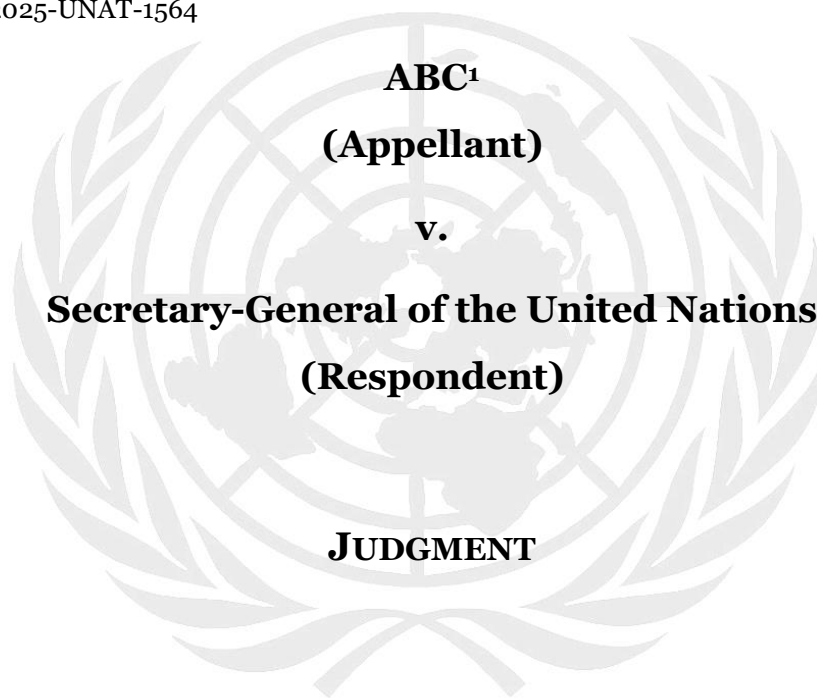




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1564



ABC¹

(Appellant)

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Leslie F. Forbang Judge Kanwaldeep Sandhu
Case No.:	2024-1971
Date of Decision:	27 June 2025
Date of Publication:	12 August 2025
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Sètondji Roland Adjovi & Anthony Kreil Wilson
Counsel for Respondent:	Angélique Trouche

¹ This unique three-letter substitute for the party's name is used to anonymize the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. ABC,² a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), contested the disciplinary decision to separate him from service for sexual harassment with compensation in lieu of notice and one half of the termination indemnity and to enter his name in the ClearCheck database³ (contested decision).
2. By Judgment No. UNDT/2024/068 (impugned Judgment),⁴ the United Nations Dispute Tribunal (UNDT) dismissed the application on the merits.
3. ABC lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure⁵

5. ABC joined UNHCR on 1 September 2019. On 11 May 2020, he was granted a temporary appointment as an Associate Information Management Officer, at the P-2 level, in Caracas. On 11 November 2020, he was appointed to the same position on a fixed-term contract. At the time of the contested decision, he held a fixed-term appointment (FTA) until 10 November 2023.⁶
6. The Complainant joined the UNHCR Venezuela Operation on a temporary appointment in August 2019. He was appointed as a Communication and Public Information Associate at the UNHCR Caracas Office in December 2019.⁷ ABC and the Complainant became friends and socialized in person outside the workplace.⁸
7. Between February and July 2021, ABC sent multiple WhatsApp messages to the Complainant, suggesting that they make a bet that, if ABC lost, he would kiss the Complainant's

² Anonymity was granted by the United Nations Dispute Tribunal.

³ ClearCheck is a United Nations centralized job candidate screening application which captures information on sexual harassment offenders and alleged offenders.

⁴ *Applicant v. Secretary-General of the United Nations*, Judgment dated 30 September 2024.

⁵ Summarized from the impugned Judgment as relevant to the appeal.

⁶ Investigation Report, para. 4.

⁷ *Ibid.*, para. 36.

⁸ *Ibid.*, paras. 37-39; impugned Judgment, paras. 38 and 50.

bottom, and repeatedly offering to pay the Complainant money if he forced ABC to fulfil the bet. ABC continued to bring up the matter despite the Complainant's multiple requests that he drop it. Even though ABC accepted that he was aware that the Complainant was not receptive to his proposal, he kept insisting in order to provoke a response. On 13 September 2021 ABC sent the Complainant a picture showing ABC pressing his face into the bottom of another man. The Complainant again asked ABC to stop this conduct.⁹

8. On 21 March 2022 and on 4 July 2022, UNHCR Inspector General's Office (IGO) received several allegations of ABC's prohibited conduct, including his conduct in respect of the Complainant. In July 2022, IGO interviewed several individuals, including the Complainant and ABC. On 4 August 2022, ABC was asked to provide comments on the draft findings of the investigation, which he did.¹⁰

9. On 12 September 2022, UNHCR informed ABC of the allegations of misconduct and invited ABC to respond, which he did on 22 September 2022.¹¹

10. On 31 March 2023, ABC was informed of the contested decision.¹² The Sanction Letter dated 29 March 2023 stated:¹³

The High Commissioner found that, by repeatedly suggesting a bet (...), which involves engaging in a sexual act (as is made clear by the picture you sent to [the Complainant], which illustrates what you had in mind (...), which was unwelcome, and which might reasonably be expected or perceived to cause offence or humiliation, you engaged in sexual harassment as defined in the Policy [UNHCR HCP/2014/4 Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority] and breached your basic obligations under staff regulations 1.2 (a) and (b), staff rule 1.2 (f), and paragraphs 4.1 and 4.2 of the Policy.

...

In determining the appropriate and proportionate disciplinary measure, the High Commissioner considered the particular circumstances of your case, including aggravating and mitigating factors as well as the prior practice of the Secretary-General of the UN and the High Commissioner. In the present case, the High Commissioner identified

⁹ Impugned Judgment, paras. 6-7.

¹⁰ Investigation Report, paras. 1-2, 8, 10 and 11.

¹¹ Sanction Letter, p. 1.

¹² 31 March 2023 e-mail.

¹³ Sanction Letter, pp. 1-2.

as mitigating circumstances that you admitted to your misconduct and that you showed remorse from the start, even before the investigation was initiated.

The High Commissioner did not identify any aggravating circumstances.

The High Commissioner also took into account the parity principle, which requires equality and consistency in the treatment of employees, and he compared your case to other similar cases in which staff members were previously involved. (...)

...

A redacted copy of this letter will be inserted into your Official Status File. In addition, your name will be included in the Clear Check database to record that your employment with UNHCR was terminated following a disciplinary process for sexual harassment.

11. On 28 June 2023, ABC filed the application with the UNDT.

The impugned Judgment

12. ABC challenged the contested decision, as set out in the Sanction Letter, before the Dispute Tribunal. The UNDT dismissed the application on the basis that, considering ABC's admission of the facts stated in the Sanction Letter and the Investigation Report and in accordance with his closing statement and his rejoinder, the facts were duly established.¹⁴

13. The UNDT held that the picture ABC had sent to the Complainant on WhatsApp was of an explicit sexual and even pornographic character. The earlier WhatsApp messages unambiguously infer that ABC's intention was for the Complainant and him to engage in the same sexual act as displayed in the photo. ABC's WhatsApp messages leading up to him sending the photo, and in particular, the photo itself fall within the legal definition of sexual harassment.¹⁵

14. Summarizing the Complainant's testimony about the jokes he had made on his part and his banter with ABC, the UNDT noted that none of ABC's comments related to those jokes had been of a sexual character or had any such undertone. However, in light of ABC's subsequent messages, his testimony on being offended by the Complainant's jokes and banter, inappropriate or not, does not seem credible. Consequently, ABC's actions cannot be excused, or even explained, by other circumstances such as the Complainant's behaviour.¹⁶

¹⁴ Impugned Judgment, para. 11.

¹⁵ *Ibid.*, paras. 26-29.

¹⁶ *Ibid.*, paras. 30-34.

15. The UNDT found that it followed consistently from the Complainant's responses, or lack thereof, to ABC's many messages on the proposed "bet" that he had found these messages, in particular the photo, unwelcome. In addition, the Complainant explained in his testimony that when receiving the photo, he was shocked, disgusted and disappointed. The Complainant responded that ABC had to stop and expressed indignation. Due to the obscenity of the photo, the messages should reasonably be expected or perceived to cause offence or humiliation in the circumstances.¹⁷

16. Turning to the next element in the analysis, the UNDT referred to the Complainant's statements in the investigation interview that on his return from leave in January 2022 "he did not feel comfortable seeing [ABC] at work without confronting [ABC] and (...) he did so in a phone call, where he spoke to [ABC] very bluntly". Furthermore, in March 2022, ABC, the Complainant and other UNHCR colleagues participated in a workshop on sexual exploitation and abuse, delivered by a UNHCR Protection Officer. Other UNHCR colleagues encouraged the Complainant to report the sexual harassment when, at the end of June 2022, ABC was appointed to the post of Protection Officer at the UNHCR Caracas Office. The Complainant could "not believe" ABC would be the one to deliver training on sexual misconduct in the future, in addition to being placed in direct contact with beneficiaries. Accordingly, as an aggravating circumstance, sending the WhatsApp messages, in particular the photo, was found to have interfered with work and created an intimidating, hostile, and offensive work environment.¹⁸

17. Noting that sexual harassment was a scourge in the workplace which undermined the morale and well-being of staff members subjected to it, the UNDT held that ABC's behaviour amounted to misconduct.¹⁹

18. In determining the proportionality of the sanction, the UNDT compared the present case to *Szvetko*²⁰ and found that similar considerations applied.²¹ The UNDT concluded therefore that UNHCR had acted lawfully when imposing the sanction.²²

¹⁷ *Ibid.*, paras. 36-39.

¹⁸ *Ibid.*, paras. 41-43.

¹⁹ *Ibid.*, paras. 44-45.

²⁰ *Balint Szvetko v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1311.

²¹ Impugned Judgment, paras. 46-50.

²² *Ibid.*, para. 51.

Procedure before the Appeals Tribunal

19. On 26 November 2024, ABC filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General filed an answer on 30 January 2025.

Submissions

ABC's Appeal

20. ABC seeks that the Appeals Tribunal rescind the contested decision and order reinstatement, compensation for damage to his career and self-respect, remove his name from the ClearCheck database or, alternatively, if it is found that the UNDT did not err in finding that he had committed the misconduct, modify the sanction and, if the misconduct is found to have warranted separation, replace the sanction with separation but with full termination indemnity.

21. ABC argues that the UNDT failed to exercise jurisdiction vested in it, erred on a question of law, committed an error in procedure, such as to affect the decision of the case, and erred on a question of fact, resulting in a manifestly unreasonable decision. ABC submits that the UNDT disregarded its own Order No. 053 (NY/2024) during the hearing of witness testimonies and overruled the objections of his counsel, which unfairly prejudiced him. The UNDT had ordered that it would allow witness testimony “on the very specific issue of the nature of their WhatsApp communications but nothing else”. His counsel had wanted to ask him and the Complainant about their statements made in the investigation interview but respected the Order. When during cross-examination, counsel for the Secretary-General did not limit cross-examination to the WhatsApp communications but asked questions about the investigation, the UNDT did not rule on the objection of ABC's counsel and overruled a subsequent objection on the same point. ABC takes issue with this as a serious error in procedure which was prejudicial to him and warrants the Judgment being set aside.

22. ABC contends that the UNDT contradicted itself and drew erroneous conclusions in finding on the one hand that none of ABC's various comments were of a sexual character and constituted, as testified by the Complainant, “jokes and banter”. On the other hand, the UNDT concluded that ABC's jokes were sexual harassment and that his testimony was not credible, while the Complainant's jokes and comments were acceptable and that his testimony was credible. ABC

argues that the Complainant's testimony on being offended by ABC's comments does not therefore seem credible.

23. ABC takes issue further with the finding of the UNDT that there was a power imbalance between ABC and the Complainant when ABC was not the Complainant's supervisor and had no influence over his career. In addition, the UNDT overlooked that the Complainant clearly had no issue with initiating and engaging in sexually charged conversations with ABC but found, with reference to the case of *AAT*,²³ that a close and friendly relationship between colleagues did not excuse unwanted and inappropriate sexual advances, especially between a supervisor and supervisee. There was little difference in income between the P-2 and G-6 positions held by ABC and the Complainant, respectively.

24. ABC argues that he did not make sexual advances to the Complainant. The UNDT mischaracterized the exchanges between them and ignored the totality of the exchanges over a period of two years and a manifestly unjust conclusion was reached regarding the joke made by ABC, particularly given the Complainant's behaviour over the three-year period prior to the incident. In addition to WhatsApp, ABC and the Complainant also communicated in person and by other means, using another WhatsApp account, direct calls and Microsoft Teams.

The Secretary-General's Answer

25. The Secretary-General requests the Appeals Tribunal to dismiss the appeal and uphold the impugned Judgment.

26. The Secretary-General argues that ABC has failed to demonstrate any reversible error in the conduct of the UNDT hearing. ABC has not shown that the UNDT exceeded its broad discretion in overruling the objections of ABC's counsel. The questions by counsel for the Secretary-General concerned a WhatsApp message for which additional context was needed. Even if there was an error, ABC has failed to show any impact on the outcome of the case.

27. The Secretary-General submits that ABC has failed to demonstrate any error with the UNDT's finding that his conduct amounted to sexual harassment. There is no contradiction between the different parts of the impugned Judgment. The UNDT did not make any reference to

²³ *AAT v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1412.

a power imbalance between ABC and the Complainant, and, in any event, a power imbalance is not required for sexual harassment to be established. The UNDT considered and rejected ABC's argument that the broader context of the communications between ABC and the Complainant be given more importance, and there is no merit to his attempt at re-arguing it. ABC did not bring forth any other communications between him and the Complainant.

28. The Secretary-General contends that there is no merit to ABC's claim for remedies. Illegality is absent. Furthermore, ABC has not brought any evidence of harm.

Considerations

Anonymization

29. ABC's identity was anonymized before the UNDT, and he seeks that such anonymity be maintained in these proceedings. No challenge has been raised to the continued anonymization of ABC's identity before this Tribunal. Having regard to the absence of any objection and the nature of the matter, we are satisfied that the anonymization of ABC's name should remain in effect, pursuant to UNAT Practice Direction No. 1, paragraph 32.²⁴

Merits

30. Article 2(1) of the UNAT Statute provides that this Tribunal is competent to hear and pass judgment on an appeal where the UNDT has (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

31. ABC argues that the UNDT failed to exercise the jurisdiction vested in it, erred on a question of law, committed an error in procedure, such as to affect the decision of the case, and erred on a question of fact, resulting in a manifestly unreasonable decision.

32. The UNDT has a broad discretion in managing the cases that come before it. This includes making rulings in relation to whether to allow evidence or call witnesses, to order an oral hearing and to order production of documents. We will not interfere lightly with this broad discretion

²⁴ See *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, paras. 155-156.

unless in clear cases where it has shown that due process has been denied.²⁵ This may occur in instances such as where an error made by the UNDT is shown to impact on a party's right to present their case or produce necessary evidence in support of it. However, the existence of an error alone is not sufficient. In order to be successful on appeal, it must also be shown that the error committed materially affected the outcome of the case.²⁶

33. We find there to be no merit in ABC's complaint that the UNDT failed to exercise the jurisdiction vested in it or that it committed an error in procedure. While ABC submits that the UNDT disregarded its own order during the hearing of witness testimonies and overruled the objections of his counsel, which he says unfairly prejudiced him, we are satisfied that the UNDT did not exceed its broad discretion in overruling the objections of ABC's counsel when it permitted questions by counsel for the Secretary-General concerning a WhatsApp message, in respect of which it appears that additional context was needed. However, even if this was an error on the part of the UNDT, given the content of its prior order, we are not satisfied that the error was of such a nature that it had a material or prejudicial impact on the outcome of the case.

34. In disciplinary cases it is the task of the UNDT to consider:²⁷

- (a) whether the facts on which the sanction is based have been established by clear and convincing evidence when termination is a possible outcome,
- (b) whether the established facts qualify as misconduct under the Staff Regulations and Rules,
- (c) whether the sanction is proportionate to the offence and the circumstances, and
- (d) whether the staff member's due process rights were observed in the investigation and disciplinary process (...).

Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; it means that the truth of the facts asserted is highly probable.

35. The preamble of the Charter of the United Nations, and the core values set out in Staff Regulation 1.2(a) and Staff Rule 1.2(f), provide that every staff member has the right to be

²⁵ AAT Judgment, *op. cit.*, paras. 64 and 66 (internal citations omitted).

²⁶ See *Ray Steven Millan v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1330, para. 83.

²⁷ AAT Judgment, *op. cit.*, para. 67 (internal citations omitted).

treated with dignity and respect, and to a work environment free from harassment and abuse. Staff Rule 1.2(f) sets out the fundamental prohibition:

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.

36. Section 1.3 of the Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) defines sexual harassment:

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

37. A finding of sexual harassment requires proof that: i) the conduct in question occurred; ii) it falls within the legal understanding of sexual harassment and is of a sexual nature; iii) the conduct was unwelcome and reasonably expected or perceived to cause offence or humiliation; and iv) it interfered with work or created an intimidating, hostile, or offensive work environment.²⁸

38. The electronic and other communications exchanged between ABC and the Complainant are not in dispute and no issue is taken with the UNDT's finding that many of these messages included acceptable jokes and banter between ABC and the Complainant. The UNDT found however that the picture ABC sent to the Complainant on WhatsApp in which ABC had his forward-facing face in another man's bottom was of an explicit sexual and even pornographic character. In addition, it found that the WhatsApp messages sent to the Complainant by ABC preceded the picture sent and that these had unambiguously inferred that ABC's intention was for the Complainant and him to engage in the same sexual act as displayed in the photo. We are satisfied that in finding as much the UNDT did not err. Sending the WhatsApp messages and the picture fell within the definition of sexual harassment. It amounted to an unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or other

²⁸ AAT Judgment, *op. cit.*, paras. 99, 102 and 103.

behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to the Complainant. ABC's conduct was clearly unwelcome and was offensive to the Complainant.

39. There is no merit in ABC's argument that the broader context of the communications between himself and the Complainant ought to have been given more importance. The fact that previous jokes and banter had been exchanged between ABC and the Complainant as friends did not justify ABC's conduct in crossing a line in sending patently inappropriate messages to the Complainant. It followed consistently from the Complainant's responses, or lack thereof, to ABC's many messages on the proposed "bet" that he had found these messages and in particular the photo, unwelcome. The Complainant testified that when he received the photo, he was shocked, disgusted and disappointed, he expressed indignation and responded that ABC had to stop. In his testimony he stated that he did not feel comfortable seeing ABC at work and so confronted him in a phone call. ABC contends that the UNDT contradicted itself and drew erroneous conclusions when it found that some of his jokes amounted to sexual harassment and others did not. We do not agree. Due to the obscenity of the photo, the messages sent by ABC to the Complainant in relation to it fell within the definition of sexual harassment and caused offence or humiliation in the circumstances and an offensive work environment. In addition, by making unwelcome, suggestive, sexual comments or innuendos to the Complainant, ABC violated the obligation of an international civil servant to uphold the highest standard of integrity and undermined professional confidence.²⁹

40. While a power imbalance between staff members may very often exist in circumstances in which sexual harassment occurs, this is not always so. Even if there was no workplace power differential between ABC and the Complainant, this did not negate the fact that ABC's conduct constituted sexual harassment as defined.

41. The fact that at the end of June 2022 ABC was appointed to the post of Protection Officer at the UNHCR Caracas Office, further indicates his lack of insight into the nature and seriousness of his conduct when in such role he would be required to deliver training on sexual misconduct in the workplace.

²⁹ *Szvetko Judgment, op. cit.*, para. 53.

42. The Secretary-General was required to prove misconduct against ABC on clear and convincing evidence. We are satisfied that it did so and that ABC's conduct constituted a serious breach of the Organization's Rules and Regulations.

43. In disciplinary matters the Secretary-General has a broad discretion which will not be lightly interfered with on judicial review. The role of the UNDT is not to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him or to substitute its own decision for that of the Secretary-General.³⁰ Rather, any disciplinary measure imposed on a staff member must be proportionate to the nature and gravity of the misconduct³¹ and be lawful, reasonable and procedurally fair. The sanction imposed on ABC was not unlawful, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity,³² with no indication that the Secretary-General failed to weigh aggravating and mitigating circumstances when deciding upon the appropriate sanction to impose.³³ This is all the more so since sexual harassment has been recognized as a scourge in the workplace which undermines the morale and well-being of staff members subjected to it.³⁴

44. For these reasons, the appeal cannot succeed and the UNDT Judgment is therefore affirmed.

³⁰ *Iyad Youssef Zaqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2021-UNAT-1183, para. 32 (internal citation omitted).

³¹ Staff Rule 10.3(b).

³² See *George M'mbetsa Nyawa v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1024, para. 89 (internal citations omitted); *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, para. 21 (internal citations omitted).

³³ *Toukolon v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-407, para. 31.

³⁴ *Desire Hatungimana v. Secretary-General of the United Nations*, Judgment No. 2025-UNAT-1539, para. 97 (internal citation omitted).

Judgment

45. ABC's appeal is dismissed, and Judgment No. UNDT/2024/068 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of June 2025 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Forbang

(Signed)

Judge Sandhu

Judgment published and entered into the Register on this 12th day of August 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar