Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Isaac Endeley, Officer-in-Charge

NKOYOCK FILS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Sètondji Roland Adjovi, Etudes Vihodé
Antony K. Wilson, Etudes Vihodé

Counsel for Respondent:
Jérôme Blanchard, HRLU/UNOG

Introduction

1. The Applicant, a former staff member of the United Nations Office of Counter-Terrorism ("UNOCT"), filed an application contesting what he terms as the 27 November 2023 refusal by the Administration to reconsider and modify the 13 February 2023 disciplinary sanction imposed on him following the judgment *Nkoyock Fils* 2023-UNAT-1401 by the United Nations Appeals Tribunal ("UNAT or Appeals Tribunal"), which overturned *Nkoyock* UNDT/2022/115.

Facts and procedural history

2. On 23 September 2020, the Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") imposed on the Applicant the disciplinary measures of a loss of three steps in grade, and deferment for three years of eligibility for consideration for promotion, together with a requirement to attend on-site or on-line interactive training on workplace civility and communication. These sanctions had been imposed for creating a hostile, offensive and humiliating work environment between 2015 and 2018, when the Applicant was Officer-in-Charge ("OiC"), at the Department of Software Products for Member States, United Nations Office on Drugs and Crime ("UNODC") ("first sanction").

3. On 24 December 2020, the Applicant filed an application with the Dispute Tribunal sitting in Geneva, which was registered as Case No. UNDT/GVA/2020/060 challenging the disciplinary sanction mentioned in para. 2 above.

4. On 16 June 2022, the Administration initiated a separate disciplinary process against the Applicant. At the conclusion of this process, on 13 February 2023, the USG/DMSPC imposed on the Applicant the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, in accordance with staff rule 10.2(a)(viii) ("second sanction").

5. The Applicant did not challenge the aforementioned separation decision before the Tribunal.

6. Effective 14 February 2023, the Applicant was separated from service.

7. On 20 October 2022, the Tribunal dismissed the Applicant's 24 December 2020 application by Judgment No. UNDT/2022/115.

8. On 19 December 2022, the Applicant appealed Judgment No. UNDT/2022/115.

9. On 27 October 2023, the Appeals Tribunal issued judgment *Nkoyock Fils* 2023-UNAT-1401 rescinding the disciplinary measures of 23 September 2020 and reversing Judgment No. UNDT/2022/115.

10. On 13 November 2023, Counsel for the Applicant sent a letter to the USG/DMSPC, copying the Assistant Secretary-General for Human Resources ("ASG/HR"), requesting that the 13 February 2023 sanction be modified given that the 23 September 2020 disciplinary sanction had been rescinded in its entirety by the Appeals Tribunal.

11. The Applicant opines that the Appeals Tribunal exonerated him from an earlier 23 September 2020 disciplinary sanction that the USG/DMSPC had relied on in her 13 February 2023 decision. Therefore, the Applicant contends that the latest sanction could not be sustained, and it must be revised.

12. On 27 November 2023, the ASG/HR replied to Counsel for the Applicant, copying *inter alia,* the USG/DMSPC, stating:

> With respect to the 13 February 2023 sanction letter, attached to your 13 November 2023 e-mail, your client, Mr. Nkoyock, had the opportunity to contest the administrative decision that he was informed of by way of the 13 February 2023 sanction letter; however, he did not do so within the time limit. Therefore, the Organization considers the matter pertaining to the 13 February 2023 sanction letter is closed. (This is the "contested decision).

13. On 27 December 2023, the Applicant requested management evaluation of the contested decision.

14. On 29 January 2024, the Applicant received confirmation from the Administration that the 23 September 2020 sanction letter had been removed from his Official Status File and replaced by a copy of the UNAT Judgment.

15. On 6 February 2024, the Management Advice and Evaluation Section ("MAES") issued its decision, finding the request for management evaluation non-receivable.

16. On 15 February 2024, the Applicant filed the present application. The Respondent filed his reply on 18 March 2024.

17. On 9 June 2024, pursuant to Order No. 52 (GVA/2024), the Applicant filed a rejoinder to the Respondent's reply, largely addressing the receivability challenge that the Respondent raised.

18. By Order No. 20 (GVA/2025) of 14 March 2025, the Tribunal denied the Applicant's motion for an oral hearing, and instructed the parties to file their closing submissions, which they did on 27 March 2025.

Consideration

19. The issues for the Tribunal's determination are:

a. Whether the Applicant's application is receivable *ratione materiae* and *ratione temporis*; and

b. If the application is receivable:

i. Whether the decision not to revise the second sanction was lawful; and

ii. Whether the Applicant is entitled to any remedies.

Receivability

20. Art. 2.1(a) of the Tribunal's Statute provides that:

> 1. The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual […]:

> (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance.

21. The Tribunal recalls that "what constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision" (*Ngokeng* 2014-UNAT-460, para. 27).

22. To be reviewable, an administrative decision must "produce direct legal consequences" affecting a staff member's terms or conditions of appointment (former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003); *Lee* 2014-UNAT-481, para. 49).

23. In his submissions, the Applicant avers that his application is receivable, both *ratione materiae* and *ratione temporis*. The Applicant claims that the Appeals Tribunal's issuance of *Nkoyock Fils* 2023-UNAT-1401 overturning *Nkoyock* UNDT/2022/115 and rescinding the 23 September 2020 sanction, which underpinned the 13 February 2023 sanction, was new information that warranted reconsideration of the sanction. The response from the ASG/HR did not address the Applicant's complaint and, therefore, it was a refusal "denying the Applicant a reconsideration or modification of the disciplinary sanction". The Applicant thus argues that the refusal was a new decision, not a reiteration of a previous decision.

24. The Applicant submits that the Administration cannot deny reconsideration of a defunct decision based on non-existent jurisprudence and previous decisions that the final judgment of UNAT has rescinded. The impugned decision, therefore, is receivable *ratione materiae.*

25. The Applicant further refers to 27 November 2023 as the date of the impugned decision by the ASG/HR denying reconsideration of the defunct decision, not 13 February 2023, the date of issuance of the sanction letter, which relied on the overturned underpinning judgment and rescinded disciplinary sanction. The challenge of the 27 November 2023 decision to refuse reconsidering the

13 February 2023 sanction based on this new evidence is, therefore, receivable *rationae temporis*.

26. The Respondent contends that the application is not receivable *ratione materiae* and *rationae temporis*. First, the 27 November 2023 email from the ASG/HR to the Applicant is not an administrative decision pursuant to art. 2 of the Tribunal's Statute. It did not produce direct legal consequences affecting the Applicant's terms and conditions of employment. Further, the Applicant has not identified any other administrative decision taken in non-compliance with his terms and conditions of appointment.

27. Second, the 27 November 2023 email to the Applicant is, at best, a reiteration of the disciplinary measure of separation with compensation in lieu of notice and without termination indemnity taken against the Applicant on 13 February 2023, more than a year earlier. No new or revised decision was taken. The Applicant did not challenge the disciplinary measure at the time within 90 calendar days of receipt of the decision as per art. 8.1(d)(ii) of the Tribunal's Statute. Thus, the Applicant's current attempt to reopen and challenge the disciplinary measure imposed on him on 13 February 2023 is also not receivable *ratione temporis.*

28. The Tribunal agrees with the Applicant's argument that the Respondent's decision not to reconsider the second sanction was a new decision, not a reiteration of the second sanction decision.

29. In the Tribunal's view, this decision produces legal consequences because the recission of the UNDT judgment is new evidence that may lead to a revision of the second sanction and subsequently affect the Applicant's terms or conditions of appointment.

30. Therefore, the Tribunal finds that the Applicant's application is receivable, both *ratione materiae* and *ratione temporis.*

Whether the decision not to revise the second sanction was lawful

31. The Applicant contends that the UNAT decision to overturn the first sanction, which underpins the second sanction, vitiates the separation sanction.

32. In support of his case, the Applicant argues that the UNAT judgment setting aside UNDT/2022/115 judgment and rescinding the first set of sanctions in their entirety axiomatically should have resulted in the Administration reconsidering the second sanction and revising the sanction letter, as four paragraphs of the second sanction relied on the first sanction letter and directly referenced UNDT judgment to support the second sanction. The refusal by the Administration to review and reconsider the second sanction violates the Applicant's right to fair treatment and justice. Thus, the second sanction letter cannot stand.

33. The Applicant further submits that the ASG/HR had no delegated authority under ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules) to refuse to review and revise the decision made by the USG/DMSPC. Relying on orders *Schwalm* Order No. 081 (NBI/2021) and *Schwalm* Order No. 134 (NBI/2021), the Applicant argues that a decision taken by an official without the requisite delegated authority is axiomatically unlawful and cannot stand.

34. In response, the Respondent submits that the Applicant's arguments are without merit. The second sanction was issued based on evidence unrelated to the previous disciplinary measure. No mention of the previous sanction and the UNDT judgment is made in the sanction letter, only in its Annex. Further, the mere four paragraphs (out of 55) in its Annex referring to the UNDT judgment and the first sanction are not determinative for the second sanction.

35. Regarding the delegation of authority, the Respondent submits that the fact that it was the ASG/HR who responded to the Applicant's request for reconsideration and not the USG/DMSPC is irrelevant. In any event, both would have the authority to send the Applicant a merely informational response that the deadline had passed, and the matter had been closed. The Respondent requests that the Tribunal dismiss the application in its entirety.

36. When considering whether two sanction decisions overlap, the Tribunal recalls a well-established legal principle against double jeopardy. Article 14.7 of the International Covenant on Civil and Political Rights provides:

> No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

37. In legal theory, double jeopardy is a procedural defence that prevents an accused person from being tried again on the same (or similar) charges following an acquittal or conviction in the same jurisdiction.

38. While it may be argued that the legal principle of double jeopardy protection originates from and normally applies in criminal cases, the Tribunal notes that the legal spirit of avoiding sanctioning a perpetrator twice for the same allegations is also appropriate to be applied in administrative matters.[1]

39. It follows that the second sanction must not be substantially affected by the first sanction because two separate decisions usually rely on different incidents. However, if the second sanction was significantly affected by the first one, this could warrant revision of the second sanction.

40. In this respect, the Tribunal agrees with the Respondent's argument that in the present case, two separate disciplinary sanctions were imposed following different disciplinary processes concerning unrelated incidents.

41. Further, the Tribunal finds that when the Administration considered aggravating and mitigating factors of the second sanction, four paragraphs in its Annex referred to the first sanction or its corresponding UNDT judgment.

42. The ensuing analysis will address the pertinent merits in the second sanction related to the first sanction and its corresponding UNDT judgment.

43. Four paragraphs of the Annex to the second sanction letter, paras. 36, 52, 53 and 54, referred to the previous disciplinary matter. Among those, paras. 53 and 54 are the most relevant and read as follows (emphases in italics):

[1] Generally, the principle of the prohibition of double jeopardy ("*ne bis in idem*") applies in German law as well as in European law. In administrative law, however, the application of this principle is not always straight forward. According to the European Court of Justice ("ECJ"), the principle of the prohibition of double jeopardy "*ne bis in idem*" applies only if the administrative measure has a punitive effect or replaces a criminal measure. See https://www.heuking.de/en/news-events/newsletter-articles/detail.

> 53. In light of the foregoing, as aggravating factors, the USG/DMSPC has taken into account that: (a) your conduct involved a deliberate organized and planned scheme which required coordination with then UNIDO staff member, Mr. […]; (b) your conduct is of a manipulative and deceptive nature; (c) your conduct caused harm to the integrity of the Organization's hiring processes with the potential to bring the Organization into disrepute; (d) your conduct continued for the period from 2018 to 2020; and (e) *you have a previous disciplinary record*.
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> 54. The USG/DMSPC considers that there is no mitigating circumstance. Despite your claim, your employment record does not warrant mitigation of your offence. While having over 16 years of employment with the Organization, *you have previously received disciplinary sanction for misconduct*.

44. It is clear from para. 53, that while the Applicant's previous disciplinary record was noted, this was only one of the five aggravating factors considered in assessing the proportionality of the sanction imposed.

45. The Tribunal also notes that due to the previous disciplinary sanction, the USG/DMSPC considers that there was no mitigating circumstance as per para. 54 of the second sanction.

46. In this connection, the Tribunal consulted the "Compendium of Disciplinary Measures containing the practice of the Secretary-General in disciplinary matters and cases of criminal behaviour from 1 July 2009 to 31 December 2023" prepared by the Office of Human Resources and found that the second sanction imposed was in line with past practice.

47. The Tribunal notes that in cases involving conflict of interest and recruitment irregularities, a sanction of separation from service with compensation in lieu of notice and with termination indemnity was imposed (see references 538 and 675 of the Compendium).

48. The Tribunal recalls the well-settled UNAT jurisprudence that the Tribunals do not interfere with a sanction decision unless it is "blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity" (See, e.g., *Sall* 2018-UNAT-889, para. 41).

49. The Applicant's long time satisfactory service with the Organization without a previous disciplinary sanction might have been considered a mitigating circumstance. However, the Tribunal will not interfere as a sanction of separation from service with compensation in lieu of notice and with or without indemnity is a disciplinary sanction within the margin of discretion of the Organization given the facts considered in the second disciplinary sanction.

50. In this respect, the Tribunal agrees with the Respondent's view that the four paragraphs in its Annex are not determinative of the second sanction. Considering the nature and gravity of the Applicant's conduct in the second disciplinary process, the Tribunal finds that the sanction of separation from service with compensation in lieu of notice and without termination indemnity was not excessive or abusive.

51. Turning to the Applicant's argument that the ASG/HR had no delegation of authority under ST/SGB/2019/2 to refuse to review and revise the decision, the Tribunal disagrees with the Respondent's contention that whether the ASG/HR or the USG/DMSPC responded to the Applicant's request for reconsideration is irrelevant.

52. The Tribunal notes that the ASG/HR issued the Applicant's second sanction letter, and when the ASG/HR sent the 27 November 2023 email to Counsel for the Applicant, she also copied it to the USG/DMSPC. In any event, the USG/DMSPC was well informed about the contested decision and did not raise any objections. Therefore, whether the ASG/HR had the delegation of authority to refuse the Applicant's request for revision of the second sanction is no longer fatal in the present case.

53. As it follows, the Tribunal has identified a lack of persuasive reasons in the 27 November 2023 email when the Respondent decided to close the matter or not to revise the second sanction letter. However, the result of the Respondent's decision was correct and lawful.

Whether the Applicant is entitled to any remedies

54. In his application, the Applicant requests: (a) review and reconsideration of the 13 February 2023 disciplinary sanction without relying on the previous sanction that was overturned by UNAT; and (b) rescission of the entire 13 February 2023 disciplinary sanction or, at a minimum, to issue a revised sanction.

55. Having upheld the contested decision, the Tribunal finds no basis for the remedies pleaded for in the application. Accordingly, the Tribunal rejects all the remedies the Applicant seeks.

Conclusion

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

(*Signed*)
Judge Sun Xiangzhuang
Dated this 30h day of June 2025

Entered in the Register on this 30th day of June 2025
(*Signed*)
Isaac Endeley, for Liliana López Bello, Registrar, Geneva