policy and Compliance informed Ms. Kamara-Joyner that she had decided to endorse the recommendation of the MEU to uphold the Ombudsman's decision to issue a written reprimand and to not assign her work pending resolution of the conflict of interest.¹⁸

30. On 22 November 2021, Ms. Kamara-Joyner filed her application challenging the three contested decisions (the reprimand, the removal of work, and the non-renewal) with the UNDT.

The Impugned Judgment

31. Reviewing the challenge to the written reprimand first, the UNDT found that there was a factual basis for the imposition of this measure. The UNDT found that the evidence showed that Ms. Kamara-Joyner's role at UNPAD undermined the neutrality and independence of UNOMS, particularly her exchanges with respect to the separated staff member in October 2019. In these

¹⁶ *Kamara-Joyner v. Secretary-General of the United Nations*, Case No. UNDT/NY/2021/035, Order No. 78 (NY/2021), paras. 25-26.

¹⁷ Impugned Judgment, para. 25.

¹⁸ *Ibid.*, para. 26.

circumstances, the UNDT found that the Ombudsman's decision to issue the written reprimand was lawful.¹⁹

32. The UNDT rejected the claim that the reprimand was tainted by the fact that it was linked to the "secretive solicitation" of advice from the Ethics Office, about which Ms. Kamara-Joyner was not aware. The UNDT held that the Ombudsman was within her rights to seek the advice of the Ethics Office, and in any event, Ms. Kamara-Joyner was obliged to comply with the Ombudsman's directions and instructions.²⁰

33. The UNDT also dismissed Ms. Kamara-Joyner's argument that her due process rights were not respected, finding that she had been given an opportunity to clarify whether she was still the President of UNPAD by 30 April 2021, and that if she did not do so, the Ombudsman had notified her that she would take administrative action. Ms. Kamara-Joyner had not responded, thus her claim failed.²¹

34. On the denial of work, the UNDT found that the Ombudsman's actions were reasonable in order to avoid compromising the work of UNOMS due to a perceived conflict of interest. Ms. Kamara-Joyner argued that the Deputy of UNOMS had given her the Feedback Methodology project to mitigate the conflict of interest. The UNDT disagreed that this was the intent of the Deputy, but in any event, the Ombudsman wanted full disassociation from UNPAD. Moreover, the UNDT found that the Ombudsman was not required to create responsibilities for Ms. Kamara-Joyner that fell outside of her terms of reference as a Conflict Resolution Officer in UNOMS.²²

35. At the request of the Secretary-General, the UNDT revisited the issue of the receivability of the challenge to the non-renewal decision and held that the application challenging the non-renewal decision was not receivable pursuant to Staff Rule 11 and Article 8 of the UNDT Statute.²³

36. Although Ms. Kamara-Joyner argued that this issue was *res judicata* as the UNDT found the application receivable in Order No. 78 (NY/2021), the UNDT was unpersuaded, holding that

¹⁹ *Ibid.*, paras. 45-46, and 55.

²⁰ *Ibid.*, paras. 56 and 58.

²¹ *Ibid.*, para. 62.

²² *Ibid.*, para. 67.

²³ *Ibid.*, paras. 72 and 75.

the Order on suspension of action was an interim measure, not a final judgment, and thus the principle of *res judicata* did not apply.²⁴

Submissions

The Appellant's Appeal

37. Ms. Kamara-Joyner appeals the impugned Judgment and requests rescission of the contested decision, reinstatement in service, and compensation for damages in the amount of three years' net base salary.

38. She alleges that for the first two and a half years in the Organization she served as President of UNPAD and performed her duties in UNOMS with the "tacit approval" of the former Ombudsman, and no perceived conflict was suggested until October 2019.

39. She further submits that the Ombudsman's objections to her activities in UNPAD are based on an inaccurate misinterpretation that advocacy is barred by her role and states that this contravenes Section 3.11 of the Terms of Reference for UNOMS found in Secretary-General's bulletin ST/SGB/2016/7 (Terms of Reference for the Office of the United Nations Ombudsman and Mediation Services). She contends that the procedural requirement to consult with her about the alleged conflict was overlooked. She also protests that the Ombudsman never told her that her continued employment was conditional on resigning from UNPAD.

40. Ms. Kamara-Joyner submits that the UNDT erred in fact by accepting the Secretary-General's assertion that she had requested sensitive medical reports from the Director of Medical Services in connection with another staff member.

41. Ms. Kamara-Joyner contends that when the Ombudsman approached the Ethics Office about the alleged conflict of interest, the Ombudsman did not share relevant documents on UNPAD with them, Ms. Kamara-Joyner was not consulted about the issue, nor did she receive the Ethics Office opinion until the Dispute Tribunal proceedings over her request for suspension of action. She says that the UNDT erred in law by finding that conflict of interest

²⁴ *Ibid.*, paras. 76-77.

matters were decided by line managers and that the role of the Ethics Office was merely confirmatory.

42. Ms. Kamara-Joyner argues that the UNDT erred by overlooking the responsibility of the Organization to mitigate any perceived conflict of interest pursuant to Staff Regulation 1.2(m). She avers that the Ethics Office was never informed of the steps that Ms. Kamara-Joyner had taken to mitigate any possible conflicts.

43. Ms. Kamara-Joyner submits that the UNAT should review the proportionality of the penalties imposed. She points to the fact that as early as December 2019, the Ombudsman intended to treat this matter as potential misconduct, which in turn suggests that the decision on non-renewal was a disguised disciplinary measure.

44. She avers that the goals of “balance, necessity and suitability” which are cornerstones of the proportionality test for a sanction, are not met here, where there was a lack of transparency in the handling of her activities in UNPAD, a denial of due process in allowing her to address allegations of unsatisfactory conduct, and there was a disguised disciplinary decision to separate her from service.

45. With respect to the ruling on the receivability of the application contesting the non-renewal decision, she argues that there is no promulgated guidance as to how to interpret Staff Rule 1.2(c). The Rule does not give guidance as to how it is to be interpreted if the request cannot be received on the calendar day in question.

The Secretary-General’s Answer

46. The Secretary-General submits that the UNDT made no errors of law or fact in the impugned Judgment, and it should be upheld.

47. The Secretary-General submits that the UNDT properly interpreted the Terms of Reference for UNOMS. The Secretary-General asserts that the UNDT correctly found that UNOMS was guided in its work by four core principles of independence, confidentiality, neutrality and informality. Further, the UNDT correctly found that Ms. Kamara-Joyner had been assigned a case as a UNOMS Conflict Resolution Officer, but instead intervened with senior officials as President of UNPAD.

48. The Secretary-General submits that Ms. Kamara-Joyner is raising a new argument about Section 3.11 of the Terms of Reference for UNOMS that was not presented to the UNDT and should be disregarded. In any event, the Secretary-General points out that Ms. Kamara-Joyner did not provide the full quotation, which is:

An ombudsman shall advocate fairness and equitably administered processes and shall not advocate on behalf of any party.

49. The Secretary-General submits that the UNDT did note that Ms. Kamara-Joyner's role as President of UNPAD was an interest entirely compatible with the goals of the United Nations and the Secretary-General's Task Force on Racism; however, the UNDT correctly found that Ms. Kamara-Joyner was advocating not generally for racial equality, but specifically on behalf of another staff member, while she was assigned to that staff member's case as a Conflict Resolution Officer for UNOMS. The UNDT found this to have undermined the neutrality and independence of UNOMS, and Ms. Kamara-Joyner has not contradicted those findings in her appeal.

50. The Secretary-General submits that there is no requirement under Staff Regulation 1.2(m) that the Organization is responsible for mitigating conflicts of interest presented by Ms. Kamara-Joyner's choice to continue in her role as President of UNPAD. The UNDT correctly held that it was Ms. Kamara-Joyner's obligation under Staff Regulation 1.2(m) and Staff Rule 1.2(q) to eliminate the conflict of interest, and given that she did not, the UNDT properly found it reasonable that the Ombudsman had to take Ms. Kamara-Joyner off her assignments.

51. The Secretary-General disputes Ms. Kamara-Joyner's argument that the Ombudsman did not have the authority to issue the letter of reprimand, and that the UNDT erred in not realizing that this was the role of the Ethics Office. The UNDT specifically cited the Ethics Office's own opinion in which the Director stated that it was up to the Head of the Entity to assess whether a particular act raises a possible conflict.

52. The Secretary-General submits that the UNDT correctly found that the issuance of the written reprimand was proportionate to the fault committed. In reaching this finding, the UNDT correctly took into account the multiple exchanges between the Ombudsman and Ms. Kamara-Joyner on the issue and Ms. Kamara-Joyner's long-standing refusal to step down as President of UNPAD.

53. The Secretary-General avers that the UNDT correctly determined that Ms. Kamara-Joyner's challenge to the non-renewal decision was not receivable. The Secretary-General objects to Ms. Kamara-Joyner's verbatim reproduction of her arguments included in the submissions on receivability before the UNDT. Ms. Kamara-Joyner made no effort to couch her arguments as errors of the UNDT and failed to demonstrate that the impugned Judgment was defective.

54. The Secretary-General submits that Ms. Kamara-Joyner is making additional substantive arguments that she did not make before the UNDT, including that the non-renewal decision was a "disguised disciplinary measure", but this goes to the merits of the decision which should not be considered given that there was no error in the finding on receivability.

55. For all of the foregoing reasons, the Secretary-General requests that the UNAT dismiss the appeal in its entirety and affirm the impugned Judgment.

Considerations

56. The Appeals Tribunal is presented with three issues in the appeal:

- 1) Did the UNDT err in finding that the written reprimand was lawful?
- 2) Did the UNDT err in finding it reasonable that the Ombudsman removed assignments from Ms. Kamara-Joyner ?
- 3) Did UNDT err in finding the non-renewal decision not receivable?

57. In each instance, there is a review of the Secretary-General's discretion. The Appeals Tribunal has consistently held that the Secretary-General's discretion is not unfettered as the Secretary-General has an obligation to act in good faith and comply with applicable laws and jurisprudence. When judging the validity of that exercise of discretion, as in the present case, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. It may consider whether relevant matters were ignored and irrelevant matters considered and examine whether the decision is absurd or perverse.²⁵ It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General

²⁵ *Yasin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-915, para. 43.

or the Administration amongst the various courses of action open to it nor to substitute its own decision for that of the Administration.²⁶

Lawfulness of the Written Reprimand

58. On 12 May 2021, the Ombudsman issued, as an administrative measure, a written reprimand to Ms. Kamara-Joyner for a conflict of interest between her position as a Conflict Resolution Officer in UNOMS and her position as President of UNPAD.

59. The Dispute Tribunal held that the facts on the written reprimand, namely the existence of the conflict of interest, were properly established on a balance of probabilities and that it was proportionate and enacted according to due process.

60. The Secretary-General has discretion to impose a disciplinary or an administrative measure on a staff member who has failed to comply with their obligations under the United Nations Charter, the Staff Regulations and Staff Rules, or relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant.²⁷

61. Staff Rule 10.2(b) permits the imposition of administrative measures that shall not be considered disciplinary measures. The purpose of Staff Rule 10.2(b) is to permit remedial or corrective action, not discipline.

62. The Appeals Tribunal has previously held that:²⁸

[A]lthough the reprimand is not a disciplinary measure but an administrative one, because of its adverse impact on the concerned staff member's career, it must be warranted on the basis of reliable facts, established to the requisite standard of proof, namely that of 'preponderance of evidence', and be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals, which otherwise would be compromised.

63. In the 12 May 2021 written reprimand, the Ombudsman stated that the reprimand was issued because Ms. Kamara-Joyner's role as President of UNPAD and her position as a Conflict Resolution Officer in UNOMS were incompatible. The letter stated that the neutrality required

²⁶ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

²⁷ *Yasin* Judgment, *op. cit.*, para. 42.

²⁸ *Ibid.*, para. 47.

from UNOMS officers conflicted with Ms. Kamara-Joyner's advocacy for a staff member as UNPAD President.

64. Staff Regulation 1.2(m) defines conflict of interest as:²⁹

...A conflict of interest occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. 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;

65. As already discussed, Ms. Kamara-Joyner is the founding member of UNPAD, which is an *ad hoc* special interest group created in 2016 by staff members of the United Nations Secretariat and the United Nations Funds and Programmes and Specialized Agencies with the stated goal of identifying, examining, and resolving issues relating to conditions of work pertaining to staff members of African descent in the United Nations.

66. In October 2019, Ms. Kamara-Joyner sent at least two e-mails advocating for a staff member who had requested UNOMS' assistance. That staff member was assigned to Ms. Kamara-Joyner as the responsible Conflict Resolution Officer. Ms. Kamara-Joyner sent an e-mail requesting that this staff member be reinstated and providing information on his medical and psychological condition. The Dispute Tribunal held that instead of handling the case in her UNOMS capacity, she handled the case as President of UNPAD. In her application to UNDT, she acknowledged that she handled the matter as President of UNPAD.

67. However, a review of UNPAD's Constitution indicates that advocating for a staff member is not part of UNPAD's scope of activities enumerated therein nor is it part of the role and responsibilities of its President.³⁰

²⁹ Secretary-General's bulletin, ST/SGB/2018/1/Rev. 2 (Staff Regulations and Rules of the United Nations).

³⁰ Article 2.2 of the UNPAD Constitution sets out its aims and objectives, namely the development of a system-wide strategy of Racial Parity, making recommendations to the Secretary-General, calling for periodic reports, promoting inclusion and diversity in the organization, consulting on issues of race and ethnicity, promoting data collection, assisting in development of benchmarks and internal UN training and policies advancing racial equality, conducting surveys on race matters, and developing proposals for

68. Ms. Kamara-Joyner submits that she was “advocating for fairness and equitably administered processes” according to the mandate of UNOMS in ST/SGB/2016/7. Although this is a new argument not made before the UNDT, it is without merit because it is a misinterpretation of UNOMS’ mandate and contrary to her role and duties as a Conflict Resolution Officer in UNOMS. It is also contrary to her statement in her UNDT application that she was handling the matter as President of UNPAD. This contradiction underscores her confusion of her roles in UNPAD and UNOMS.

69. Section 3.10 of ST/SGB/2016/7 stipulates that UNOMS is “a designated neutral party, [and] shall remain impartial and have no personal interest or stake in the outcome of an issue. An ombudsman shall consider the legitimate concerns and interests of all individuals affected by the matter under consideration.” Section 3.11 further provides that: “An ombudsman shall advocate fairness and equitably administered processes and shall not advocate on behalf of any party.” Section 3.11 thus could not be clearer that it specifically prohibits the Ombudsman and their staff from advocating on behalf of an individual party.

70. A review of the October 2019 e-mails sent by Ms. Kamara-Joyner amounts to advocacy for an individual staff member, as she is making arguments and requests on his behalf as an advocate or representative.

71. Therefore, whether she acted as President of UNPAD or as a Conflict Resolution Officer in UNOMS, her advocacy on behalf of the staff member in October 2019 was outside of her roles and duties in both capacities.

72. Ms. Kamara-Joyner says that she had the “tacit approval” of the former Ombudsman as she had been President of UNPAD for her first two and half years at UNOMS. Also, she argues that there is an obligation on UNOMS to mitigate the conflict of interest. This, again, is a misinterpretation of the relevant Staff Rules and Regulations.

the allocation of budgetary resources for racial inclusion agendas. There is no mention of advocacy on behalf of individuals.

Appendix A of the UNPAD Constitution delineates the roles and responsibilities of the President, including: “presiding over the affairs of UNPAD, serving as a liaison to the Secretary-General, enforcing UNPAD’s Constitution, presiding over UNPAD meetings, deciding points of order and procedure, having votes, ensuring officers perform their duties, issue annual reports of UNPAD, ensure funds are authorized, act as spokesperson for UNPAD, and set up committees and taskforces. Again, there is no mention of the President acting as an advocate on behalf of individuals.

73. Staff Rule 1.2(q), which has since been superseded,³¹ provides that:³²

A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant *shall disclose* any such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation.

74. Also, Staff Rule 1.2(s) states that staff members shall not engage in any outside occupation or employment, whether remunerated or not, without the approval of the Secretary-General.

75. Pursuant to Staff Regulation 1.2(m) the Administration's mitigation of a staff member's actual or potential conflict of interest is dependent on the staff member's disclosure and subject to a resolution in favour of the interests of the Organization. The provisions require that the staff member has the obligation to disclose actual or perceived conflicts of interest from outside activities to the Secretary General who then can authorize and approve these outside activities. This cannot occur through "tacit" or "implicit" approval.

76. Secretary-General's bulletin ST/SGB/2016/9 (Status, basic rights and duties of United Nations staff members) provides the following commentary on Staff Regulation 1.2(m):³³

The regulation clarifies that actual as well as potential conflicts must be avoided, disclosed and resolved. Staff are obliged to *disclose even possible conflicts and to follow instructions on how to resolve the situation*, including to avoid and remove the conflict or the circumstances that make it a possible conflict. Failure by a staff member

³¹ For information, the current provision on conflict of interest is now in Staff Rule 1.2(p) of Secretary-General's bulletin ST/SGB/2023/1 (Staff Regulations and Staff Rules, including provisional Staff Rules, of the United Nations). Staff Rule 1.2(p) states: "Staff members shall, except as otherwise authorized by the Secretary-General, formally recuse themselves from any involvement in a matter which might give rise to an actual or possible conflict of interest as set out in staff regulation 1.2 (m) and take any other action as may be deemed necessary pending the consideration by the Organization of any mitigation or remediation measures. Staff members shall implement the mitigation or remediation prescribed by the Organization to resolve that conflict of interest situation."

³² Secretary-General's bulletin ST/SGB/2018/1/Rev. 2 (emphasis added).

³³ The commentary provides guidance on interpreting the Staff Regulations in order to help staff members understand each provision by placing it into context. The Commentary is not part of the Staff Regulations and Rules so is not a legal norm, nor does it have the legal force of a rule. It is, however, an official guide published by the Secretary-General for the use of management and staff on the scope and application of the Staff Regulations and Rules.

to disclose an actual or possible conflict can seriously disrupt operations of the Organization and pose detriment to the Organization's integrity and reputation as a whole, and may lead to the imposition of disciplinary measures against the staff member.³⁴

77. Ms. Kamara-Joyner did not disclose her activities with UNPAD and did not expressly seek the approval of the current Ombudsman as she was obligated to. Further, she was obliged to follow the instructions of UNOMS on how to avoid and remove the conflict. In an e-mail of 24 October 2019 and further verbal and e-mail exchanges, the Ombudsman advised her of the existence of a conflict and requested her to step down from the presidency of UNPAD. Ms. Kamara-Joyner did not do so. Therefore, she violated Staff Rule 1.2(q) and Section 3.11 of ST/SGB/2016/9, and was subject to either a disciplinary or an administrative measure.

78. Ms. Kamara-Joyner argues that she was not consulted on and did not receive the Ethics Office's opinion. In March 2021 the Ethics Office, at the Ombudsman's request provided an opinion that Ms. Kamara-Joyner's role as President of UNPAD gave risk to a situation of conflict of interest.

79. Ms. Kamara-Joyner provides no procedural requirement that the Ethics Office opinion be provided to her or that she be consulted. Further, the UNDT properly found that the written reprimand was not based on the Ethics Office opinion, and that it was within the rights of the Ombudsman to seek advice. As stated in ST/SGB/2016/9, it will be for the Secretary-General and heads of departments to assess whether a particular act or omission raises a potential conflict of interest situation which the Ombudsman did after seeking advice from the Ethics Office.³⁵

80. Staff Rule 10.2(c) does require that the staff member be provided with an opportunity to comment on the facts and circumstances prior to the issuance of a reprimand. Ms. Kamara-Joyner was provided that opportunity. In the 24 October 2019 e-mail of the Ombudsman, there is a reference to a conversation she had with Ms. Kamara-Joyner on 22 October 2019 on the facts and circumstances, as well as "several conversations" subsequently.³⁶

³⁴ Emphasis added.

³⁵ Regulation 1.2(m), Commentary 1.

³⁶ Appellant's Annex 9 (12 May 2021 letter from Ombudsman to Ms. Kamara-Joyner).

81. As a result, we find that the Dispute Tribunal did not err when it found that the facts underlying the reprimand were established by a balance of probabilities.

82. Next, Ms. Kamara-Joyner requests that the Appeals Tribunal review the proportionality of the administrative measure.

83. The Appeals Tribunal has said that: “If there is a rational connection between the purpose of Staff Rule 10.2(b), the purpose of the decision to impose the administrative measures, the information upon which the decision is based and the reasons for the decision, then the exercise of discretion will pass the test of rationality and will be lawful.”³⁷

84. The UNDT correctly judged the validity of the Secretary-General’s exercise of discretion in imposing the administrative measure which was within the range of appropriate options particularly as Ms. Kamara-Joyner specifically failed to follow the Ombudsman’s instruction to resign as President of UNPAD. There is a rational connection between the purpose of the corrective action and the information on which the decision was based.

85. Therefore, we find that the Dispute Tribunal did not err when it held that the written reprimand was proportionate.

The denial of work

86. Ms. Kamara-Joyner went on a temporary assignment on 1 April 2020 after being advised of concerns regarding the conflict of interest. After her return to UNOMS on 31 March 2021, she was not provided with a work plan until her status with UNPAD was rectified. She failed to rectify and clarify her role with UNPAD. Therefore, due to the continued conflict of interest, UNOMS did not provide her with any assignments.

87. We agree with the Dispute Tribunal that it was reasonable for Ms. Kamara-Joyner to not be assigned work during her continued involvement in UNPAD and the continuation of the actual or potential conflict of interest. UNOMS and its staff must act with neutrality and confidentiality. A staff member of UNOMS who cannot uphold these requirements due to a conflict of interest cannot receive confidential information from individual clients of UNOMS.

³⁷ *Leila Gharagozloo Pakkala v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1268, para. 34.

88. Staff Regulation 1.2(c) provides: “Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any activities or offices of the United Nations.” Accordingly, we opined in *Lauritzen* that:³⁸

Staff Regulation 1.2(c) thus gives the Secretary-General broad discretionary powers when it comes to organization of work. It is well established that, notwithstanding the width of the discretion conferred by this provision, it is not unfettered and can be challenged on the basis that the decision is arbitrary or taken in violation of mandatory procedures or based on improper motives or bad faith.

89. Given the actual or perceived conflict of interest with her involvement in UNPAD, and Ms. Kamara-Joyner’s failure to adequately address it despite being given an opportunity to do so, UNOMS correctly determined that it could not rely on Ms. Kamara-Joyner to carry out her duties as a Conflict Resolution Officer and therefore, the only option available at the time was to not assign her any further work.

Receivability of the Non-Renewal Decision

90. Finally, we address the Dispute Tribunal’s conclusion that Ms. Kamara-Joyner’s application challenging the non-renewal decision was not receivable.

91. Article 8(1)(c) of the UNDT Statute provides that an application to UNDT is receivable if an applicant has previously submitted the contested administrative decision for management evaluation. Article 8(3) further stipulates that the UNDT shall not suspend or waive the deadlines for management evaluation.

92. Staff Rule 11.2(c) provides that a request for a management evaluation shall not be receivable by the Secretary-General unless it is “sent within 60 calendar days” from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

93. It is not disputed that Ms. Kamara-Joyner was informed of the decision not to renew her appointment on 16 June 2021. She submitted her management evaluation on 16 August 2021. The

³⁸ *Lauritzen v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-282, para. 28.

MEU rejected her request as it was submitted outside of the prescribed 60 calendar days which ended on 15 August 2021, a Sunday.

94. We find that the Dispute Tribunal did not err in determining that her application was not receivable for failure to file a timely management evaluation.

95. Ms. Kamara-Joyner attempts to rely on the UNAT's practice, which accords with the UNDT's practice, that time limits are extended to the next working day of the Registry when the last day of the time period is not a working day.

96. This argument must fail. The Appeals Tribunal has consistently held that the Dispute Tribunal has no authority to suspend or waive the deadlines for management evaluation and the management evaluation time limits must be strictly enforced.³⁹ As noted *supra*, only the Secretary-General may extend the deadline for management evaluation under prescribed circumstances. The Dispute Tribunal does not have this discretion. Rather, Article 8(3) is strict that the Dispute Tribunal cannot suspend or waive these deadlines for any reason.

97. The Appeals Tribunal's views on this issue may be traced to our Judgment in *Costa*,⁴⁰ where we adopted the reasoning of the learned UNDT Judge in the underlying case that: "There is no express power in either the Statute or the Staff Rules for the Tribunal to extend or waive any deadlines or other time constraints set by the Staff Rules. To the contrary, Article 8.3 contains an express prohibition in relation to management evaluation deadlines."⁴¹

98. We likewise agree with the reasoning therein that: "The words of a statutory provision are to be interpreted according to their plain meaning and, where necessary, with reference to the context in which the words are found. The words of Article 8.3 of the [UNDT] Statute are clear on their face."⁴²

99. A plain and ordinary reading of the language of Article 8(3) is that the prohibition on suspending or waiving deadlines for management evaluation precludes extending a deadline

³⁹ See, e.g., *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38; *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335, para. 19.

⁴⁰ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036, para. 17 ("approv[ing] the UNDT Judgment No. UNDT/2009/051 as the law on this issue").

⁴¹ *Costa v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/051, para. 26.

⁴² *Ibid.*, para. 21.

that falls on a holiday or weekend. There is no authority to allow a staff member the “extra” day to submit a request for management evaluation on a Monday as this has the effect of “suspending” the deadline over the weekend, contrary to Article 8(3).

100. In addition, Staff Rule 11.2(c) provides that a request for a management evaluation shall not be receivable by the Secretary-General unless it is “*sent* within 60 calendar days” from the date on which the staff member received notification of the administrative decision to be contested.⁴³

101. A plain-and-ordinary meaning interpretation of this language is that the Rule refers to the “sending” of the request and not the Administration “receiving” the request. Therefore, the fact that the deadline falls on a day that is a holiday or a weekend, which may mean that the Administration does not receive the request until the next working day, does not prevent the staff member from engaging in the act of “sending” a request for management evaluation, for example, by an e-mail that can be sent on any day of the week.

102. Therefore, regardless of the Tribunals’ respective practices on calculating timelines for other matters, there must be strict enforcement of the deadlines for management evaluation.

103. Finally, Ms. Kamara-Joyner argues that the issue of receivability was *res judicata* as the UNDT found the application receivable in Order No. 78 (NY/2021). However, in the impugned Judgment, the UNDT reconsidered the question of receivability based on additional pleadings and held the application on this matter was not receivable. As this is a jurisdictional, threshold issue which was reconsidered by the UNDT, the principle of *res judicata* cannot apply.⁴⁴ We agree.

104. As a result, her request for management evaluation of the non-renewal decision was beyond the 60-day deadline and therefore, her application to the Dispute Tribunal contesting this decision was not receivable.

⁴³ Emphasis added.

⁴⁴ *Ibid.*, paras. 76-77.

Judgment

105. The Appellant's appeal is dismissed, and Judgment No. UNDT/2022/089 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Forbang

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 7th day of December 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar