



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Jeffrey C. Dahl

Counsel for Respondent:

Nicola Caon, DAS/ALD/OHR, UN Secretariat

Albert Angeles, DAS/ALD/OHR/UN Secretariat

Introduction

1. By application registered under Case No. UNDT/GVA/2020/036, the Applicant, a former staff member of the United Nations Office on Drugs and Crime (“UNODC”), contested the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and with 25 per cent of the termination indemnity.
2. By Judgment *Applicant* UNDT/2022/071 of 28 July 2022, the Tribunal adjudicated the matter.
3. By Judgment *AAO 2023-UNAT-1361*, the United Nations Appeals Tribunal (“UNAT”, or “the Appeals Tribunal”) reversed the above UNDT Judgment and remanded the case for determination by a different Judge.
4. On 31 July 2023, the remanded case, registered under Case No. UNDT/GVA/2020/036/R1, was assigned to the undersigned Judge.
5. For the reasons stated below, the Tribunal finds that the contested decision is lawful and rejects the application.

The remand

6. According to UNAT, there were several methodological flaws that rendered the impugned Judgment unsustainable, including, *inter alia*, an overreliance on hearsay evidence that was mostly inadmissible and on the investigative report from the Office of Internal Oversight Services (“OIOS”) without proper examination-in-chief and cross-examination.
7. As a result, the matter was remanded to UNDT for a fresh trial before another judge, pursuant to art. 2.6 of the Appeals Tribunal Statute.

Facts

8. Prior to his separation, the Applicant held a fixed-term appointment expiring on 31 December 2021 and served as Social Affairs Officer at the P-3 level in the Data Development and Dissemination Unit (“DDDU”), UNODC, Vienna. V01 was

an intern between July and December 2015 at DDDU, reporting directly to the Applicant. In October 2016, V01 returned to work as an individual contractor in DDDU. The Applicant was not her first reporting officer, but she worked directly with him as the Applicant managed projects assigned to her.

9. On 20 July 2018, the Investigations Division of OIOS received a report of sexual harassment, harassment and abuse of authority implicating the Applicant. It was reported that the Applicant behaved inappropriately towards V01.

10. OIOS interviewed V01 and several witnesses, including the Applicant, who was interviewed on 4 and 5 February 2019.

11. On 28 June 2019, OIOS concluded its investigation of the matter, finding that the Applicant sexually harassed V01 and abused his authority vis-à-vis V01 by sending her an email on 8 November 2017, in which he suggested that they share a room on the last night of an official trip to South Korea, and harassed V01 and abused his authority vis-à-vis V01 by:

- a. Controlling her movements and creating a hostile working environment after she refused his advances and reproached him for his conduct towards her;
- b. Making offensive comments on International Women's Day of 2017;
- c. Humiliating V01 and being rude to her in the presence of other colleagues during team meetings;
- d. Causing V01 embarrassment by making comments about her age during a dinner in June 2018;
- e. Speaking to V01 using a loud tone, especially when she had done something wrong; and
- f. Raising his voice towards V01 during a discussion on 5 July 2018, and by being harsh and unfriendly with her during a subsequent meeting.

12. On 24 September 2019, the Director of the Administrative Law Division, Office of Human Resources, issued a memorandum entitled “allegations of misconduct”. The Applicant was requested to provide any written statements or explanations he might wish to give in response to the allegations of misconduct.

13. On 29 November 2019, the Applicant responded to the allegations.

14. By letter from the Assistant Secretary-General for Human Resources, dated 19 May 2020, the Under-Secretary General for Management Strategy, Policy and Compliance (“USG/DMSPC”) concluded that the investigation of OIOS established by clear and convincing evidence that the Applicant had made unwelcome sexual advances towards V01 and, from January to July 2018, created an intimidating and hostile environment for her. The USG/DMSPC concluded that the Applicant’s actions constituted serious misconduct in violation of staff regulation 1.2(a), staff rule 1.2(f) and secs. 2.1 and 3.2 of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and, as a result, the Applicant was separated from service, with compensation in lieu of notice and with 25 per cent of the termination indemnity, pursuant to staff rule 10.2(a)(viii).

Procedural background

15. On 3 August 2020, the Applicant filed an application before this Tribunal contesting the above-mentioned decision. His application was registered under Case No. UNDT/GVA/2020/036 (Applicant).

16. Between 13 and 15 June 2022, the Tribunal held a hearing on the merits limited in scope to hear witnesses exclusively related to the matter of the use of prior conduct evidence and moral damages. The Applicant and four witnesses provided testimony.

17. On 28 July 2022, the UNDT issued its Judgment *Applicant* UNDT/2022/071, which the Applicant subsequently appealed.

18. On 25 July 2023, UNAT published its Judgment *AAO* 2023-UNAT-1361 remanding the case to the UNDT for a determination by a different Judge.

19. By Order No. 113 (GVA/2023) of 30 August 2023, the Tribunal invited the parties to attend a case management discussion (“CMD”), held virtually via Microsoft Teams on 11 September 2023. During the CMD, the parties discussed the case and agreed on a way to move forward. *Inter alia*, it was decided that a new hearing would be appropriate, that the Tribunal could rely on the evidence already on record, including the testimonial evidence adduced during the first hearing concerning the Applicant’s testimony, and the testimony of witnesses about the issue of prior conduct evidence and moral damages.¹

20. By Order No. 119 (GVA/2023) of 12 September 2023, the Tribunal summarized the outcome of the CMD and instructed:

- a. The Respondent to confirm the availability of witnesses to attend a hearing on the merits; and
- b. The parties to inform the Tribunal about the result of their informal discussions and whether they were amenable to engage in mediation.

21. On 29 September 2023, in response to the Tribunal’s encouragement to explore amicable settlement, the parties filed a joint motion informing that they were engaged in informal discussions but requesting that the proceedings not be postponed in the meantime.

22. In addition, the Respondent responded to Order No. 119 (GVA/2023) informing, *inter alia*, that V01 was willing to testify under the following three conditions: (i) the hearing be held *in camera*; (ii) her name not be mentioned in the

¹ The Tribunal is aware of UNAT’s instruction on *AAO* 2023-UNAT-1361, para. 73, that “the agreement on how to proceed should be reflected in a formal pre-trial minute”. However, the practice at the Dispute Tribunal is only to issue Orders and Judgments. The agreement on how to proceed thus was made during the CMD on 11 September 2023, whose recording is part of the case record, and its summary is reflected in Order No. 119 (GVA/2023) of 12 September 2023.

Judgment; and (iii) the Applicant not be present during her testimony to preserve her mental health and not cause her further emotional distress.

23. By Order No. 130 (GVA/2023) of 2 October 2023, the Tribunal instructed the Applicant to comment on V01's conditions to testify.

24. On 5 October 2023, the Applicant responded to Order No. 130 (GVA/2023) and agreed to V01's conditions.

25. By Order No. 136 (GVA/2023) of 9 October 2023, the Tribunal scheduled a hearing on the merits, which was held virtually on 13, 23 and 25 October 2023. At the hearing, the Tribunal heard from V01 and six other witnesses. The Applicant and four other witnesses who had already provided testimony during the first hearing were not called to testify.

26. By Order No. 140 (GVA/2023) of 26 October 2023, the Tribunal ordered the parties to file their respective closing submission, which they both did on 9 November 2023.

Consideration

Preliminary matter 1: anonymity

27. As provided by Judgment *Applicant* UNDT/2022/071, anonymity was exceptionally granted in this case for the purpose of protecting V01 who otherwise would have been easily identified by the factual circumstances surrounding the case and described in the proceedings.

28. The award for anonymity was not part of the appeal against Judgment *Applicant* UNDT/2022/071, nor part of the Appeals Tribunal considerations on Judgment *AAO* 2023-UNAT-1361.

29. Accordingly, the Tribunal decides to maintain the anonymity in the present judgment in line with the reasoning provided for in paras. 23 to 28 of Judgment *Applicant* UNDT/2022/071.

Preliminary matter 2: the use of prior conduct evidence

30. By Judgment *AAO* 2023-UNAT-1361, the Appeals Tribunal determined that Judgment *Applicant* UNDT/2022/071 be reversed due to substantial methodological flaws that rendered it impossible to be reviewed, and remanded the matter for a fresh trial by another Judge.

31. Acknowledging the instructions from the Appeals Tribunal to avoid reliance on hearsay evidence, this Tribunal held a new hearing on the merits to examine the evidence from V01 and other relevant witnesses on the facts under dispute. Since the Applicant provided testimony during the first hearing on 13 June 2022, both parties agreed that he did not need to testify again. The same applies for the other witnesses who provided testimony between 13 and 15 June 2022. All these sworn testimonies under oath are part of the record and will be relied upon in the ensuing analysis.

32. Notwithstanding, since the issue with the use of prior conduct evidence was not particularly subject to the remand, the Tribunal finds that it was sufficiently and properly adjudicated by the previous Judge in paras. 29 to 54 of *Applicant* UNDT/2022/071, deciding thus to maintain it as it was.

33. In summary, there is no evidence that the facts that were taken into consideration to substantiate the investigator's finding of "prior conduct" were properly investigated up to the threshold of clear and convincing evidence. The alleged other victims never filed a complaint, and an investigation was thus never introduced.

34. Indeed, the evidence on record indicates that the conclusions drawn by the Administration that the Applicant had a "pattern of behaviour" relied on unchallenged and unverified accounts.

35. Therefore, the credibility assessment made by the Administration via the use of prior conduct evidence in this case cannot stand and the alleged prior conduct will not be considered as evidence by this Tribunal in its judicial review of the facts of the present case.

Scope of judicial review in disciplinary cases

36. Pursuant to the Appeals Tribunal’s jurisprudence, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing evidence requires more than a preponderance of evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable (*Molari* 2011-UNAT-164, para. 2).

37. The Appeals Tribunal has also guided that in imposing a disciplinary sanction, decision-makers enjoy a wide discretionary area of judgment. Due deference should be given to the discretion of the decision-maker. In *Cheikh Thiare* 2021-UNAT-1167, the Appeals Tribunal further added:

33. [...] the Administration is the best suited actor to select an adequate sanction able to fulfil the following general requirements, which include *inter alia* that the sanction imposed is within the limits stated by the respective norms, and second, the sanction must be sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity.

38. It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him, nor it is the role of the Tribunal to substitute its own decision for that of the Secretary-General.

39. According to the amended art. 9.4 of the Tribunal’s Statute, in hearing an application challenging an administrative decision imposing a disciplinary measure, the role of the Dispute Tribunal is to pass judgment on the application by conducting a judicial review. In conducting a judicial review, the Dispute Tribunal “shall consider the record assembled by the Secretary-General and may admit other evidence” to assess:

- a. Whether the facts on which the disciplinary measure was based have been established by evidence;

- b. Whether the established facts legally amount to misconduct;
- c. Whether the Applicant's due process rights were observed; and
- d. Whether the disciplinary measure imposed was proportionate to the offence.

40. It bears mentioning that, at the time of the application and of judgment *AAO 2023-UNAT-1361*, the 22 December 2023 amendment to art. 9.4 had not yet been introduced in the Dispute Tribunal's Statute. The role of the Tribunal was regulated by the jurisprudence of the Appeals Tribunal (*Molari*, para. 1).

41. However, the "*tempus regit actum*" principle to procedural law allows for the proceedings to be governed by the procedural law in force at the time of their institution, unless expressly provided otherwise. Thus, applying the amended version of art. 9.4 of the Statute to proceedings introduced thereafter does not have a retroactive effect. Indeed, this is how this Tribunal (see *Rodriguez Viquez* UNDT/2016/030, para. 195; *Landgraf* UNDT/2016/056, para. 216) and UNAT (*Gueben et al.* 2016-UNAT-692, para. 50) have handled amendments to its Statute in the past.

42. Accordingly, the ensuing analysis will be based on the amended version of art.9.4 to the Dispute Tribunal's Statute.

Scope of the case: the allegations against the Applicant

43. As per the sanction letter, the Applicant is alleged to have:
- a. Made unwelcome advances of a sexual nature towards V01 in November and December 2017, in connection with and during travels for a mission to South Korea; and
 - b. Created an intimidating and hostile work environment for V01 between January and July 2018 by closely and excessively monitoring her work and movements in the office, treating her rudely in team meetings, making

demeaning remarks to or about her in work contexts, and raising his voice at her in public settings in the workplace.

The witnesses' testimonies

44. Between 13 and 15 June 2022, the Applicant and four witnesses (Mr. G.N., Ms. F.U., Ms. A.A., and Ms. M.N) were examined and cross-examined during the first virtual hearing before the previous Judge.

45. During the second hearing held virtually on 13, 23 and 25 October 2023 before the undersigned Judge, the Tribunal heard from V01 and six other witnesses (Mr. E.B., Ms. M.T., Ms. A.S., Ms. S.K., Mr. A.K., and Mr. U.R.).

46. During the investigation, OIOS interviewed these same witnesses, and their interview transcript is part of the case record.

47. The testimony of these witnesses, in its most relevant parts, will be examined as follows.

The Applicant

48. The Applicant first explained to the Tribunal his job as a Research Officer at UNODC. He indicated that due to his very specific and narrow field of expertise, he has few job prospects outside the UN system.

49. The Applicant also shared his view on how the investigation and disciplinary process were conducted. According to him, OIOS never fully explained the nature and the details of V01's allegations against him. This made him very unprepared for the interview in which he was questioned for details of things that allegedly had happened three years before and of which he had no specific recollection.

50. The Applicant further alleged that the investigators were biased by asking him several leading questions. This made him feel uncomfortable and led him to say things that were not accurate. As an example, the Applicant referred to the question about whether he decided to take V01 on the South Korea mission for any other reason than professional. In his view, this question was "leading" because he did not have the authority to decide which staff members go on a mission.

51. The Applicant was asked about his allegation that the investigators did not present him with all the incidents of workplace harassment he was being accused of. For example, he was not asked about being overcontrolling or excessively monitoring V01 in the workplace. If he had been asked about these, he would have indicated that his behaviour was part of “normal work procedures”. Checking V01’s screens, for instance, was a normal part of collaborating on data and statistics analysis.

52. In this context, the Judge asked the Applicant to clarify his position *vis-à-vis* the above, since witnesses heard during the investigation stated that he was constantly controlling the hours in which V01 came to work, including the time she arrived and left for lunch. The Judge asked if the Applicant could explain how his colleagues had this perception that he was micromanaging V01. The Applicant did not acknowledge having acted in such a way with V01. He admitted to perhaps asking about her whereabouts in the context of work if they had a meeting together or needed to meet with a deadline.

53. The Applicant further stated that there were other witnesses in the investigation who indicated not having observed such excessive monitoring from him.

54. Furthermore, the Judge asked the Applicant to clarify who had the authority to decide on the extension of V01’s consultancy contract, and if he was consulted in this respect. The Applicant answered that such decision was the responsibility of their supervisor, Mr. E.B. Sometimes Mr. E.B. would consult with the Applicant, other times he would not, but the decision was solely up to him.

55. The Applicant was asked if he had any role over V01’s workdays and how was the hierarchy between him, as a P-3, and V01, as a consultant. The Applicant stated that the only supervisory role he had over V01 was limited to specific outputs and tasks, nothing related to time management. He also noted that they had a flat hierarchy within the team with respect to day-to-day work, but that it was Mr. E.B., the Chief of the Section, who would make decisions.

56. Specifically on his professional relationship with V01, the Applicant was asked about recommending V01 for a paid consultancy in Thailand during her contract break in the summer of 2018. He clarified that he helped V01 based on his personal connections, not based on any professional authority. On further probing, the Applicant accepted he may have some degree of influence on V01 due to his connections and ability to help her move forward in her career.

57. With respect to his involvement in helping V01 get a consultancy position in Thailand, the Applicant was asked if he continued to support her after their disagreement on 5 July 2018, to which he answered in the negative.

58. Concerning the allegation of shouting at V01, the Applicant denied having behaved in such a manner, and further testified that he treated V01 professionally and in the same way as every other colleague. When confronted with the testimony of Mr. E.B., who confirmed having heard the “shouting” from several offices away, the Applicant admitted to having raised his voice on that occasion, but not to “shouting”.

59. When confronted with his position that V01 lied or fabricated the allegations against him, and the lack of evidence thereof during the investigation and disciplinary process, the Applicant stated that he was not able to provide any evidence because, by the time he was interviewed, he did not know the details of the allegations against him.

60. Throughout his written submissions, the Applicant denied having insisted on sharing an Airbnb accommodation with V01 in connection with travels for the South Korea mission, and claims that he only suggested such an arrangement in the first place to help her financially.

61. The Applicant further denied having declared romantic feelings for V01 during the outbound flight to South Korea, or telling her that he did not believe in the Organization’s principles forbidding romantic relationships between supervisors and supervisees.

62. It is the Applicant's position that V01 misinterpreted their interactions because she was paranoid since she had faced a serious instance of sexual harassment not long before. It is also his position that he never harassed V01 in the workplace. While he admits to some disagreements, the Applicant claims that he treated V01 in the same way as every other colleague, and that their interaction, including disagreements, were all strictly work-related.

Mr. G.N.

63. Mr. G.N. works as a consultant for international organizations. He met the Applicant in 2007 at work, and they since have become friends.

64. The witness shared that the Applicant told him about the disciplinary process and sanction. He attested to the Applicant's state of mind at the time of receiving the sanction as seriously upset and depressive. The witness also shared that the Applicant was very frustrated for not being able to find another job in his field of expertise.

65. Furthermore, the witness confirmed that he has never met or spoken with V01. He is not aware of the evidence on record, and does not know anything specific about the facts of the case. He confirmed having no first-hand knowledge about what happened during the plane ride to South Korea, or concerning the workplace interactions between the Applicant and V01.

66. The evidence of Mr. G.N. attests to the impact the contested disciplinary sanction has had on the Applicant's personal life and livelihood.

Ms. F.U.

67. Ms. F.U. is currently a staff member at the Statistics Section of UNODC. She joined the Organization as a consultant in November 2019, when she first met the Applicant as her supervisor.

68. The witness gave evidence about a mission she went with the Applicant to Nigeria that lasted four or five days. She said that the travel arrangements for the trip were organised by each staff member with support from the travel agency, that

the hotel was chosen from a list of pre-approved hotels given by the Organization, and that there was no extra time for leisure.

69. She further stated that the Applicant never made any suggestion of a sexual nature during or before the trip, nor anything inappropriate that made her feel uncomfortable. They had a very good professional and personal relationship during the time they worked together.

70. Ms. F.U. further testified that she has never met V01, and only interacted with her on a few occasions over Microsoft Teams for work-related projects. She did not know the Applicant before they went on mission together. They had a purely professional relationship at the time, but now they are friends.

71. The witness also affirmed that the Applicant never suggested sharing hotel accommodations with her, including on Airbnb, that he never insisted on sitting together on plane rides, that the Applicant never texted her while she was on contract breaks, that their conversations were mainly about work, and that she never went alone with him on afterwork activities.

Ms. A.A.

72. Ms. A.A. worked at UNODC between 2003 and 2010 as a Research Officer. She met the Applicant in 2009 when she recruited him to work for the Organization. During that time, they got to know each other and established a friendly relationship. Between 2010 and 2020, they kept a professional contact and, in 2020, they met for coffee to talk about the disciplinary measure and sanction.

73. Ms. A.A. testified that the Applicant was very affected and “not acting like himself” when he told her about the case. He needed her help to find work, since his work experience and expertise, as well as hers, are very narrow and specific. She attested to the difficulty in finding work outside the UN system.

74. The witness further shared that she does not know V01 nor anything about this case. She did not discuss with the Applicant the circumstances that led to his separation from the Organization. Their discussion was mainly about the Applicant’s situation and finding solutions moving forward. She said the Applicant

was in a turmoil of feelings, concerned about his family, health, reputation, and career.

75. The witness did not offer anything with respect to the facts under dispute, serving exclusively to assist the Applicant in his claim for moral damages.

Ms. M.N.

76. Ms. M.N. works as a Crime Statistics Specialist at UNDP since 2020. Before her current position, she worked as a consultant for UNODC between 2017 and 2019. The Applicant was her supervisor for projects in Kenya and Uganda, but she was not based with him in Vienna.

77. The witness shared that she went on two missions with the Applicant. They stayed in hotels setup by the host organizations, and travelled to and from mission separately. They went sightseeing for leisure between trips, for which arrangements had been made by the Applicant.

78. The witness stated that the Applicant never made her feel uncomfortable in preparation or attendance of these missions, and that he never behaved in any inappropriate manner with her. They shared meals together, went out for drinks and social activities, shared personal conversations about family and traveling. Nothing of a sexual nature was ever suggested by the Applicant.

79. In cross-examination, the witness further affirmed that the Applicant never suggested the two of them share accommodations, never commented about her age, never talked about his divorce, ex-wife or girlfriend, never mentioned sensitive and personal issues within his family, never asked her on a date or unintentionally touched her in any way. When asked about contacts with the Applicant during contract breaks, she said that the Applicant indeed texted her, but that was mostly about his kids and trips.

Mr. E.B.

80. Mr. E.B. worked at the research branch of UNODC since January 2009, from which he retired in September 2022. Before retiring, he acted as the Chief of the DDDU (“Chief of Unit”), and as supervisor/first reporting officer (“FRO”) for both the Applicant and V01.

81. The witness was asked about the relationship between the Applicant and V01 in the office. According to him, the Applicant and V01 worked together almost on a daily basis. They generally worked well and collaboratively together, but sometimes they differed in the way they thought about or approached the work.

82. Asked about lines 37-45 of his OIOS interview transcript, the witness shared that the Applicant and V01 had some work-related tensions due to differences in opinion in how to develop some aspects of their work, plus the fact that the Applicant was often repetitive in his disagreements.

83. Asked about the South Korea mission in December 2017, Mr. E.B. stated that he initially suggested V01 to go on the mission.

84. Asked about the incident of 5 July 2018, Mr. E.B. recalled that he was working with V01 on a project that required inputs from the Applicant (i.e., the “Corruptions Manual”). At some point, he and V01 decided on a revision of the workload and Mr. E.B. asked additional inputs from the Applicant by email. He also arranged a meeting between the three to go over the changes. The Applicant had a bad reaction to this, refused to join, and subsequently reacted badly to V01.

85. When asked to clarify the meaning of a “bad reaction”, Mr. E.B. said that when the Applicant did not show up to the meeting, V01 went to his office to talk about the issue. It was at this moment that Mr. E.B. could hear the Applicant speaking very loudly to V01 from “four or five doors away”. The witness also said that it was an unusual behaviour at their Unit.

86. Asked about lines 284-294 of his OIOS interview transcript, Mr. E.B. confirmed the veracity of the recollection therein, *i.e.*, that when the Applicant eventually came to the meeting with him and V01, he was acting harshly and not at all friendly towards her.

87. After the aforementioned meeting, Mr. E.B. asked V01 if something else was happening between her and the Applicant. At first, V01 did not tell him anything, but upon further inquiry, she told him what had happened during and after the mission to South Korea in December 2017, *i.e.*, the Applicant's inappropriate behaviour during the mission and at the workplace.

88. Subsequently to the conversation with V01, Mr. E.B. spoke to his supervisor and with a representative of Human Resources. He then spoke again with V01 and asked her if she wanted to file a formal complaint against the Applicant to have things handled professionally. V01 took some time to decide whether she wanted to report it, which she eventually did.

89. When asked about V01's emotional state when disclosing the above to him, Mr. E.B. stated that she was highly affected. She continued working for his team after the incident of 5 July 2018, but mostly on a remote basis as per her preference.

90. Upon cross-examination, Mr. E.B. was first asked about V01's emotional state during the period when she reported the Applicant and whether she was affected by another case. Mr. E.B. provided that V01 was visibly sad about all that was happening but did not go into any more details.

91. Mr. E.B. further confirmed that the tensions between the Applicant and V01 during that period concerned work-related issues, and that they all worked in a high-pressure environment.

92. When asked about the Applicant's work style, particularly if he was "blunt", "straightforward" and if he "spoke his mind", Mr. E.B. answered that the Applicant "spoke his mind" just as everyone else in the team, and that he was often not open to new ways of working.

93. When asked to clarify his supervisor's role vis-à-vis the Applicant and V01, Mr. E.B. replied that he did not recall who was the formal supervisor of V01. Regarding the day-to-day work, he supervised some projects/tasks where both the Applicant and V01 were working together. Sometimes he would supervise V01 directly, and other times it was the Applicant who would supervise V01's work.

94. When asked about V01's role in the Corruptions Manual, Mr. E.B. clarified that V01 was tasked with making sure the project was done under his overall supervision. In this context, Mr. E.B. sent the Applicant an email asking him to help V01 with some inputs. This prompted a change in the project that the Applicant disagreed with and triggered the incident of 5 July 2018.

95. When asked if it was reasonable for the Applicant to be concerned and upset about the aforementioned change, Mr. E.B. said that it was normal to have different views and disagreements over the way to move forward with tasks and projects, but that the Applicant's reaction was very unusual. In fact, Mr. E.B. stated that he had never witnessed a similar reaction to a work disagreement as the one the Applicant had at the 5 July 2018 incident.

96. When asked if he ever observed a behaviour from the Applicant towards V01 that could be interpreted as sexual harassment, Mr. E.B. responded in the negative.

97. When asked if the Applicant had any say in V01's rate as a consultant/individual contractor, Mr. E.B. stated that he would often ask colleagues, including the Applicant, for their opinions regarding the contract of external contractors, but ultimately the input that he gave to HR was his own.

98. When asked about the incident in Peru, Mr. E.B. did not recall any comment by the Applicant concerning V01's age.

V01

99. V01 attended the hearing before the undersigned Judge on 23 October 2023.

100. V01 started to work for the DDDU, UNODC, as an intern in 2015. She returned for the first time as a consultant in October 2016. For the subsequent years, she worked as a full-time research consultant in the same branch, with a few contract breaks in between. The Chief of the Unit during this period was Mr. E.B. While the Applicant was her direct supervisor during the internship, she was not sure afterwards who acted as her first and second reporting officers, whether Mr. E.B or the Applicant.

101. V01 testified that she worked very closely with the Applicant and Mr. E.B. as a team for the duration of her consultancy contracts. Prior to December 2017, she had a very good working relationship with the Applicant. She looked up to him and respected him a lot. They did not have any personal or outside-of-work relationship.

102. Concerning her contract break in the summer of 2017, V01 shared that she was engaged in a short-term contract elsewhere between July and the end of October 2017. It was during this time that the Applicant first started engaging with her outside of work with personal and friendly messages on WhatsApp. At the time, V01 did not think anything bad of these messages. On the contrary, she was grateful that she had a supervisor checking in on her and her work.

103. In November 2017, V01 returned to DDDU. Previously though, the Applicant had asked her on WhatsApp if she would be interested in going with him on the capacity-building training mission to South Korea in December 2017, which she felt honoured and accepted.

104. Concerning the additional night of the mission in South Korea, V01 did not recall who had come up with the idea. She said that it was already decided by the time she came back from her contract break, and that she was happy to be given the opportunity to go on a mission and spend an extra day there. V01 was not involved with the travel preparations for the mission except for the hotel booking for the additional night. V01 further shared that the Applicant suggested spending the additional day in the mountains, which she refused and decided to go to Seoul instead.

105. In this context, V01 stated that she and the Applicant shared multiple in-person conversations about accommodations for this additional day. The Applicant initially suggested they share a room, and then suggested an Airbnb accommodation. The in-person conversations were not witnessed by any third parties, but part of the exchanges were over emails and are included in the case record.

106. When asked about her allegation that the Applicant offered to pay for the accommodation so she could save on costs, V01 provided that she never had expressed to the Applicant any financial concern that could have prompted such conversation.

107. Furthermore, V01 confirmed the accuracy of the unofficial translation done by OIOS of the emails between her and the Applicant dated 8 and 21 November 2017. It is possible to note from these exchanges that the Applicant first asked V01 to look for accommodation and prices. She informed him there were many available hotel options and asked for a price range so she “[could] reserve 2 rooms”. The Applicant then responded: “Maybe you’ll find something on Airbnb where you have 2 rooms or separate beds or something like that”.

108. Subsequently, on 21 November 2017, V01 told the Applicant: “By the way, I am still sorting out accommodation for the last night in Seoul. I have made a reservation, but I’m still waiting for a better offer! I will keep you updated”. To which the Applicant replied, “What about Airbnb?”.

109. According to V01, these two email exchanges were not the only time when the Applicant suggested they share an accommodation. Rather, it was the only documentary evidence she could find to support her complaint because most of their conversations on the topic were face-to-face and on an ongoing basis.

110. V01 further testified that she felt very uncomfortable and insecure with the situation, to the point where she sought advice from a colleague, Ms. M.T., on how to handle the situation.

111. When asked about her reaction during those in-person conversations, V01 stated that she was trying to avoid direct confrontation so she only told the Applicant that a hotel would be better and that she would book two separate rooms.

112. Concerning the flight to South Korea, V01 testified that the Applicant shared with her very personal and intense topics about his family, particularly his childhood, divorce and children. She listened attentively and engaged with him, even though she was trying to focus on work, and felt uncomfortable due to the intensity of the topic. According to V01, the Applicant also told her that she was the only one at UNODC with whom he had shared these personal conversations.

113. V01 further shared that at some point during the second leg of the journey, the Applicant had drunk too much and told her the following:

I wanted to tell you that maybe you realise that I started messaging you over WhatsApp during summer while you were in Nairobi. I need to be honest with you, but I have been starting to have feelings for you...

I don't care about the UN Sexual Harassment training that we had or integrity training...

I hope you know what is expected of [you] on this trip.

114. In response, V01 immediately left her seat and went to the restroom, where she stayed for a long time. She felt that there was some sexual connotation in the Applicant's statements. Upon return, V01 said that the Applicant had fallen asleep, and she did not remember engaging in any more conversations with him at that point. Just before landing, though, the Applicant told her explicitly not to tell anyone about the personal things he shared, and about his feelings for her.

115. On the first leg of the return flight from South Korea, V01 saw the Applicant asking the air stewardess to check if it was possible to change seats so that he and V01 could seat together. Upon noticing that, V01 asked the same air stewardess to not change their seats, and they travelled separately.

116. At the end of the second leg of the return trip, V01 recalled that she woke up the Applicant to have a conversation about what had happened. She asked him for feedback on the mission, and whether he had invited her on the mission for any “personal gain or agenda” or if she was there for professional reasons. He told her that he took her on the mission for both professional and personal reasons. In response, she told him that his behaviour was inappropriate, and that “this will never ever happen between us”.

117. After landing in Vienna, V01 called her personal friend, Ms. A.S., and told her what had happened with the Applicant during the mission.

118. When asked if she had another conversation with the Applicant about the mission, V01 replied that when she returned to work after her contract break, she and the Applicant met for lunch at the cafeteria. She noticed the Applicant was acting very unaware of any issues in discussing the matter with her. She then explicitly told him that his behaviour had been very inappropriate, particularly given that he knew the mental and physical toll the other case had taken on her, and that what he did also impacted her well-being, to which the Applicant reacted surprised.

119. V01 shared that, at first, she did not want to report the Applicant’s conduct due to fear of retaliation and of losing her consultancy contract with the Organization. She was very disappointed at how things had been handled in the other case, and thus was fearful that nothing good would come from reporting the Applicant.

120. V01 further shared that working with the Applicant was awful following the aforementioned conversation at the cafeteria. The Applicant started playing some “psychological power games” with her, by which she meant that the Applicant sometimes abused his authority over her, but other times was overly nice. He would act passively-aggressively, controlling and monitoring, while also suddenly nice and praiseful. She felt that the Applicant’s unpredictable behaviour was very hard to handle.

121. In this context, V01 testified that the Applicant was often monitoring her whereabouts in the office. He would question her whenever she was not at her desk, and she was put in an awkward position of constantly having to explain where she was. The Applicant also excessively monitored her work. He would place extra pressure on her by constantly asking about deliverables and deadlines, even though she had never missed one before.

122. When asked if the so-called “extra pressure” could be a result of work-related stress and deadlines that the Applicant himself might have had to meet, V01 disagreed with the possibility. According to her, there was nothing special or particular in their work during that period that could justify so much extra pressure for so long.

123. Furthermore, V01 alleged that the Applicant was rude to her in team meetings. He would raise his voice, cut her off, act dismissive of her, and make her look foolish in front of others. It was after one of these team meetings that she had her first breakdown in the office and confided in her colleague, Mr. U.R.

124. According to V01, Mr. U.R. noticed the Applicant’s aggressive conduct towards her in team meetings, and asked her directly what was happening between the two. At that moment, she told Mr. U.R. what had happened since the mission to South Korea. Mr. U.R. showed her immediate support, strongly recommended her to report the matter to OIOS, and gave her printed copies of relevant documents.

125. Concerning the incident in Peru, V01 shared that the Applicant knew how uncomfortable she was at people knowing and judging her by her age, yet he made demeaning remarks at the dinner table about 25-year olds, proceeding to tell the people there that she was 25. It was V01’s impression that the Applicant was intentionally “out to get her”.

126. V01 was also asked if the Applicant had ever behaved similarly with her in the past (i.e., prior to the South Korea mission), which she denied. V01 further stated that “it was only after this mission [to South Korea] that [the Applicant] started treating [her] the way that he was during those five to six months”. It is

V01's view that the Applicant only started treating her poorly because she rejected him previously.

127. When asked if there could have been a different explanation for the Applicant's behaviour, like additional stress with deadlines or him generally being confrontational or a demanding supervisor, V01 denied it. She had never been treated that way by the Applicant before, neither as an intern or a consultant. She also never witnessed the Applicant treating others in a similar manner. Thus, she could not think of any possible explanation for his behaviour.

128. Regarding the incident of 5 July 2018, V01 recounted the following. Mr. E.B. had asked V01 to ask the Applicant to draft some additional inputs for the Corruption Manual that they were working on, besides the ones that the Applicant had already agreed on. V01 did not feel comfortable doing that, so Mr. E.B. took upon himself to ask the Applicant by email. It was in the context of this email that the Applicant felt "extremely aggravated" and thought V01 had overstepped him.

129. The Applicant allegedly sought V01 at her office and shouted at her, accusing her of overstepping him and not allowing her to explain the situation, which V01 saw as a misunderstanding. After this interaction, V01 followed the Applicant into his office trying to reason with him. They had a meeting scheduled that day with Mr. E.B. to discuss the Manual, but the Applicant refused to come. He only accepted later after a request from Mr. E.B.

130. It was after this meeting that Mr. E.B. asked V01 directly what was happening between her and the Applicant. After some insistence, she told Mr. E.B. what had occurred during and since the mission to South Korea, albeit in not too much detail. V01 initially asked Mr. E.B. not to engage the Head of the Research and Transanalysis Branch at the time because she felt already uncomfortable given the other case. Mr. E.B. insisted that he needed to tell the Head of the Branch, and it was in a meeting between the three that V01 was encouraged to report the matter to OIOS.

131. After July 2018, V01 continued working at the DDDU mostly on a remote basis, and the Unit arranged for V01 not to engage directly with the Applicant anymore. V01 further shared that she left the Organization soon after to take care of her mental and physical health, which she characterized as a “heart-breaking” decision.

132. On cross-examination, V01 was asked to clarify some details of her account.

133. Concerning the Corruption Manual, V01 was asked if she had the lead role and was assigned to finish the project. V01 replied that the project was not part of her terms of reference and that she was not specialized in corruption, but due to some other problems in the section, she was tasked with completing it. She was not given a project manager role though.

134. V01 was asked if there was a possible motive for the Applicant feeling upset about the email from Mr. E.B. since therein was a request for inputs that he had not agreed on. V01 confirmed that the Applicant had not agreed on some of the inputs, but only because they had not come up in discussions yet. Thus, in her view, there was no reason for the Applicant to believe she had overstepped him or “went behind his back”.

135. Still on the 5 July 2018 incident, V01 also shared that Mr. U.R. was present at their office when the Applicant allegedly shouted at her. Mr. U.R., however, did not recall any “shouting” (see his testimony at para. 187).

136. Concerning the allegation of sexual harassment, V01 was asked if the Applicant had ever requested her “to have sex with him”, if he had engaged in any kind of sexual behaviour, or if he had done anything that she interpreted as a type of sexual request (apart from the incident on the flight to South Korea). V01 denied.

137. V01 also denied the Applicant making any type of advances during the mission in South Korea, but further explained that while they spent all day together, there was always other people with them.

138. Concerning the flight to South Korea, V01 confirmed that she also shared personal information with the Applicant, including about the other case. With respect to the latter, V01 was showed the timeline she submitted to OIOS depicting the incidents involving the Applicant and the other case. She was then asked about her mental state at the time vis-à-vis what had happened with the other case. V01 shared that this other case left her feeling “extremely anxious and paranoid”, both inside and outside the workplace, and that it had a profound impact on her mental and physical health.

139. Concerning the people V01 contacted during the mission to South Korea, V01 confirmed that she only spoke to her mom at the time. She contacted Ms. A.S. when she landed back in Vienna, not before.

140. Concerning the additional night of the mission, V01 was asked about the email conversation of 8 November 2017 with the Applicant during which they decided to spend the extra night in Seoul instead of staying at the training accommodation in Daejeon. She explained that she did not want to spend the night in Daejeon because they were flying the next day from the airport close to Seoul, so it was more practical to spend the night in Seoul. The next day, the Applicant asked her by email to check for accommodations and prices in Seoul for them both, which prompted afterwards the Airbnb suggestion.

141. In response, V01 told the Applicant that she had already looked at options online and asked him for a price range. The Applicant replied saying that he would adjust to her budget, and asked about an Airbnb option. V01 refused sharing accommodation and thus booked two separate hotel rooms (n.b., full email conversation on para. 205 below). In this context, V01 was asked where it showed that the Applicant had offered to pay for her accommodation. She stated never having made such claim.

142. With respect to the latter, V01 was confronted with a statement she made previously in her testimony whereby she testified that the Applicant had indeed offered to cover the costs of accommodation. V01 clarified that the Applicant never explicitly said “if you make the booking, I will pay”. What he said was that, due to the high costs, sharing an accommodation would reduce costs.

143. In this context, V01 clarified that the email thread only shows a side conversation about accommodation, whereas the many conversations they shared were mostly face-to-face.

144. Furthermore, V01 was asked about Ms. A.S.’ testimony that she had been hospitalized in the spring of 2018. V01 clarified that in that period she sought psychological help for the first time from a psychiatrist in a hospital, but she was not admitted to said hospital and neither hospitalized. A hospital admittance indeed occurred, but at a much later date.

145. Concerning the work environment in DDDU, V01 confirmed that they were a small group that worked collaboratively and under high-pressure. It was common for the team members to go directly to each other’s offices when they needed to discuss something. In this context, V01 clarified that what made her uncomfortable with the Applicant’s situation was the fact that he would come into her office without saying anything and simply stare at her screen.

146. Lastly, the undersigned Judge asked V01 to clarify the allegation that the Applicant insisted on sharing an Airbnb accommodation with her and, if so, how. V01 stated that the wording used in the previous judgment was indeed incorrect because the Applicant never insisted on the Airbnb suggestion *by email*. Rather, his “insistence” happened during the many face-to-face conversations they shared.

Ms. M.T.

147. Ms. M.T. worked as a consultant at UNODC between 2015 and 2018. She met and worked with both the Applicant and V01 in the same division.

148. Ms. M.T. confirmed that V01 sought her for advice in November 2017 because she felt that the Applicant was pressuring her to share a hotel/accommodation during the additional night of the mission in Seoul. She advised V01 to tell him that this suggestion was not appropriate, to book her own hotel and let him sort out his accommodation himself. The witness further shared that V01 was very anxious and stressed about the situation.

149. Concerning the incidents during the mission, Ms. M.T. stated that V01 told her about it a few weeks after returning to the office. Specifically, V01 told her that the Applicant behaved very inappropriately during the flight, and that he was constantly trying to spend time with her during the mission, including on the extra day they had for sightseeing.

150. After this incident with the Applicant and the ones prior to it, Ms. M.T. noticed that V01 was very uncomfortable in the workplace, and that she was very affected in her mental and physical well-being.

151. On cross-examination, Ms. M.T. confirmed that her knowledge about the incidents is based on what V01 told her at the time, and that she did not witness any of it directly.

Ms. A.S.

152. Ms. A.S. identified herself as the best friend of V01.

153. The witness testified that V01 called her after landing in Vienna following a mission to South Korea to tell her what had happened with the Applicant during said mission. According to the witness, V01 was in shock and very distraught. V01 told her that the Applicant behaved very inappropriately on the outbound flight, during which he drank too much alcohol, shared some very personal and inappropriate details about past relationships, confessed romantic feelings for her, made implicit comments like “you know what is expected of you on this trip”, and told V01 he did not care about the “sexual harassment conference” they had had a few days prior. V01 also told Ms. A.S. that the Applicant’s inappropriate behaviour continued throughout the mission by always wanting to spend time with her.

154. Ms. A.S. also testified that V01 told her that before they went on the mission, the Applicant had suggested they share a room “to save money or something like that”.

155. Concerning her own impression of V01, Ms. A.S. testified that they spent two weeks together after the South Korea mission and before V01 went back to work. She noticed V01 being a “shell of herself”. A usually happy, strong, extroverted and enthusiastic person gave place to someone very sad, depressed and quiet.

156. Confronted with the possibility of V01 being “so out of character” also because of the other case, Ms. A.S. stated that even though V01 had been very distressed after that other incident, she was still very resilient throughout. It was only after the mission to South Korea that the witness observed the aforementioned character change.

157. Furthermore, Ms. A.S. was asked about the power dynamics between V01 and the Applicant. The witness confirmed that it was her understanding, based on previous conversations with V01, that the Applicant had power over her job security and wages or, at least, some input.

Ms. S.K.

158. Ms. S.K. is a UNODC staff member since 1985, and a graphic designer team leader at UNODC since 2000. In this role, she has met and worked with both the Applicant and V01.

159. When asked about an example she gave to OIOS during her interview at lines 729-740 of her interview transcript, Ms. S.K. testified that she noticed V01 feared the Applicant’s power over her. She recounted one example when she asked V01 to go with her to get fresh water in the next building. The moment they left V01’s office, the Applicant approached V01 saying he was looking for her and that he wanted to speak to her. Ms. S.K. noticed that V01 had been in her office that entire time and that perhaps the Applicant was over-controlling her. Ms. S.K. also told OIOS that she thought the Applicant did “that with all his staff”.

160. Asked to clarify what she meant by “I think he does that with all of his staff”, Ms. S.K. stated that the Applicant was often stopping colleagues spontaneously in the corridor, entering their offices, and saying he needed to speak with them. In her clarification, Ms. S.K. further provided that she did not mean that the Applicant was over controlling with all of his staff, only that he often called them spontaneously.

161. When asked about another example she gave to OIOS during her interview at lines 637-652 of her interview transcript, Ms. S.K. confirmed that on one occasion, when V01 was working on a website with her at her office, she became nervous and worried that the Applicant might look for her and not find her at her office. Ms. S.K. told the investigators that she had the impression V01 was feeling controlled.

162. When asked about what she described to OIOS during her interview at lines 786-789 and 796-800 of her interview transcript, Ms. S.K. did not recall many details but confirmed that she never witnessed the Applicant behaving in any specific way towards V01. What she noticed was V01’s feelings and behaviour with respect to the Applicant.

163. When asked about what she described to OIOS during her interview at lines 603-609 of her interview transcript, Ms. S.K. recalled an incident where she found V01 crying at the cafeteria. This was allegedly after the 5 July 2018 incident because V01 was upset about the Applicant shouting at her, and the reason for the shouting, as V01 told Ms. S.K., was that the Applicant felt V01 had overstepped him in a work issue. At this point, V01 told Ms. S.K. that she had had “too much”.

164. On cross-examination, Ms. S.K. confirmed that she never attended team meetings with both the Applicant and V01.

165. Asked about her experience with the Applicant in the workplace, Ms. S.K. stated that she did not have problems with him. She observed, however, that the Applicant would sometimes invade other people’s spaces without realizing it. She also confirmed that the Applicant would be intrusive with others too, not just V01.

Mr. A.K.

166. Mr. A.K. worked as a consultant at the DDDU, UNODC, between March and December 2018. During this period, he worked with both the Applicant and V01.

167. The witness testified that the working relationship at the DDDU between staff members and consultants/contractors was usually very good, with the exception of the Applicant, who he described as “toxic”.

168. Mr. A.K. confirmed that he participated in the weekly team meetings at the DDDU. In these meetings, and generally around the office, he observed the interactions between the Applicant and V01. According to him, it was obvious that they worked together and that there were tensions between them. He had the feeling that V01 was “suffering”, by which he meant that she looked in fear and in distress.

169. When asked about an example he gave to OIOS during his interview at lines 240-249 of his interview transcript, Mr. A.K. told the Tribunal that he remembered that the Applicant was usually very negative and critical of V01 during team meetings, and that on one occasion V01 pushed back, and they got into a heated argument.

170. Mr. A.K. further clarified that the Applicant did not behave in such a negative and toxic manner all the time with every colleague, although he had experienced some toxic behaviour and gaslighting from the Applicant. According to Mr. A.K., the Applicant was often intrusive but also kind with colleagues. However, Mr. A.K. never observed the Applicant being kind to V01. In fact, he was more negative, more disrespectful and controlling with her.

171. Mr. A.K. further shared that the Applicant never raised his voice at him for a work-related issue.

172. The witness also observed that the Applicant seemed to be frequently interested in V01’s whereabouts, and was more focused on her than on any of the other team members. When he first joined the team in March 2018, before being made aware by V01 of the ongoing issues, the witness thought that this “extra focus” was strange, but work-related.

173. In July 2018, Mr. A.K. observed the Applicant aggressively looking for V01 in the office, which he attributed to the Applicant having found out about the complaint against him. Mr. A.K. clarified that the Applicant came to his office looking for V01 and speaking to him in a loud tone, but did not recall him shouting at her. The witness did not recall any specific details about the 5 July 2018 incident.

174. The Tribunal notes, however, that the witness' recollection at para. 173 above most likely concerned the incident of 5 July 2018, since V01 only filed her complaint on 20 July 2018 and after that she was mostly working remotely.

175. Furthermore, Mr. A.K. confirmed that V01 told him on an unclear date about the incidents with the Applicant in South Korea and how the Applicant had changed his behaviour in the workplace towards her afterwards.

176. With respect to sexual harassment, Mr. A.K. shared that he never observed the Applicant making outright sexual comments towards V01, or about her, or touching her. However, based on his knowledge of the Applicant, Mr. A.K. interpreted his suggestions to share a room as a form of sexual advance.

177. Mr. A.K. also clarified that he did not share an office with V01 at any point, and neither worked directly with her frequently. Thus, he was not witness to all interactions between her and the Applicant.

Mr. U.R.

178. Mr. U.R. works as a Senior Statistics Assistant at the research and analysis branch, UNODC, since 2010. He worked with both the Applicant and V01, and shared an office with V01 for approximately one year.

179. The witness confirmed previous statements that the Applicant was a few times rude and aggressive to V01 in team meetings. Mr. U.R. found unusual that when V01 spoke about her work in these meetings, the Applicant would interrupt her and state that the things she was saying were wrong. The witness noticed that V01 stopped speaking at team meetings, that she looked demotivated and upset.

180. Mr. U.R. further testified that V01 told him about the Applicant's suggestion to share an accommodation in South Korea, and about how she felt pressured to "be nice and respectful" to him due to her career at the Organization. This conversation happened many months after the trip, but it is unclear exactly when.

181. Having known the Applicant as a nice person, having noticed his unusual behaviour towards V01 in team meetings, and having been told by V01 about the South Korea incident, Mr. U.R. concluded that there must have been a connection between the poor treatment the Applicant was giving V01 and the fact that she rejected him some months prior.

182. After V01 told him about the South Korea trip, Mr. U.R. advised her to find some type of support within the Organization, went online with her, and printed the information on some resources for her to use.

183. On cross-examination, Mr. U.R. was asked to clarify what he meant by the Applicant being V01's "direct supervisor". He stated that he did not remember what each of their roles was on paper, but that in practice V01 was reporting directly to the Applicant in all projects. When asked if this was also the case for the Corruption Manual project, or the other way around, Mr. U.R. accepted the possibility but could not recall specifics.

184. Mr. U.R. also confirmed that everything he knows about the South Korea trip, including that the Applicant volunteered to pay for the accommodation and that V01 was scared to report the Applicant because of her job, is what V01 told him. He did not witness any of said interactions between them.

185. Mr. U.R. further confirmed that the environment at their Unit was often tense due to the workload related pressures.

186. About the Applicant's rudeness in team meetings, Mr. U.R. clarified that, even though he thinks it is natural to disagree with people at team meetings in front of others, there are professional manners in which to do so. The way the Applicant behaved, however, caught his attention as something unusual.

187. Concerning the incident of 5 July 2018, where V01 claimed that the Applicant shouted at her in her office (which she shared with Mr. U.R.), the witness did not recall any shouting.

Whether the facts on which the disciplinary measure was based have been established

188. The Applicant argues that there is no clear and convincing evidence that he harassed and sexually harassed V01, and manifestly denies having engaged in such a way.

189. With respect to the sexual harassment allegation, the Applicant argues that:

- a. V01's testimony is inconsistent, and her interpretation of events is biased, speculative, and exaggerated;
- b. No witnesses were present during the interactions between V01 and the Applicant on the South Korean trip, which means that the charge was based solely on V01's narrative;
- c. There was no sexual connotation in his initial suggestion to share an Airbnb accommodation with V01, and he never insisted on it upon her refusal;
- d. He did not make any sexual advances or engaged in improper conduct with V01 during the outbound and return flights to/from South Korea in December 2017; and
- e. None of the email exchanges provided by V01 to the investigators support a finding that the Applicant made improper advances, requested any sexual favour, or made any other gesture of a sexual nature. There is also no evidence that V01 had found their conversations improper until she made the complaint in July 2018.

190. With respect to the allegation of workplace harassment, the Applicant fully denies it. According to him, the pressure noted by V01 was work-related and the alleged “monitoring behaviour” was a misinterpretation of normal work activity. The Applicant behaved in a formal and direct manner during team meetings, and the single moment of disagreement between him and V01 that is indeed acknowledged (i.e., the 5 July 2018 incident) was also work-related. The Applicant treated V01 the same way as every other colleague, and the fact that he had a difficult professional relationship with her at times is not probative of harassment.

191. The Applicant further claims that V01 was reasonably unable to objectively process and recollect events at the time of the investigation due to the other case, and that his actions were unfairly exaggerated as a result.

192. Based on the foregoing, the Applicant argues that the level of evidence in this case does not meet the standard of clear and convincing. The allegations of misconduct were biased and based on the Respondent’s improper use of prior conduct. V01’s inconsistent behaviour and testimony do not support a finding that her testimony was more credible than that of the Applicant.

193. The Tribunal notes that in cases of sexual harassment, it is rather common that direct evidence is not always available and that the evidentiary questions centre on the credibility of the complainant’s testimony (*Mohammad Yahya Al Othman* 2022-UNAT-1196, para. 78; *Haidar* 2020-UNAT-1076, para. 43). The role of the Tribunal is to evaluate the admissibility of the available evidence, its probative value and establish its relevance to the issues in dispute (*facta probanda*) (*Appellant* 2022-UNAT-1210, para. 39; *Applicant* 2022-UNAT-1187, para. 56).

V01’s alleged embellishments and inconsistencies

194. The Applicant argues that the number of inconsistencies in V01’s story calls into question the veracity, reliability and credibility of her testimony. *Inter alia*, he claims that:

- a. V01 impeached herself by denying a previous statement that the Applicant offered to pay for the extra night in Seoul. Plus, Mr. U. R. testified before the Tribunal that V01 told him that the Applicant had offered to pay for the Airbnb accommodation;
- b. V01 allegedly told Ms. A.S. that the Applicant had “absolute power over her, in terms of her job and salary”, which is not true;
- c. V01 allegedly told Ms. A.S. that she was admitted to the hospital in the spring of 2018, but then denied this fact on cross-examination;
- d. V01 allegedly told Mr. A.K. that the Applicant “wanted to have sexual intercourse with her”, but at no point during her testimony did V01 say that the Applicant requested, suggested, or even alluded to sexual intercourse. This shows an embellishment of her story to Mr. A.K.;
- e. Concerning the excessive work monitoring allegation, Mr. A.K. testified that the Applicant looked over his shoulder and to his screen as well. This shows how V01 exaggerated the work interactions and how she was not targeted by the Applicant;
- f. Concerning the conference in Peru, Mr. E.B. was at the same dinner table as the Applicant and V01 and did not recall any comments on her age. The Applicant acknowledged having made comments, but on a complimentary way. If these comments had been so embarrassing as V01 suggests, the witness would have a recollection of it; and
- g. Mr. U.R. shared an office with V01. According to her, he was present when the Applicant shouted at her following the incident of 5 July 2018. The witness however did not recall any shouting.

195. While some specific parts of the testimonies may show apparent inconsistencies as claimed by the Applicant, the Tribunal underlines that most of what was heard was the witnesses' perspectives of emotional accounts laid to them five years prior. In this context, it is expected that statements do not match "word for word".

196. However, it is the Tribunal's understanding that the alleged inconsistencies raised by the Applicant are either irrelevant to the determination of the facts under dispute, and/or a distortion of the testimonies.

197. Concerning the alleged "self-impeachment", it was never part of the allegations against the Applicant that he had offered to pay for the Airbnb accommodation. In addition, the fact that V01 denied that the Applicant made such an explicit offer combined with the fact that she may have interpreted his suggestion to "save costs" as an "implied" offer is not mutually exclusive. Plus, the testimony of Mr. U.R. is consistent with this narrative.

198. Ms. A.S. testified that from her understanding based on previous discussions with V01, the Applicant had some power over her job security or "at least some input". This testimony does not benefit the Applicant's interpretation that V01 told Ms. A.S. that he had "absolute power over her job security". The testimony benefits, however, the testimonies of Mr. E.B., Mr. A.K., and the Applicant, whereby it was established that the Applicant and V01 worked very closely together, that he acted as her *de facto* supervisor, and that he was consulted by Mr. E.B. when it came to performance evaluation and contract renewals of individual contractors and consultants, including V01.

199. The testimony of Ms. A.S. is equally uncorroborative of the Applicant's claim of inconsistency with respect to V01's alleged admission to a hospital in the spring of 2018. First, whether or not V01 received psychological help in the spring of 2018 is irrelevant to the current proceedings. Second, there was no inconsistency in her testimony. When asked about the statement of Ms. A.S. that she had been admitted to a hospital, V01 clarified that she was not, but that she consulted with a

psychiatrist in a hospital at that time. The two testimonies are not opposites as the Applicant tries to claim.

200. Concerning the testimony of Mr. A.K., the witness did not say that V01 told him explicitly that the Applicant “wanted to have sexual intercourse with her”. What the witness provided was his own interpretation of the Applicant’s intention with the suggestion to share an Airbnb accommodation.

201. Furthermore, the testimony of Mr. A.K. about the workplace interactions between the Applicant and V01 does not suggest an interpretation that the Applicant treated V01 the same as everyone else. On the contrary, the witness is very clear in saying that, while the Applicant was generally “negative and toxic”, he was not “like that” all the time with colleagues, except with V01. Specifically, about looking into screens, Mr. A.K. clarified that the Applicant did not behave that way frequently, only that he was “very intrusive” and “the kind of person to do that”.

202. Finally, concerning the conference in Peru, the fact that Mr. E.B. did not recall an incident at the dinner table does not corroborate a finding that V01 was not embarrassed or did not feel targeted by the Applicant. The Applicant admitted to commenting on her age “in a complimentary way”. V01’s perception of said comments is not for someone else to determine. More importantly, Mr. E.B. did not even remember the comments. Thus, his non-observation of V01’s reaction is irrelevant.

203. Based on the foregoing, the Tribunal does not agree with the Applicant’s interpretation that the testimonies heard during the hearing show relevant inconsistencies, embellishments and exaggerations that would render V01’s testimony unreliable or not credible.

Suggestion to share accommodation

204. It is established from the evidence on record that the Applicant suggested to share an Airbnb accommodation with V01 during the last and non-working day of their mission to South Korea. It is also established that she refused and booked two

separate hotel rooms instead. The point of contention lies on whether the Applicant insisted on it and whether his conduct had sexual connotations.

205. By email dated 8 November 2017 (n.b., unofficial translation by OIOS not contested by either party), the Applicant and V01 shared the following (emphasis added):

9:19 am the Applicant to V01: [...], Does not sound bad, what do you think? I've done some researches, Daejeon is not that exciting, but the high-speed train to Seoul takes 50 min. So, you could go back and forth in one day (Friday for example). Let me know, [...].

10:23 am V01 to the Applicant: That's true. But we fly from Seoul the next day, right? Then we have to drive twice ... Would it not be more practical to stay in Seoul and from there go to the airport? [...]

11:31 am the Applicant to V01: Yes, I see that too ... I thought the airport is in the middle between Seoul and Daejeon, but that's not so and it's over 2 hours from Daejeon to the airport ... We could check the prices for the accommodation in Seoul and or - Ask KOSTAT if they would provide us with the airport shuttle on Saturday the latter possibility would be almost risky ... Can you look for accommodation /prices. [...]

12:33 am V01 to the Applicant: [...] I have already looked. Basically, there are all sorts of accommodations between 50 – 500 euros! At booking.com there are always good deals – **if you give me a price range I can reserve 2 rooms**. This is very fast. Also, for the airport shuttle, either the shuttle will drive us to Seoul on Friday to the new accommodation (instead to the airport), or on Saturday from the Seoul accommodation to the airport. [...]

13:08 the Applicant to V01: [...] OK, price range of 50-100 should be ok, but I'm more in line with your budget. **Maybe you'll find something on Airbnb where you have 2 rooms or separate beds or something like that**. I can ask if we can take the shuttle on Friday to Seoul. I really do not want to ask for Saturday.

206. By email dated 21 November 2017, V01 told the Applicant: “[...] I am still sorting out accommodation for the last night in Seoul. **I have made a reservation**, but I’m still waiting for a better offer! I will keep you updated”. To which, the Applicant replied: **“What about Airbnb?”** (emphasis added).

207. It is established, therefore, that on two documented occasions, the Applicant suggested to share an Airbnb accommodation with V01.

208. Concerning whether the Applicant indeed insisted on sharing said accommodation, V01's testimony is that most of her conversations with him in this regard were in person. The emails were just a side documentation of what was happening face-to-face on an ongoing basis.

209. In this respect, the testimony of Ms. M.T. corroborates V01's allegation that she was troubled and feeling pressured by the Applicant's suggestions. While these alleged conversations were ongoing, V01 sought the advice of the witness on how to handle the issue. It is therefore not credible that V01 fabricated being in distress to Ms. M.T. about the Applicant's suggestions in a preparatory move to complaint against him eight months later.

210. Indeed, the Tribunal is convinced that, at the very least, the Applicant engaged in inappropriate behaviour towards V01 by suggesting multiple times they share an accommodation, which could reasonably be perceived to cause offense or humiliation.

211. The Tribunal is also convinced that V01 felt insecure and pressured on this matter. In the email exchanges of 8 and 21 November 2017, it is possible to notice that V01 initially ignored the Applicant's suggestion and instead made a hotel reservation. After she told him that she had already made a reservation and was only waiting for a better offer to confirm it, he again asked about an Airbnb.

212. It is thus credible that being asked multiple times by a former FRO and *de facto* supervisor² to share an accommodation during a mission in a foreign country would make her feel, at the very least, uncomfortable.

² Even though the Applicant was not officially V01's FRO, it is established by the testimony of V01, Mr. E.B., Mr. A.K., Mr. U.R., and Ms. S.K., that they worked very close together and that he acted as her supervisor *de facto* in the daily work.

213. Therefore, based on the 8 and 21 November 2017 emails, which confirm the Applicant's persistency with the idea of sharing an accommodation on Airbnb, and the contemporaneous indirect testimonial evidence on record, which confirms V01's perception of pressure at the time of the incident, the Tribunal considers the allegation to be established to the standard of clear and convincing evidence.

The flights on 3 and 9 December 2017

214. During the flight to South Korea on 3 December 2017, the Applicant and V01 sat next to each other. V01 claims that the Applicant shared intense personal matters with her about his childhood, divorce and past romantic relationship with a young woman, told her he had romantic feelings for her, that he did not care for the UN principles against romantic relationships between supervisors and supervisees, and that "I hope you know what is expected of you on this trip".

215. On the return flight on 9 December 2017, V01 stated that, on a conversation prompted by her asking for feedback, she asked the Applicant if he had invited her on the mission for his personal agenda or for professional reasons. He allegedly stated that it was for both, to which V01 allegedly responded that nothing was ever going to happen between them.

216. The Applicant denies having professed romantic feelings for V01 or having invited V01 on the mission for any reason beyond professional. In fact, throughout his submissions, the Applicant defended that he did not even have the authority to decide who goes on mission.

217. With respect to the latter, the Tribunal notes that the Applicant's argument is partially corroborated by the testimony of Mr. E.B., who confirmed that he was the one with the authority to make decisions vis-à-vis the staff at the Unit, but that he often consulted the Applicant on these matters.

218. The Tribunal also notes, however, that it was reasonable for V01 to assume that the Applicant was the one responsible for her presence at the mission since he was the one who had actually invited her, as shown in their WhatsApp conversation between 28 September and 3 October 2017, while V01 was still on contract break.

219. Thus, the Tribunal does not believe that the foregoing shows an inconsistency in V01's testimony, much less damages her credibility. In fact, the Tribunal underlines that the aforementioned is irrelevant for the determination of the facts under dispute, as the Applicant was not charged with having invited V01 to the mission for personal reasons.

220. Furthermore, Ms. A.S. testified before the undersigned Judge that V01 called her immediately after the return flight to Vienna, very distraught about what had happened during the mission between her and the Applicant.

221. While the witness was not present at the flight and thus did not provide direct evidence of the account, the Tribunal considers unlikely and unreasonable that V01 would have contemporaneously fabricated a distressing account to her best friend, who is not a staff member and did not know any party, without even formally reporting the Applicant's conduct to the Organization at the time.

222. Instead, considering the incidents that transpired in the workplace in the subsequent months after the mission, plus the suggestion to share accommodation and the amount of detail given by V01 with respect to the personal conversations she had with the Applicant during the flights, the Tribunal finds her recollection of events more credible than the Applicant's plain denial.

223. Accordingly, the totality of the evidence meets the standard of clear and convincing.

Creating an intimidating and hostile work environment between January and July 2018

224. According to V01, the Applicant's workplace behaviour changed from January 2018 onwards. Allegedly, he started putting significant pressure on her, monitoring her work and whereabouts closely, and being unpredictable and erratic in his behaviour towards her. Specifically, V01 alleged the following relevant incidents.

(i) Monitoring her work and movements in the office.

225. V01 testified that the Applicant was closely monitoring her movements around the office, including when she went to the bathroom and the cafeteria, and often asking where she had been if he did not find her at her desk/office.

226. Mr. A.K. testified before this Tribunal and confirmed the Applicant's behaviour of monitoring V01. The witness said that the Applicant seemed more focused on V01 than on other colleagues, that he was often rude to her in team meetings, and had an overall strange behaviour. This witness joined the team around March 2018 and immediately noticed a strange and unusual dynamic between the Applicant and V01.

227. Ms. S.K., also confirmed the Applicant's excess monitoring of V01's whereabouts, and testified that V01 seemed scared of the Applicant. It was the witness' impression that V01 felt controlled by him.

(ii) Behaviour in team meetings

228. According to V01, the Applicant was often rude to her during team meetings. He would interrupt her and act in a demeaning manner.

229. On 26 April 2018 particularly, it is alleged that the Applicant cut her off in a team meeting and that, afterwards, she "broke down" in her office. This is where she confided what had happened during the South Korea mission to her office mate, Mr. U.R.

230. Mr. U.R. testified before this Tribunal and confirmed V01's version of events. According to the witness, he noticed the unprofessional way in which the Applicant treated V01, which caught his attention as something unusual.

231. Mr. A.K. also observed incidents between the Applicant and V01 in team meetings, which he described as often heated and tense. The witness further observed that the Applicant was generally "very negative and toxic" to colleagues, but also kind and praiseful. However, he was never kind to V01. With her, he was more negative, more disrespectful and controlling.

232. The Applicant claims that while it is true that he sometimes had disagreements with V01 during team meetings, they were always on work-related issues, and he treated her the same way as every other colleague.

(iii) Comments regarding V01's age

233. In her complaint, V01 claimed that at the beginning of a mission to Peru in June 2018, the Applicant made a comment about her age in front of colleagues and counterparts. According to her, the Applicant mocked the behaviour of people who are 25-year old and told attendees to the dinner that she—V01—was 25 years old. V01 felt the Applicant made these comments purposely to offend her, as he knew how self-conscious she was about her age.

234. The Applicant admitted to having commented on her age, but in a complementary way. He denied any ill-intent with said comment.

235. The Tribunal did not hear from any direct or indirect witness about this incident.

(iv) Incident of 5 July 2018

236. V01 alleged that, due to a work-related disagreement over a project (i.e., the Corruptions Manual) she was working on with the Applicant and Mr. E.B., the Applicant reacted aggressively towards her by shouting and accusing her of overstepping his authority.

237. Mr. E.B. testified before this Tribunal and confirmed the veracity of V01's recollection of this incident. According to the witness, when V01 went to the Applicant's office to talk things out after his initial "outburst", he could hear the Applicant shouting at her from multiple offices away.

238. Another witness, Ms. S.K., testified having seen V01 crying that day due to the disagreement with the Applicant.

239. The Applicant admitted to having reacted harshly on this occasion, but justifiably so. They had a work-related disagreement where he felt that V01 "went behind his back".

240. Upon the above analysis, it is this Tribunal's view that V01 provided a consistent, clear and objective testimony throughout the investigation and disciplinary process, as well as during the hearing before the undersigned Judge. Most of her account is corroborated by either circumstantial or direct evidence. The contemporaneous witnesses, having heard directly from V01 immediately after the incidents, testified to how stressed, anxious and distraught V01 was at the time. The witnesses also noticed that the Applicant's harsh behaviour seemed to be worse with her as opposed to the other colleagues with whom he interacted.

241. The Tribunal is therefore convinced that there is a causal link between the events in South Korea and the way the Applicant treated V01 in the workplace afterwards. Indeed, the totality of the evidence corroborates this. V01's account of what happened during and in preparation for the mission to South Korea is corroborated by the Applicant's change of behaviour in the workplace from January 2018 onwards. The Applicant's change of behaviour is corroborated by the witnesses that provided testimony in this regard.

242. Even though there are opposing views between the Applicant and V01 regarding the conversation that took place during the flights on 3 and 9 December 2017, the totality of the evidence, especially that related to the subsequent incidents from January 2018 onwards, gives V01's account more credibility than the Applicant's. It is not a matter of determining who is more credible than the other. It is a matter of deciding what is more credible and reasonable in face of the totality of the evidence and opposing accounts.

243. To this Tribunal, it is not reasonable to conclude that V01 would have fabricated an elaborated a story of workplace harassment with multiple witnesses and incidents lasting over a period of almost seven months just to corroborate another equally and previously fabricated story of sexual harassment.

244. It is also not credible, as the Applicant tried to make it seem, that V01 was misinterpreting and/or enlarging the Applicant's behaviour due to having experienced a prior incident of sexual harassment. Nothing on the record suggests that V01's account was tainted by past experiences, nor that she was unable to

objectively process and recollect events. On the contrary, having faced something similar before, it is more credible that she was “extra aware”, as she put it, of interpersonal relationships and improper conduct in the workplace than “overreacting”.

245. Undeniably, there is clear and convincing evidence in support of V01’s allegations that the Applicant sexually harassed her in connection with and during a mission to South Korea, and proceeded to harass her between January and July 2018 by creating a hostile work environment.

Whether the established facts qualify as misconduct

246. Staff regulation 1.2(a) provides that:

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;

247. And staff rule 1.2(f) provides that:

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.

248. ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) provides, *inter alia*, as follows:

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.

...

1.3 Sexual harassment is any unwelcome sexual advance, request for sexual favour, verbal or physical conduct 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 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.

...

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.

....

3.2 Managers and supervisors have the duty to take all appropriate measures to promote a harmonious work environment, free of intimidation, hostility, offence and any form of prohibited conduct. They must act as role models by upholding the highest standards of conduct. Managers and supervisors have the obligation to ensure that complaints of prohibited conduct are promptly addressed in a fair and impartial manner. Failure on the part of managers and supervisors to fulfil their obligations under the present bulletin may be considered a breach of duty, which, if established, shall be reflected in their annual performance appraisal, and they will be subject to administrative or disciplinary action, as appropriate.

249. In *Appellant* 2021-UNAT-1137, the Appeals Tribunal held that:

57. Sexual harassment can encompass numerous types of conduct, some overtly sexual in nature and others more subtle. There is a wide spectrum of conduct that can be defined as sexual harassment and its determination is entirely context specific. Whether a particular type of conduct constitutes sexual harassment will depend on a number of factors and the circumstances of each case.

58. Importantly, a determination of whether a particular type of conduct is sexual in nature does not turn on the intentions of the perpetrator but on the circumstances surrounding the conduct, the type of conduct complained of, the relational dynamics between the complainant and the perpetrator, the institutional or workplace environment or culture that is generally accepted in the circumstances, and the complainant's perception of the conduct.

250. The Tribunal finds that the Applicant's suggestion to share a room with V01 during a private deviation of a professional work trip was completely inappropriate and reprimandable. If isolated, this incident might or might not reach the threshold of sexual harassment, given that it is difficult to conclude that the Applicant's behaviour had necessarily a sexual nature and/or intent. Notwithstanding, the Applicant's behaviour cannot be assessed in isolation. The established facts and circumstances surrounding the Applicant's conduct cannot be left out of the examination.

251. Indeed, the evidence on record clearly demonstrates that the Applicant made multiple suggestions to share accommodation on a non-working night with his junior colleague while on a mission in a foreign country. As an aggravating factor, although he was not her first reporting officer, their professional relationship was not on equal grounds. He indeed oversaw most of V01's daily work, which in turn gave him an input into her performance evaluations and possibly an impact in her consultancy contract renewals.

252. It is also established that the Applicant created a hostile working environment for V01 between January and July 2018. Different witnesses testified to the Applicant's excessive monitoring of V01's activities and whereabouts, of his rude behaviour towards her in team meetings, including one occasion when he raised his voice at her, and of how distraught V01 was during this period.

253. The Applicant does not dispute his behaviour nor the established incidents above, but rather the Respondent's characterization of his conduct. He tried to argue that he treated V01 the same way as he treated every other colleague, that they had normal work-related issues, and that V01 was overly sensitive.

254. However, V01 testified that the Applicant's behaviour towards her, as well as their professional working relationship, only started deteriorating after the mission to South Korea. This allegation is supported by the testimonies of Mr. S.K. and Mr. U.R.

255. In the Tribunal's view, it is established that the manner in which the Applicant managed his professional relationship with V01 was so problematic to the point of outside third parties noticing a change in his behaviour during a specific time.

256. All the circumstances above combined support a finding of workplace harassment.

257. More importantly to note, the established workplace harassment only started after V01 returned to work subsequently to the mission to South Korea. In other words, only after V01 allegedly turned down the Applicant.

258. This change in the Applicant's behaviour towards V01 leaves no doubt about the nature of his intentions and supports her allegations with respect to what happened months prior in South Korea. That is, the subsequent workplace harassment is consistent with V01's allegations that she suffered sexual harassment from the Applicant, thus befitting a finding of misconduct also in this respect.

259. Based on the foregoing, the Tribunal considers that the set of facts attributed to the Applicant constitutes harassment and sexual harassment within the meaning of secs. 1.2 and 1.3 of ST/SGB/2008/5, and a violation of staff regulation 1.2(a), staff rule 1.2(f), and secs. 2.1 and 3.2 of ST/SGB/2008/5.

Whether the sanction is proportionate to the misconduct

260. The Secretary-General has wide discretion in applying sanctions for misconduct but at all relevant times must adhere to the principle of proportionality (*Applicant* 2013-UNAT-280, para. 120).

261. In *Rajan* 2017-UNAT-781, para. 48, the Appeals Tribunal held that:

The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.

262. In *Mbaigolmem* 2018-UNAT-819, para. 33, the Appeals Tribunal stated:

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.

263. In *Conteh* 2021-UNAT-1171, paras. 46 and 48, the Appeals Tribunal held that sexual harassment does not depend on ill intent, but rather on the attitude of the person, and that the absence of ill intent is not a relevant consideration for the proportionality of the sanction. It also held that “if there is zero tolerance, there should be no requirement for the conduct to be repetitive. Depending on the circumstances, one instance could conceptually be sufficient to be misconduct subject to the sanction of separation”.

264. The Tribunal does not consider long service or unblemished disciplinary record as a relevant mitigating factor in a case of harassment and sexual harassment. The Tribunal is also not persuaded by the Applicant’s “good character” witnesses. While they were able to testify that the Applicant never engaged in ill or poor behaviour towards them, their experience carries no probative value into the Applicant’s behaviour towards V01.

265. The Tribunal further notes that the decision-maker considered the worldwide public health crises caused by the COVID-19 pandemic as a mitigating factor.

266. Furthermore, in deciding on the sanction to be applied, the Secretary-General was entitled to take into consideration any aggravating factor, including the Applicant’s supervisory role over V01, who was an individual contractor. Here, the fact that the Applicant was not her FRO is not sufficient to depart from this

aggravating factor, as it is established by the evidence on record that the Applicant acted as her supervisor *de facto* in most of the daily work.

267. Given the gravity of the misconduct, the Tribunal agrees that remaining in service would be irreconcilable with the core values professed by the United Nations.

268. In this context, it bears reminding that separation from service is not the strongest disciplinary sanction that was available to the decision-maker under staff rule 10.2.

269. In light of the above, the Tribunal finds the sanction adequate and proportionate to the gravity of the offence.

Were the Applicant's due process rights respected during the investigation and the disciplinary process?

270. After having carefully reviewed the case record, including the investigation stage and the disciplinary process, the Tribunal is satisfied that the Applicant's due process rights were fully respected throughout both phases.

271. The evidence shows that the Applicant was informed that OIOS was investigating him for the reported matters. He was interviewed on 4 and 5 February 2019. The interview was audio recorded, he was provided with a digital copy of it and given two weeks to present any additional information that he deemed appropriate and/or a written statement in relation to the matter under investigation.

272. The Applicant's allegation of bias and leading questions is also meritless. None of the examples he gave to the Tribunal actually indicates that OIOS investigators used "leading questions" to have him say something he did not mean. For example, in his closing submission, the Applicant claims that the questions pertaining to the invitation to the mission in South Korea were leading. After the Applicant had already explained that Mr. E.B. was the one who decided who would go on mission, the investigators kept asking him about his decision to invite V01.

273. The Tribunal does not agree that the aforementioned line of questioning represents inappropriate “leading questions”. Instead, it considers appropriate that the investigators used the term “invite”, given the evidence available to them at the time, i.e., the WhatsApp conversation between 28 September and 3 October 2017, whereby the Applicant indeed asked V01 if she was interested in going on the mission with him.

274. Furthermore, the argument that the Applicant was not given an opportunity to provide evidence is equally without merit. The case record shows that the Applicant provided his comments and evidence to the investigators after being interviewed.

275. The record also shows that, on 24 September 2019, the Applicant was notified of a memorandum of allegations of misconduct, according to which, he would be subject to a disciplinary process and formally charged of misconduct. The memorandum contained a detailed account of the allegations against the Applicant and a description of his due process rights. Namely, he was entitled to submit a response to the charges within one month from receipt of the charge letter; he was given the opportunity to include in his response all information relating to the formal charges; and he was informed that he could avail himself of the assistance of the Office of Staff Legal Assistance (“OSLA”) or seek the assistance of any other counsel in his defense at his own expense.

276. The Applicant submitted his comments on 2 December 2019 through the assistance of OSLA. In it, the Applicant included a list of 11 additional individuals he believed should be interviewed by OIOS to testify how the Applicant was “not prone to sexual advances”. His response was duly considered in the sanction letter.

277. With respect to the additional witnesses, the Tribunal underlines that OIOS investigators have no obligation to interview every single witness proposed by a subject. In fact, the investigators have a certain margin of discretion in relation to the methodology of the investigation and the relevant evidence. They can decide not to interview witnesses who are not deemed relevant to the case, and this does not constitute a violation of due process rights.

278. In this case, even if the Applicant had submitted his request for witnesses during the investigation phase, which he did not, it is clear that those witnesses would not have added value to the investigation of the facts under dispute. As the Applicant himself described, they were listed as colleagues who had worked or gone on mission with him before and could attest to his “helpful and non-threatening” character. None of them could have shed light into the allegations against him.

279. Bearing in mind all the relevant elements of the case file, the Tribunal finds that the Applicant’s due process rights were observed and fully respected during both the investigation and disciplinary proceedings.

280. In relation to the use of prior conduct evidence as part of the credibility assessment, as decided in the previous judgment, the Tribunal finds that it did not violate the Applicant’s due process rights. The Applicant’s misconduct is based on facts that are established by clear and convincing evidence, and that are unrelated to those *alleged* prior conduct incidents. The Tribunal further recalls that it did not consider the *alleged* prior conduct as evidence in its judicial review of the present case.

Conclusion

281. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Sun Xiangzhuang

Dated this 28th day of March 2024

Entered in the Register on this 28th day of March 2024

(Signed)

René M. Vargas M., Registrar, Geneva