



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1516

Désiré Yameogo

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before: Judge Abdelmohsen Sheha, Presiding
Judge Leslie F. Forbang
Judge Gao Xiaoli

Case No.: 2024-1954

Date of Decision: 21 March 2025

Date of Publication: 14 April 2025

Registrar: Juliet E. Johnson

Counsel for Appellant: Emmanuel Yonli

Counsel for Respondent: Angélique Trouche

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. On 8 January 2021, Mr. Désiré Yameogo (Mr. Yameogo) filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging the decision of the Administration of the United Nations Children’s Fund (UNICEF) to impose on him the disciplinary measure of dismissal for serious misconduct (contested decision).
2. In its Judgment No. UNDT/2022/005 of 18 January 2022 (impugned Judgment),¹ the UNDT affirmed the legality of the sanction imposed on Mr. Yameogo and rejected his application.
3. Mr. Yameogo filed an appeal against the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set forth below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. Mr. Yameogo joined UNICEF on 3 January 2006. At the time of his separation from service, he held the position of Child Protection Specialist (NO-3) in the Burkina Faso Country Office, located in Ouagadougou, and had done so since 1 March 2018. From July to August 2019, Mr. Yameogo was temporarily deployed to the Mali Country Office, located in Bamako. During his deployment, Mr. Yameogo met the Complainant (VO1), a Child Protection Specialist in the Mali Country Office.²
6. On 9 September 2019, the Office of Internal Audit and Investigations of UNICEF was alerted in an e-mail from a colleague of VO1 to possible misconduct of a sexual nature by Mr. Yameogo against VO1, which had been reported to the colleague on 4 September 2019.³
7. On 23 September 2019, VO1 submitted a formal complaint against Mr. Yameogo to the Office of Internal Audit and Investigations.⁴ In her written complaint, VO1 described, among

¹ *Yameogo v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/005.

² Investigation Report, paras. 1–2.

³ *Ibid.*, paras. 1 and 31. See also the email of 9 September 2019 from VO1’s colleague to the Office of Internal Audit and Investigations and the impugned Judgment, para. 30.

⁴ Investigation report, para. 9. See also VO1’s complaint dated 23 September 2019.

other things, an incident that allegedly took place on 24 August 2019, while she was at Mr. Yameogo's home:

[H]e got up, leaned towards me and tried to kiss me while putting his arm in front of me.

I immediately stood up, got out from under his arm, grabbed my bag and said, "No! If that's what this is about, I'm out of here." He said, "But why?" I said, "No, there's been a misunderstanding, I didn't come here for that."

That's when he grabbed me, pulled me close to him and lifted me off the ground. My feet were no longer touching the ground. I was completely trapped in his embrace, my neck level with his face. I started pushing against his arms to try to free myself from his embrace, crying out, "Let go of me!!!" He started kissing my neck. I pulled my face away with all my might. He kept repeating, "Kiss me, kiss me..." I was scared and started to panic.

After a few minutes, he released me. I ran to the door, opened it and went out into the hallway, which opens onto a balcony outside his apartment. He caught up with me. Then he said, "Please come back. I'll get some water. Come and drink your juice." I replied, "No, I want to go home."

He said, "Oh but I hope you're not angry about that. You haven't had your juice even though you wanted some water." I replied, "No, it's fine, I'm not angry, I just want to leave. I have water at home."

He retorted, "Well, I've run out of water, so are you inviting me to drink some water at your place?" I went downstairs. Once I was on the street, I got into my car, but before I could close the door, he had caught up with me and said, "Aren't you going to kiss me goodbye?"

I was scared, and, acting on autopilot, I got out of the car to kiss him goodbye. Then I got back into my car and managed to start it up and drive away. I went straight home.⁵

8. On 5 March 2020, Mr. Yameogo was informed in writing that the Office of Internal Audit and Investigations was conducting an investigation into potential misconduct reported to it.⁶ As part of the investigation, Mr. Yameogo was questioned on 17 March 2020 with a view to obtaining his version of the events.⁷

9. On 16 June 2020, the Office of Internal Audit and Investigations completed its investigation and forwarded its Investigation Report to the UNICEF Deputy Executive

⁵ VO1's complaint dated 23 September 2019.

⁶ Letter dated 5 March 2020 from the Office of Internal Audit and Investigations to Mr. Yameogo.

⁷ Investigation Report, para. 33.

Director, Management. Favouring VO1's version of the events, the Office of Internal Audit and Investigations found that the following facts had been established:

[O]n 24 August 2019, Mr. Yameogo had possibly made unwelcome sexual advances by grabbing, hugging and kissing [VO1] against her will, and that thereafter, Mr. Yaméogo repeatedly attempted to catch [VO1]'s attention, amongst the other things by sending her a text message 'loving thought and best regards'. Such conduct made [VO1] uncomfortable and caused her distress.⁸

10. The Office of Internal Audit and Investigations concluded that the established facts might constitute reasonable grounds to conclude that Mr. Yameogo failed to observe the standards of conduct expected of an international civil servant. Consequently, it recommended that the Deputy Executive Director, Management, take appropriate action against Mr. Yameogo.⁹

11. On 21 July 2020, the Deputy Executive Director, Management, notified Mr. Yameogo that a disciplinary process had been opened against him and that he was formally charged with attempting, on 24 August 2019, to kiss VO1 in his Bamako apartment, and then, against her will, grabbing her, lifting her off the ground and kissing her.¹⁰ He was invited to submit his response to the allegations, which he did on 4 and 18 August 2020.

12. On 18 September 2020, Mr. Yameogo was notified in a letter from the UNICEF Deputy Executive Director, Management, that the allegations of misconduct against him had been established by clear and convincing evidence and constituted sexual harassment, which amounted to serious misconduct in violation of Staff Regulation 1.2(a), Staff Rule 1.2(f) and Section 2.1 of UNICEF Executive Directive CF/EXD/2012-007 Amend. 1 (Prohibition of discrimination, harassment, sexual harassment, and abuse of authority),¹¹ justifying the imposition of the disciplinary measure of dismissal. In the letter, the Deputy Executive Director also stated that, in determining the appropriate sanction, the Administration had considered: (i) Mr. Yameogo's 14 years of continuous service as a mitigating factor, although this consideration was limited due to the gravity of his conduct; and (ii) the Organization's

⁸ *Ibid.*, para. 3.

⁹ *Ibid.*, paras. 56–57.

¹⁰ Letter dated 21 July 2020 from the Deputy Executive Director, Management, to Mr. Yameogo, para. 24.

¹¹ UNICEF policy on the prohibition of discrimination, harassment, sexual harassment, and abuse of authority.

policy of zero-tolerance for sexual harassment and the violation of VO1's physical integrity as an aggravating factor.¹²

13. Mr. Yameogo's dismissal took effect on 13 October 2020.

14. On 8 January 2021, Mr. Yameogo filed an application with the UNDT challenging the contested decision.

Proceedings before the United Nations Dispute Tribunal

15. On 22 November 2021, by Order No. 110 (NY/2021), the UNDT ordered the parties to submit any requests for the production of additional evidence and the identity of the witnesses they wished to call to testify.¹³

16. On 8 December 2021, Mr. Yameogo informed the UNDT by e-mail that he did not wish to request the submission of any further evidence or the hearing of any witness before the UNDT.¹⁴

17. On the same day, by Order No. 121 (NY/2021), the UNDT decided that it would adjudicate the case solely on the basis of the evidence and submissions on record.¹⁵

Impugned Judgment

18. On 18 January 2022, the Dispute Tribunal rejected Mr. Yameogo's application. The UNDT was satisfied that the facts upon which the contested decision was based had been established by clear and convincing evidence.¹⁶

19. The UNDT found that VO1's version of the events relating to the incident of 24 August 2019 was detailed, coherent and consistent. It noted that VO1 had no ulterior motive to wrongly accuse Mr. Yameogo. In this respect, the UNDT rejected Mr. Yameogo's argument that VO1's complaint may have been made in retaliation for him having reported irregularities,

¹² Disciplinary sanction letter dated 18 September 2021 from the Deputy Executive Director, Management, to Mr. Yameogo and the annex thereto.

¹³ *Yameogo v. Secretary-General of the United Nations*, Order No. 110 (NY/2021), paras. 16–17.

¹⁴ *Yameogo v. Secretary-General of the United Nations*, Order No. 121 (NY/2021), para. 2.

¹⁵ *Ibid.*, para. 5.

¹⁶ Impugned Judgment, para. 44.

pointing out that the report had not yet been filed when VO1 submitted her complaint to the Office of Internal Audit and Investigations.¹⁷

20. The UNDT found Mr. Yameogo's argument that his neighbours would have heard VO1 if she had cried out when trying to release herself from his embrace to be speculative and unfounded.¹⁸ Similarly, the UNDT pointed out that "there is no rule as to how a victim of sexual harassment is meant to behave following the incident", thus rejecting Mr. Yameogo's argument that, had VO1 felt uncomfortable because of his conduct, she would have fled rather than kissing him on the cheek. The UNDT also noted that VO1 appeared upset when she reported the incident to her colleague.¹⁹

21. Relying on *Ali Hussein Haidar*,²⁰ the UNDT found that the statement made by VO1's colleague was indirectly corroborative of VO1's version of the events. In this regard, the UNDT noted that Mr. Yameogo had not wished to cross-examine VO1, despite being allowed the opportunity to make such request in due course.²¹

22. Although Mr. Yameogo made no arguments under the remaining tiers of the judicial review, the UNDT deemed it fit to undertake a complete review of the contested decision.²² In so doing, the Tribunal was satisfied that Mr. Yameogo's conduct amounted to sexual harassment within the meaning of section 1.1(c) of UNICEF Executive Directive CF/EXD/2012-007 Amend. 1, and constituted a violation of Staff Rule 1.2(f).²³

23. As to whether the disciplinary measure imposed against Mr. Yameogo was proportionate, the UNDT found that it was proportionate to the nature and gravity of his misconduct, noting that the Administration had considered the UNICEF policy of zero-tolerance for sexual harassment. The UNDT also noted that the Administration had rightly considered the violation of VO1's physical integrity to be an aggravating factor and Mr. Yameogo's 14 years of service to be a mitigating factor.²⁴

¹⁷ *Ibid.*, paras. 37–38.

¹⁸ *Ibid.*, para. 39.

¹⁹ *Ibid.*, paras. 40–41.

²⁰ *Ali Hussein Haidar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1076, para. 43 (original English).

²¹ Impugned Judgment, paras. 33–35 and 42.

²² *Ibid.*, para. 45.

²³ *Ibid.*, paras. 46–47.

²⁴ *Ibid.*, paras. 48–49.

24. Lastly, the UNDT found that Mr. Yameogo had been subject to a fair and equitable procedure.²⁵

Proceedings before the Appeals Tribunal

25. On 19 March 2022, Mr. Yameogo filed an appeal with the Appeals Tribunal against the impugned Judgment. The Secretary-General submitted his answer on 13 December 2024.²⁶

Submissions

Mr. Yameogo's Appeal

26. Mr. Yameogo requests that the Appeals Tribunal reverse the impugned Judgment and the contested decision.

27. Mr. Yameogo submits that the facts of which he is accused have not been established by clear and convincing evidence. In this regard, he argues that the UNDT erred in basing its reasoning solely on VO1's statements. He points out that, in its Investigation Report, on which the impugned Judgment is based, the Office of Internal Audit and Investigations "makes no objective finding regarding the allegations under investigation [and] limits itself to reporting VO1's peremptory statements alone, without the slightest proof".

28. Mr. Yameogo argues that the statement made by VO1's colleague does not establish any of the facts of which he is accused, as she simply reported what VO1 had told her. He also argues that there is a contradiction between the versions of the events reported by VO1 and her colleague: the colleague said that VO1 had cried out when trying to release herself from his embrace, but VO1 never mentioned this in her statements. In this regard, Mr. Yameogo reiterates that his neighbours would surely have heard VO1 if she had really cried out.

29. Mr. Yameogo submits that his statement should have been deemed credible, given that he is a "person of honesty and integrity" who had worked for UNICEF for more than 14 years without ever being reproached, had received consistently positive performance evaluations, and had even been nominated "Human of UNICEF".

²⁵ *Ibid.*, paras. 50–53.

²⁶ Owing to a technical problem at the UNAT Registry, the appeal was not assigned a case number until October 2024.

30. Lastly, Mr. Yameogo questions the fact that the Administration and the UNDT focused solely on the incident that occurred on 24 August 2019 despite the fact that VO1 had initially made additional harassment allegations against him regarding other subsequent incidents.

The Secretary-General's Answer

31. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the impugned Judgment.

32. The Secretary-General submits that the UNDT was correct in affirming the legality of the contested decision.

33. The Secretary-General argues that Mr. Yameogo has failed to establish any error warranting the reversal of the impugned Judgment. He observes that, on the contrary, Mr. Yameogo repeats in part the same arguments already made before the UNDT to express his disagreement with the impugned Judgment. The Secretary-General stresses that the mere repetition of arguments that have already been submitted is not sufficient to reverse the findings of the Dispute Tribunal.²⁷

34. The Secretary-General maintains that the UNDT rightly found VO1's statements to be credible and determined that the facts had been established by clear and convincing evidence.²⁸ In addition, the Secretary-General submits that the UNDT was right to consider the statement made by VO1's colleague to be indirectly corroborative of VO1's version of the events and points out that Mr. Yameogo has not established any error on the part of the UNDT in that respect.

35. The Secretary-General asserts that Mr. Yameogo's argument that there is a contradiction between the versions of the events reported by VO1 and her colleague in terms of whether VO1 cried out during the incident on 24 August 2019 is erroneous. He points out that, in her formal complaint filed on 23 September 2019, VO1 explicitly states that she "tried to free [herself] from his embrace by crying out".²⁹ Furthermore, the Secretary-General notes that Mr. Yameogo has not demonstrated any error in the Dispute Tribunal's finding that his

²⁷ *Yolla Kamel Kanbar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1082, para. 25.

²⁸ The Secretary-General observes that Mr. Yameogo does not contest that "the allegations constitute misconduct, that the disciplinary measure of dismissal is proportionate and that his rights to due process were respected".

²⁹ VO1's complaint dated 23 September 2019.

argument that his neighbours would have heard VO1's cries if she had cried out when trying to release herself from his embrace was speculative and unfounded.

36. As for Mr. Yameogo's claim that his version of the events should have been deemed credible, the Secretary-General submits that Mr. Yameogo's "record of service has no impact on the reality of the allegations and does not make them any less serious".³⁰ He also points out that, contrary to Mr. Yameogo's claim, he never received the "Human of UNICEF" award.³¹ Furthermore, referring to the reply provided by Mr. Yameogo pursuant to Order No. 110 (NY/2021), the Secretary-General observes that Mr. Yameogo did not wish to cross-examine VO1 or to testify on his own behalf.

37. The Secretary-General maintains that the allegations relating to the incidents that occurred after 24 August 2019 are irrelevant insofar as the Administration did not rely on them in making the contested decision.

38. Lastly, in the absence of any irregularities, the Secretary-General submits that no compensation can be granted to Mr. Yameogo.

Considerations

39. Mr. Yameogo maintains that the UNDT erred in finding that the facts of which he was accused had been established by clear and convincing evidence. In particular, Mr. Yameogo alleges that the UNDT erred: (i) by relying solely on VO1's statements; (ii) by accepting statements by VO1's colleague that were not consistent with those of VO1; and (iii) by ignoring his own statements and his character of integrity and honesty throughout his service at UNICEF.

40. First, it is worth recalling the Appeals Tribunal's settled jurisprudence, according to which, in disciplinary cases that could lead to dismissal, the Administration must establish the alleged misconduct, including serious misconduct, by clear and convincing evidence. This high burden involves two criteria. The first, "clear", implies that the misconduct must be unequivocal and manifest. The second, "convincing", assumes that, once the "clear" criterion has been met, the evidence is persuasive to a standard appropriate to the gravity of the

³⁰ *Hoyce Temu v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1281, para. 41.

³¹ E-mail dated 8 April 2021 from UNICEF to Mr. Yameogo. In the e-mail, Mr. Yameogo was informed that he had been mistakenly told that he had been nominated for a "Human of UNICEF" award.

allegation against the staff member and the severity of its consequences. Evidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn from other direct evidence.³²

41. It follows that clear and convincing evidence entails a high probability that the alleged facts occurred. This standard of proof is more than a mere probability but less than a finding beyond reasonable doubt.³³

42. In cases of sexual harassment, under the Appeal Tribunal's settled jurisprudence, before concluding that there has been sexual harassment, there has to be evidence proving a high probability that the alleged perpetrator of sexual harassment made unwelcome sexual advances, made requests for sexual favours or engaged in verbal or physical conduct of a sexual nature. This conduct must be unwelcome or reasonably expected to cause offence or humiliation, or to cause an intimidating or hostile work environment.³⁴

43. The Appeals Tribunal has already pointed out that cases of sexual harassment are known to often take place in private, without direct evidence other than from the complainant.³⁵

44. In the present case, the evidence on record, in particular from the investigation, clearly shows that VO1's statements were consistent, detailed, coherent and credible. These statements were corroborated, in a largely consistent manner, by the statements of VO1's colleague. The differences between the statements of VO1 and her colleague were minor and had no bearing on the credibility or consistency of their testimonies as a whole. Moreover, there is no reason to believe that either VO1 or her colleague were acting maliciously through their statements. We therefore agree with the Dispute Tribunal's finding that VO1 and her colleague were credible.

45. We also recall that the UNDT rejected Mr. Yameogo's argument that the case against him had been brought in retaliation for the report of irregularities that he had submitted during

³² *Mohammad Yahya Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1196, paras. 57–58 (original English).

³³ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1187, paras. 63–65 (original English).

³⁴ *Gonzalo Ramos v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1256, para. 37 (original English).

³⁵ *Ali Hussein Haidar* Judgment, op. cit.

a selection process in which he had participated. As the UNDT rightly pointed out, the selection process, as well as the report of irregularities submitted by Mr. Yameogo, post-dated, rather than predated, the complaint filed by VO1. This, combined with the fact that Mr. Yameogo waived his right to cross-examine VO1 and her colleague before the UNDT, weakens his position in the present case and calls into question his own credibility, unlike that of VO1.

46. Lastly, we reject Mr. Yameogo's argument that his character of integrity and honesty throughout his service at UNICEF constitutes evidence that his statements regarding the unfolding of the events on 24 August 2019 are credible. On the contrary, an objective examination of the evidence on record reveals a high probability that Mr. Yameogo did in fact commit the facts of which he is accused.

47. For these reasons, the appeal must be dismissed.

Conclusion

48. Mr. Yameogo's appeal is dismissed, and Judgment No. UNDT/2022/005 is hereby affirmed.

Original and Authoritative Version: French

Dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Forbang

(Signed)

Judge Gao

Judgment published and entered into the Register on this 14th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar