



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1261

Widmark J. Valme
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

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| Before: | Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu |
| Case No.: | 2021-1599 |
| Date of Decision: | 1 July 2022 |
| Date of Publication: | 17 August 2022 |
| Registrar: | Weicheng Lin |

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| Counsel for Appellant: | Sètondji Roland Adjovi |
| Counsel for Respondent: | Patricia C. Aragonés |

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Widmark J. Valme contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the Secretary-General's decision to dismiss him from service for serious misconduct with compensation *in lieu* of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii). Mr. Valme had been found to have: i) used his position of authority as Chief of Communications and Information Technology (CITS) and Geospatial Information and Telecommunication Technologies Services (GITTS) at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), to unduly influence the continued employment of Ms. FM and Ms. YF; ii) failed to disclose a conflict of interest arising from his relationship with Ms. FM; and iii) attempted to interfere with the OIOS investigation into his conduct. By Judgment No. UNDT/2021/078 dated 30 June 2021, the UNDT dismissed the application.

2. Mr. Valme has appealed to the United Nations Appeals Tribunal (Appeals Tribunal).

3. For the reasons given below, the Appeals Tribunal dismisses the appeal.

Facts and Procedure

4. The events giving rise to the contested decision occurred when Mr. Valme was serving as Chief of CITS and GITTS at MINUSCA between 2014 and 2017.

5. On 13 December 2016, the Investigations Division of the Office of Internal Oversight Services (ID/OIOS) received a report implicating Mr. Valme. Specifically, the complainant reported that on the evening of 12 February 2016, Mr. Valme drugged her and sexually abused her at his private residence in Bangui. During the course of the OIOS investigation, evidence emerged to indicate that Mr. Valme also engaged in recruitment irregularities and/or used his position of authority as the MINUSCA, Chief/GITTS to unduly influence the recruitment of the complainant, as well as another female staff member, Ms. FM. The evidence also indicated that Mr. Valme, in conjunction with other key witnesses in the investigation, actively and unduly tried to influence the course of the OIOS investigation by, prior to the OIOS interviews, aligning their individual statements made to OIOS during interviews, and/or consulting with Mr. Valme as to which selective information would be shared with OIOS during the interviews, and maintaining an online shared drive containing key dates and evidence, by which they shared only selected information with OIOS.

6. The OIOS investigation found that there was evidence that Mr. Valme had engaged in recruitment irregularities and/or used his position of authority as the Chief/GITTS to unduly influence the recruitment of the complainant; that a sexual relationship existed between Mr. Valme and Ms. FM, which contributed to Mr. Valme using his position of authority as the Chief/GITTS to unduly, and continuously, influence the recruitment of Ms. FM; and that Mr. Valme, as well as other key witnesses, actively and unduly tried to influence the course of the OIOS investigation. The OIOS investigation, however, found that there was insufficient evidence to substantiate the allegation that Mr. Valme had sexually abused the complainant.

7. On 16 April 2018, OIOS finalized its Investigation Report and referred the report to the Department of Field Support for its consideration. On 21 December 2018, Mr. Valme received a memorandum from the Assistant Secretary-General for Human Resources Management (ASG/HRM) charging him with misconduct. Specifically, it was alleged that: between 2014 and 2017, he used his position of authority as Chief/GITTS, MINUSCA, to unduly influence the continued employment of Ms. FM at GITTS, MINUSCA; between 2015 and 2016, he used his position of authority as Chief/GITTS, MINUSCA, to unduly influence the recruitment of the complainant as an individual contractor at GITTS, MINUSCA, by forwarding her resume for consideration, and providing interview questions to her before the job interview; between 2014 and 2017, he failed to disclose a conflict of interest arising from his sexual relationship with Ms. FM and his continued involvement in her recruitment at GITTS, MINUSCA; and/or between December 2016 and December 2017, he attempted to interfere with the OIOS investigation into his conduct by asking possible witnesses to gather and share information pertaining to the alleged misconduct, and giving them suggestions on how to respond to the investigators during their interviews.

8. Mr. Valme responded to the allegations on 6 March 2019 having been granted extensions of time to do so. He filed additional responses to the allegations on 30 April 2019. On 20 May 2019, Mr. Valme was informed that the Secretary-General had decided to dismiss him from service for serious misconduct with compensation *in lieu* of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii). Effective 28 May 2019, he was separated from service.

9. On 17 July 2019, Mr. Valme filed an application with the UNDT in Nairobi challenging the Secretary-General's decision. The UNDT heard the case on 23, 24, 25 November 2020; 15 and 16 December 2020; and on 13 April and 17 May 2021 where oral testimony was received

from: Mr. Valme; a GIS Officer, MINUSCA; the then MINUSCA Director of Mission Support (DMS); the Chief Communications Officer, MINUSCA; the then Chief of GITTS Operations, MINUSCA; an Information Management Assistant, GITTS/ MONUSCA; a System Administrator, MINUSCA; and Ms. FM, then working on temporary duty in GITTS/MINUSCA.

10. On 30 June 2021, the UNDT issued Judgment No. UNDT/2021/078, upholding the contested decision. The UNDT found that the established facts constituted clear and convincing evidence of each of the allegations against Mr. Valme, that his actions amounted to misconduct, that the imposed disciplinary measure was proportionate to the Appellant's misconduct, and that there were no due process violations in his case. Accordingly, the UNDT dismissed the application.

11. On 31 August 2021, Mr. Valme filed an appeal, and on 1 November 2021, the Secretary-General filed an answer.

Submissions

Mr. Valme's Appeal

12. The UNDT made several errors in fact. Throughout its motivation, the UNDT chose not to consider the totality of the evidence at its disposal but to refer to the evidence in a very selective way, as if it was trying to justify the outcome at any cost. This shows that there was bias against Mr. Valme who submits that the allegation of sexual exploitation and abuse has never been established and it would be highly unfair to develop any bias on that basis.

13. The UNDT did not consider the totality of the evidence regarding the recruitment of Ms. FM. Mr. Valme made the necessary recommendations for recruitment; however, those recommendations were based on the initiative of Ms. FM's immediate supervisor while the DMS was the final decision-maker. In his testimony, he clearly stated that he was the decision-maker on all recruitment matters and that he does not just accept the recommendations made by the program managers. It was therefore misleading to refer only to Mr. Valme's testimony and to ignore the other relevant evidence.

14. With regard to conflict of interest, the UNDT again failed to consider the totality of the evidence. The then DMS testified that Mr. Valme's relationship would not have had any influence on his decision-making process and therefore did not warrant disclosure. Furthermore, the UNDT heard of situations similar to Mr. Valme's, where the disclosure was meaningless. The Chief Communications Officer, MINUSCA testified about his relationship with a woman who he had managed to get a job for in the Mission and, subsequently, in MINUSMA. It is difficult to understand how the UNDT could completely ignore this testimony throughout the Judgment. The finding that there was a conflict of interest and that Mr. Valme failed to disclose it was therefore partial without any consideration of the evidence.

15. With regard to the recruitment of the complainant, the UNDT failed to consider other evidence that weakened its finding. The then Chief of GITTS Operations, MINUSCA lied extensively in his evidence before both OIOS and the UNDT and was not reliable. The UNDT used his hearsay without thorough assessment of his evidence. The complainant submitted a serious allegation that was false, and her evidence was therefore critically and negatively affected. She refused to provide her mobile phone for forensic analysis. In those circumstances, it is impossible to conclude that the allegation of influence was established by clear and convincing evidence.

16. Finally, with regard to the interference with the OIOS investigation, Mr. Valme recalls that the shared drive was set up before he had signed any confidentiality provision with OIOS; and the shared drive was an investigative tool that helped him secure evidence to challenge the allegation against him. Indeed, it has not been established that there was anything false shared through that folder. The UNDT failed to consider those elements of the evidence at its disposal. The UNDT found that Mr. Valme failed to substantiate his argument that OIOS had violated privileged communication with his lawyer to his detriment. Yet, the UNDT retained the allegation of interference on the basis of the existence of the shared drive which was a tool designed by Mr. Valme's counsel to gather evidence in support of his case.

17. The UNDT erred in law. The UNDT failed to consider when referring to Staff Regulation 1.2(e) that there was no issue about how competent Ms. FM and the complainant were. The interests of the Organization were served by making sure that the successful candidates met the requirements of the position and that the administrative procedure was duly followed with the DMS making the final decision. The UNDT therefore erred in its interpretation of the facts vis-à-vis the relevant legal provision that it relied on.

18. Moreover, the UNDT violated Mr. Valme's right to a fair trial when it made a legal finding on a matter outside the charges. Indeed, the UNDT found at the end of paragraph 60 that Mr. Valme "also violated staff rule 1.2(c) when he manipulated/controlled other staff members who were junior and subordinate to him". This legal finding was not within the allegations and Mr. Valme did not make any argument about it. Had he known of it, he would have put relevant questions to witnesses to demonstrate that those staff members were not under his influence.

57. Mr. Valme asks that the Appeals Tribunal declare the application receivable, vacate the UNDT Judgment and grant his initial prayers.

The Secretary-General's Answer

58. Mr. Valme has not established any errors warranting a reversal of the Judgment. In his appeal, he raises various challenges to the Judgment which aim to minimize or justify his conduct, and which are repetitive of arguments raised before the UNDT.

59. First, there is no merit in his contentions that the UNDT did not consider the totality of the evidence and referred to the evidence in a selective way. The UNDT carefully considered all the evidence before it and Mr. Valme has not identified any evidence that was ignored by the UNDT. Further, there is no evidence on record that the UNDT was biased against Mr. Valme, and Mr. Valme has not identified any on appeal. Mr. Valme advanced a similarly unsubstantiated claim before the UNDT alleging bias in the OIOS investigation and the contested decision. Mr. Valme is simply dissatisfied with the outcome of his case.

60. Second, there is no merit in Mr. Valme's contention that the UNDT only referred to Mr. Valme's testimony. The UNDT found that Mr. Valme's admissions regarding his influence on the recruitment process were corroborated by the evidence from three witnesses. Further, there is no evidence on record or in the Judgment to suggest that the UNDT did not understand the recruitment process. By Mr. Valme's own admissions, he was closely involved in the recruitment process and, as he stated himself, "99.9% [of the time] the [final decision-maker would] sign off" on the recommendations made by him. His admission rather emphasizes how he abused his position of authority and the trust placed in him. Finally, even though Mr. Valme was not the final decision-maker, it was not disputed that his recommendation carried significant weight, which made his non-disclosure of his conflict of interest even more damning.

61. Third, Mr. Valme's claims that the UNDT again failed to consider the totality of the evidence when it found that he had failed to disclose his conflict of interest arising from his sexual relationship with Ms. FM, are irrelevant and show a lack of understanding of the concept of impartiality and conflict of interest. At issue were not the opinion or actions of others but Mr. Valme's actions. None of Mr. Valme's claims divert from the fact that the established facts clearly amounted to a conflict of interest and showed a lack of integrity, which constituted misconduct.

62. Fourth, Mr. Valme's claims that it was "impossible to conclude" that the allegation that he had used his position of authority to influence the recruitment of the complainant had been established by clear and convincing evidence, and specifically that the UNDT erred in finding credible, and relying on, the testimony of the then Chief of GITTTS Operations, MINUSCA and the Complainant, are repetitive and unsubstantiated. As the UNDT correctly found, Mr. Valme admitted the material facts and "[h]is admission lends credence to the evidence of [the GIS Officer, MINUSCA, the then Chief of GITTTS Operations, MINUSCA], aspects of Ms. FM and the recorded messages". In any event, considering Mr. Valme's own admissions and the physical evidence, the UNDT's finding is sustained even without these testimonies.

63. Fifth, Mr. Valme's submissions that the UNDT erred when it found that he had interfered with the OIOS investigation by not having considered his submissions that the Google Drive had been set up "before he signed any confidentiality provision with OIOS", that it was "an investigative tool" to help him challenge the sexual abuse allegation against him, and that nothing false was shared through it, are again repetitive of his arguments advanced before the UNDT and do not identify a reversible error. The UNDT considered Mr. Valme's submissions but rejected them as being "against the weight of the evidence," which included his own admissions and the corroborating testimony of other witnesses.

64. Sixth, Mr. Valme has failed to point to any evidence on record and to provide any explanation in support of his contention that the UNDT erred in finding that Mr. Valme's "complaint that the OIOS [had] 'violated attorney-client privileges and attorney-work-product privileges' in accessing the Google Drive [was] not substantiated, since the [Appellant] ha[d] not shown that OIOS accessed any particular communication between him and legal counsel or that reliance [had been] made on such communication to his detriment".

65. Finally, the UNDT did not commit any errors in law. Mr. Valme's claim that the UNDT "failed to consider when referring to [Staff Regulation 1.2(e)] that there was no issue about how competent [Ms. FM and the Complainant] were" is inapposite. What is at issue was Mr. Valme's behaviour and conduct, not whether Ms. FM and the complainant were competent for their positions. There is also no merit to Mr. Valme's claim that the UNDT erred in law in finding that Mr. Valme had also violated Staff Rule 1.2(c) "when he manipulated/controlled other staff members who were junior or subordinate to him" since this act and legal qualification had not been part of the allegations against him. The sanction letter stated that Mr. Valme's actions violated Staff Rule 1.2(c) and that he had taken steps to manipulate/control witnesses of the OIOS investigation; and the Secretary-General argued before the UNDT that Mr. Valme had violated Staff Rule 1.2(c) by using staff members subordinate to him.

66. The Secretary-General requests that the UNAT dismiss the appeal in its entirety.

Considerations

67. The main issue for consideration and determination here is whether the UNDT erred in its finding that the decision to impose on Mr. Valme the disciplinary measure of separation from service for serious misconduct with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii) was lawful.

68. The initial complaint against Mr. Valme in connection with an alleged sexual assault against Ms. YF was eventually closed. However, during the course of the investigation of this complaint, facts emerged that related to Mr. Valme having engaged in recruitment irregularities and/or used his position of authority as the Chief/GITTS, MINUSCA to unduly, and continuously, influence the recruitment of the complainant (Ms. YF), as well as another female staff member, Ms. FM.

69. According to the investigation, the evidence also indicated that Mr. Valme, in conjunction with the other key witnesses in the investigation, actively and unduly tried to influence the course of the OIOS investigation by, prior to the OIOS interviews, aligning their individual statements made during interviews, and/or consulting with Mr. Valme as to which selective information would

be shared with OIOS during the interviews, and maintaining an online shared drive containing key dates and evidence, by which they shared only selected information with OIOS.¹

70. These facts, together with the failure to disclose a conflict of interest arising from Mr. Valme's sexual relationship with Ms. FM, despite his continued involvement in her recruitment at GITTS, MINUSCA, led to the OIOS findings which, in relevant parts, are as follows:

110. In respect of the recruitment of Ms. YF, the OIOS investigation found that:

(i) Mr. Valme had engaged in irregular recruitment practices relating to Ms. [YF] by providing to her, prior to her job interview, and via Ms. [FM], the interview questions that were asked during her job interview with [T] for the position of GIS Technician with MINUSCA.

111. In respect of the recruitment of Ms. [FM], the OIOS investigation found that:

(i) Mr. Valme had engaged in irregular recruitment practices relating to Ms. [FM], both in relation to Ms. [FM]'s initial recruitment to MINUSCA, as well as her continued employment, on [temporary job openings (TJOs)] and [temporary duty (TDY)], to MINUSCA. Due to the existence of a sexual relationship between Mr. Valme and Ms. [FM], there was a clear conflict of interest in Mr. Valme's involve[ment] in Ms. [FM]'s recruitment and extension of contracts, which he never disclosed.

112. In respect of the Google online shared drive, the OIOS investigation found that:

(i) The Google shared drive case file contains information that is stored and/or communicated between staff members of the United Nations;

(ii) Evidence was adduced that Mr. Valme, as well as several United Nations witnesses involved in the case, had withheld information and/or evidence relevant to the OIOS investigation, and known to them at the time of their respective OIOS interviews, and/or had misrepresented facts and/or directly lied during their respective OIOS interviews, thus hampering the OIOS investigation; and

(iii) Mr. Valme, as well as key witnesses, actively and unduly tried to influence the course of the OIOS investigation. Mr. Valme had discussions with several of the witnesses in the case - before and after their respective OIOS interviews, agreeing on and/or instructing witnesses as to which information to disclose to OIOS during the interviews, including instructing Ms. [FM] to lie to OIOS about the nature of her relationship with Mr. Valme.

¹ Impugned Judgment, paras. 6 and 7.

71. Following the OIOS report, Mr. Valme responded to a disciplinary process, which led to the sanction letter of separation from service with compensation in lieu of notice and with termination indemnity.

72. The standard of review in disciplinary matters is settled in the Appeals Tribunal's unambiguous jurisprudence, according to which a judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. In this context, the UNDT is

‘to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence’. And, of course, ‘the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred’. ‘[W]hen termination is a possible outcome, misconduct must be established by clear and convincing evidence’, which ‘means that the truth of the facts asserted is highly probable’.²

73. Staff Regulation 1.2 (Basic rights and obligations of staff) stipulates in relevant parts the following:

Core values

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

(b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status;

² *Abdulhamid Al Fararjeh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1136, para. 11, citing to *Ladu v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-956, para. 15; *Bagot v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-718, para. 46; *Negussie v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-700, para. 18; *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 18; *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29.

General rights and obligations

...

(e) By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants;

(f) ... [Staff members] shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. ...

(g) Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour;

...

Conflict of interest

(m) A conflict of interest occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization[.]

74. Staff Rule 1.2 (Basic rights and obligations of staff) stipulates in relevant parts the following:

(c) Staff members have the duty to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action and to cooperate with duly authorized audits and investigations. Staff members shall not be retaliated against for complying with these duties.

(d) Disciplinary procedures set out in article X of the Staff Regulations and chapter X of the Staff Rules may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Staff Rules, the Financial Regulations and Rules and administrative issuances.

Specific instances of prohibited conduct

...

(h) Staff members shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.

57. After having heard the oral testimonies of nine people involved in the circumstances of the case, including Mr. Valme and Ms. FM, the UNDT affirmed the contested administrative decision. Specifically, the UNDT found that there was clear and convincing evidence of the following:

- i) Mr. Valme used his position of authority as Chief of GITTS, MINUSCA to unduly influence the continued employment of Ms. FM at GITTS, MINUSCA;
- ii) Mr. Valme failed to disclose a conflict of interest arising from his sexual relationship with Ms. FM during his continued involvement in her recruitment at GITTS, MINUSCA;
- iii) Between 2015 and 2016, Mr. Valme used his position of authority as Chief of GITTS, MINUSCA, to unduly influence the recruitment of Mr. YF as an individual contractor at GITTS, MINUSCA; and
- iv) Between December 2016 and December 2017, Mr. Valme attempted to interfere with the investigation by OIOS into his conduct by asking possible witnesses to gather and share information pertaining to the alleged misconduct and gave them suggestions on how to respond to the investigators during their interviews.

58. The UNDT also concluded that these facts amounted to misconduct as they constituted a violation of Staff Regulations 1.2(b), 1.2(e), 1.2(f), 1.2(g), 1.2(m) and Staff Rules 1.2(c) and 1.2(g) cited above. Finally, the UNDT found that Mr. Valme's due process rights had been respected and that the sanction, which was not the most severe available to the Organization, was proportionate to the misconduct given the outcome of similar cases.

59. In his appeal, Mr. Valme maintains that the UNDT failed to consider the totality of the evidence, and referred to it in a selective way, something he submits reflects bias against him. Mr. Valme also claims that the allegation of sexual exploitation and abuse was not established against him. The Appeals Tribunal firstly states that any consideration about the complaint of sexual abuse is beyond the scope of the present case and cannot be considered, since Mr. Valme was not sanctioned for sexual abuse and his application does not deal with any administrative decision concerning this fact, but rather facts which came to light in the course of the investigation of alleged prohibited conduct of Mr. Valme.

60. Secondly, the Appeals Tribunal notes that it is inherent to the principle of judicial persuasion that courts and tribunals highlight elements of evidence which they consider the most relevant in the circumstances of each case under examination. By so doing, the UNDT or any other tribunal does not display bias since this is rather an authentic exercise of the jurisdictional power. This is also the way judges explain their reasoning to the parties and the public, in order to best respond to their request of justice to each particular case. Furthermore, this is how judicial decisions are mostly legitimized.

61. Thirdly, it is within this context that the UNDT did not err by referring only to Mr. Valme's testimony, which in the UNDT's perception was more relevant than other oral evidence including the testimony of the DMS. In this regard, the UNDT found that Mr. Valme had admitted having been *the decision-maker* in the process of extending and/or recommending the extension of Ms. FM's TDY and TJO beyond the ordinary time limit of three months as stipulated by the corresponding provisions.³ According to the UNDT, Mr. Valme also admitted having used "special measures" to keep Ms. FM in MINUSCA at the end of her TDY and again at the end of the TJO.⁴ These factual findings of the UNDT cannot be considered unreasonable, as alleged by Mr. Valme's appeal, in light of Article 2(1)(e) of the Appeals Tribunal Statute .

62. Moreover, the UNDT also referred to an exchange of messages between Mr. Valme and Ms. FM, according to which Mr. Valme had proposed to "coach" Ms. FM for the interview and Ms. FM had asked him to include the UNV in "your next budget", to which he answered, "Okay".⁵ It is true that the DMS stated in his testimony before the UNDT that his authority went to a certain

³ Impugned Judgment, para. 25. See also UNDT transcript of proceedings (oral testimony by Mr. Valme), p. 21, lines 23-25 and p. 22, line 1.

⁴ Impugned Judgment, para. 27.

⁵ *Ibid.*, paras. 28 and 29.

level in the recruitment process for staff members. However, the DMS also stated that his involvement was based on, and bound by, the recommendations with justifications of candidates by the “service chief”.⁶ In other words, the DMS’s testimony reaffirms the authority of Mr. Valme in the recruitment process of both Ms. FM and Ms. YF.

63. Likewise, with respect to the conflict of interest, the UNDT did not fail to consider the totality of the evidence, in particular the testimonies of the DMS and the Chief Communications Officer’s, MINUSCA. In this regard, the Appeals Tribunal notes that despite the information that there had been possible situations in the past where a staff member had been hired because of their relationship with the manager, what matters most in matters of recruitment is, apart from the competence of the candidate, the transparency of the selection exercise and the appointment process. As previously mentioned in this Judgment, honesty and truthfulness in all matters affecting staff member’s work and status are “core values” of any staff member’s obligations and duties towards the Organization.

64. In this sense, Staff Regulation 1.2(m) stipulates that the interests of the Organization must prevail over the staff member’s personal interests and this is why any staff member whose personal interests are in question should disclose the conflict to their head of office, so that *the Organization* can resolve it. Mr. Valme’s reliance on possible past improper practices cannot justify his failure to disclose his conflict at the time. Nor can his reliance on any information that the disclosure of his conflict would not have had an impact on the selection of Ms. FM. When it comes to the conflict of interest, the main question is that Mr. Valme undoubtedly violated his duty of transparency in the selection of Ms. FM, as provided by Staff Regulation 1.2(m).

65. In summary, the fact that Mr. Valme had a romantic relationship with Ms. FM should not have been a discriminatory factor against her. However, it should not have acted as a favourable element in her recruitment either, as became clear from the evidence in the record, Mr. Valme having not disputed the fact that he actively participated in her selection, even when she lacked the requisite work experience.⁷ This finding is regardless of Ms. FM’s and Ms. YF’s possible existing competencies, which are not put into question here.

⁶ UNDT transcript of proceedings (oral testimony by the DMS), p. 31, lines 24-25 and p. 32, lines 1-22.

⁷ Impugned Judgment, para. 27.

66. Mr. Valme further takes issue with the UNDT's finding that he had used his position of authority to influence the recruitment of Mr. YF. According to Mr. Valme, this fact was not established by clear and convincing evidence, and specifically the UNDT erred in finding it credible, and relying on the testimony of the Chief of GITTS Operations and Ms. YF, the latter having been discredited by her false allegation of sexual abuse. On this matter, the UNDT Judgment did not rely on Ms. YF's evidence, as she was heard at the first instance level. Moreover, apart from the testimony by the Chief of GITTS Operations, the UNDT Judgment also relied on other people's testimonies, including Mr. Valme's admissions that he had forwarded the questions for Ms. YF's interview before her being selected for the position, and that he had obtained these questions from the GIS Officer, MINUSCA, one of the interviewers.⁸ This is not to mention that the UNDT also based its findings on Viber text messages between Mr. Valme and Ms. FM, who had introduced Ms. YF to Mr. Valme, and asked for his intervention in Ms. YF's favour.

67. Mr. Valme's allegations concerning the Google Drive shared folder are unmeritorious. Firstly, they are basically the same as those used at the first instance level. Therefore, from the outset on this issue, the Appeals Tribunal recalls that a party cannot merely repeat on appeal arguments that did not succeed before the UNDT. As already noted in *Krioutchkov*⁹ and *Aliko*¹⁰, the Appeals Tribunal is not an instance for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. This is because "[i]n the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal".¹¹ When it comes to an alleged error of fact, the appellant has the burden to convince the Appeals Tribunal that it resulted in a manifestly unreasonable decision.¹² This has not been the case here and this issue of the appeal could be dismissed on this simple basis.

68. Furthermore, the Appeals Tribunal has reviewed the evidence in the record and has come to the conclusion that Mr. Valme and his housemates' use of the "pool of evidence" in the shared drive went beyond the mere gathering of information and/or documents to be an investigative tool to help him challenge the sexual abuse allegation against him. In reality,

⁸ *Ibid.*, paras. 41, 42 and 45.

⁹ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22.

¹⁰ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

¹¹ *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346, para. 23.

¹² Article 2(e) of the Appeals Tribunal Statute.

Mr. Valme admitted that he had used the shared drive to direct his housemates' testimonies and therefore align statements, including before their OIOS interviews.¹³ Mr. Valme has not established any grounds why the Appeals Tribunal would interfere with this finding. Rather, Mr. Valme repeated his argument of OIOS having violated attorney-client privileges and attorney-work-product privileges' in accessing the Google Drive. However, this claim had been rejected by the UNDT and Mr. Valme does not substantiate his contention that the UNDT erred in this respect.

69. Finally, Mr. Valme's contention that the UNDT violated his due process rights is erroneous. The finding that Mr. Valme had also violated Staff Rule 1.2(c) when he manipulated/controlled other staff members who were junior or subordinate to him was made very clear in the sanction letter and was not raised by the UNDT.¹⁴

70. Having considered all the elements in the record, the Appeals Tribunal finds that the UNDT did not err in its findings and the appeal subsequently fails.

¹³ Impugned Judgment, para. 51.

¹⁴ *Ibid.*, para. 60, and sanction letter, annex, para. 60.

Judgment

71. The appeal is dismissed and Judgment UNDT No. UNDT/2021/078 is affirmed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Sandhu

Judgment published and entered into the Registrar on this 17th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar