



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1605

Joseph Brown
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

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| Before: | Judge Gao Xiaoli, Presiding Judge Nassib G. Ziadé Judge Graeme Colgan |
| Case No.: | 2024-1978 |
| Date of Decision: | 31 October 2025 |
| Date of Publication: | 15 December 2025 |
| Registrar: | Juliet E. Johnson |

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|---------------------------|------------------|
| Counsel for Joseph Brown: | George G. Irving |
| Counsel for Respondent: | Noam Wiener |

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Joseph Brown (Mr. Brown), a staff member of the United Nations Interim Security Force for Abyei (UNISFA) contested the decision of the Administration to impose on him the disciplinary measures of written censure and loss of two steps in grade for failure to cooperate with an investigation (contested decision).
2. On 4 November 2024, by Judgment No. UNDT/2024/090 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) granted Mr. Brown's application and rescinded the contested decision.
3. The Secretary-General lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal grants the appeal and reverses the impugned Judgment.

Facts and Procedure

5. Mr. Brown joined the Organization in 2010. At the relevant time of events, he was employed as a Security Officer at grade FS-4 with UNISFA.
6. In March 2020, with travel restrictions in place due to the COVID-19 pandemic, several UNISFA staff members – including Mr. Brown and Mr. Francis N. Fultang (Mr. Fultang), a Conduct and Discipline Officer at the P-4 level – found themselves stranded in Entebbe, Uganda, unable to return to their duty station in Abyei or home leave destinations. As a Security Officer, Mr. Brown was tasked with monitoring the well-being, safety and security of the UNISFA staff members in Entebbe. Specifically, on 16 April 2020, A.S., the Field Security Coordination Officer of the United Nations Department of Safety and Security (UNDSS) instructed him “to follow up on UNISFA staff stranded in Entebbe by maintaining a staff list, checking their status once a week and using the UNISFA vehicle in Entebbe to assist UNISFA staff in Entebbe to have access to essentials”. He was also tasked with identifying their area of living and recording their GPS coordinates, along with their addresses and contact details.²

¹ *Brown v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/090.

² Letter of allegations of misconduct dated 23 October 2023, para. 7.

7. On 22 April 2020, Mr. Brown sent the draft list to the UNISFA staff members in Entebbe, asking them to fill in missing information. On the same date, Mr. Fultang responded, listing his residential address as the MowiCribs Hotel.³

8. On 27 April 2020, Mr. Brown circulated the updated contact list to UNISFA staff members in Entebbe, encouraging them to review it and provide him with any missing information.⁴

9. Between 22 April 2020 and 14 August 2020, Mr. Brown regularly submitted contact lists to his supervisor, R.L.⁵

10. On 23 January 2021, the Office of Internal Oversight Services (OIOS) received a report alleging that Mr. Fultang may have submitted false documentation to the Organization, indicating that he had lodged at the Imperial Golf View Hotel in Entebbe from March to September 2020. As a result, OIOS opened an investigation into the allegations.

11. On 10 March 2021, Mr. Brown was interviewed as a witness in connection with the investigation into Mr. Fultang's conduct. Following his interview, on 17 March 2021, Mr. Brown provided reports he had issued, recording visits made to UNISFA staff members in Entebbe. These reports noted that Mr. Fultang's accommodation was at the MowiCribs Hotel.⁶ During the course of the investigation, OIOS identified evidence of possible misconduct on the part of Mr. Brown.

12. On 15 April 2021, Mr. Brown was informed that he was the subject of an investigation into allegations that he knowingly provided false information to the United Nations.⁷

13. On 19 April 2021, Mr. Brown was interviewed as a subject by OIOS.⁸

14. On 27 May 2021, OIOS issued its Investigation Report in Mr. Fultang's case. On 28 November 2022, following the completion of the disciplinary process, the Administration found that between mid-March and mid-September 2020, on one or more occasions, Mr. Fultang misrepresented to the Organization his place of accommodation by claiming that he was staying at

³ *Ibid.*, paras. 8-9. The MowiCribs Hotel is also referred to as the Mowi Crabs Hotel in the impugned Judgment.

⁴ Letter of allegations of misconduct dated 23 October 2023, para. 10.

⁵ *Ibid.*, para. 11.

⁶ E-mail from Mr. Brown to OIOS dated 17 March 2021. See also Investigation Report, para. 82.

⁷ Impugned Judgment, para. 12.

⁸ Investigation Report, para. 85.

the MowiCribs Hotel and claimed reimbursement for expenses related to residing in that hotel, when, in fact, he had stayed there for no more than one day and, in truth, resided in long-term rental apartments, specifically the Felix Apartments and the Zack Apartments. As a result, the Administration imposed on Mr. Fultang the disciplinary measure of dismissal and required him to reimburse the Organization for its financial loss up to the amount of USD 17,213.00.⁹

15. On 19 August 2021, OIOS issued an Investigation Report in Mr. Brown's case. It concluded that there were reasonable grounds to conclude that:¹⁰

(...) [Mr. Brown] submitted staff contact lists to UNISFA and Security colleagues that he knew inaccurately recorded the accommodation of Mr. Fultang (...). In fact, Mr. Brown's submissions incorrectly showed Mr. Fultang staying in a hotel, whilst Mr. Brown visited him at his true accommodation.

Mr. Brown failed to disclose to OIOS relevant interactions with Mr. Fultang when asked at interview, that he knew him to have stayed in long-term rented apartments throughout the lockdown period and that he visited him at his accommodation. Mr. Brown was aware that Mr. Fultang had submitted a claim for financial compensation for the time stayed at a hotel.

16. Consequently, OIOS referred the case to the Office of Human Resources (OHR) for appropriate action.¹¹

17. On 23 October 2023, the Director, Administrative Law Division (ALD), OHR, informed Mr. Brown by memorandum that, on the basis of the evidence and findings contained in the Investigation Report, the following allegations of misconduct were issued against him:¹²

[I]t is alleged that you failed to cooperate with the duly authorised investigation concerning Mr. Fultang by one or more of the following:

a. On 10 March 2021, when interviewed as a witness under oath, telling the OIOS investigator that you did not have enough information to tell him where Mr. Fultang was located during lockdown, when in reality you visited him several times and would regularly pick him [up] at his accommodation;

b. On 10 March 2021, when asked during your interview as a witness under oath if you could remember any of the other locations where you met Mr. Fultang at any time when you were in Entebbe, omitting to mention that you had visited Mr. Fultang at his apartment on Abdu

⁹ The lawfulness of the disciplinary measure imposed on Mr. Fultang was confirmed by the UNDT in *Fultang v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/022.

¹⁰ Investigation Report, paras. 3-4.

¹¹ *Ibid.*, para. 98.

¹² Letter of allegations of misconduct dated 23 October 2023, para. 45.

Close, near Lunyo and the apartment he later relocated to on Bishop Close, off Uringi Crescent; that you had regularly picked him up at this accommodation for transportation purposes; and that you had met him at the Wash and Wills hotel in Mbale in September 2020;

c. On 17 March 2021, writing to the OIOS investigator that you had visited Mr. Fultang at the MowiCribs Hotel on 29 April 2020, when in reality you had visited him at his residence in an apartment on Abdu Close, near Lunyo;

d. Providing vague and evasive statements in response to the OIOS investigator's questions when the record indicates that you had considerable first-hand information about the matters asked.

18. Mr. Brown was requested to provide his written comments on the factual findings within one month, which he did on 21 November 2023.¹³

19. On 16 January 2024, the Assistant Secretary-General for Human Resources (ASG/OHR) informed Mr. Brown by letter of the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) that the allegations against him had been substantiated on a preponderance of the evidence and constituted misconduct pursuant to Staff Regulation 1.2(b) and Staff Rule 1.2(c), in respect of which the disciplinary measures of written censure and loss of two steps in grade were imposed. The letter also stated that, in reaching its decision, the Administration considered Mr. Brown's role as a Security Officer as an aggravating factor and his long service with the Organization as a mitigating factor. It concluded that the "aggravating factor outweigh[ed] the mitigating factor, as [he] provided incomplete, false and vague information to the OIOS investigator reflecting a lapse of integrity that [was] rendered more serious by [his] role involving a position of trust" and justified the imposition of a sanction "on the sterner end of the spectrum for this type of conduct".¹⁴

20. On 9 April 2024, Mr. Brown filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

21. On 4 November 2024, the UNDT issued the impugned Judgment, granting Mr. Brown's application and rescinding the contested decision.

¹³ Impugned Judgment, para. 14.

¹⁴ Sanction letter dated 16 January 2024.

22. The UNDT first found that, as Mr. Brown's statements to OIOS were on the record and proven, the facts on which the contested decision was based had been established. It nevertheless acknowledged the "difficult issue of assessment of those statements and of their deceptive or evasive nature, if any".¹⁵

23. The UNDT concluded that the established facts did not amount to misconduct. It held that whether or not Mr. Brown could recall details such as addresses or meetings with Mr. Fultang long after the events did not, in itself, constitute evidence of impropriety or provide a basis for assuming misconduct on his part. Moreover, it found that Mr. Brown's statement to the investigators could not be seen as "misleading, objectively deceptive, nor incorrect".¹⁶

24. The UNDT held that Mr. Brown's responsibility was limited to acquiring contact information of UNISFA staff members in case they needed support, not to monitoring where they were located.¹⁷ Therefore, the UNDT characterized as a "mere subjective opinion" the Secretary-General's speculation regarding what Mr. Brown should have known or should have better recalled due to his position as a Security Officer.¹⁸

25. The UNDT further determined that the allegations against Mr. Brown stemmed from an erroneous "assumption that his statement to investigators [was] intended to objectively give help to Mr. Fultang in committing his fraud". It noted that Mr. Brown's statements could not be viewed as "deceptive" as he had told the investigators that he visited Mr. Fultang at different places where he lived and knew that he resided in various rented apartments, namely "one before COVID-19 (a rented accommodation in Lunyo, Mayors's Road) and another at some time later during and after the COVID-19 pandemic (an apartment around the Santas Maria area, going toward Country Bar)".¹⁹

26. The UNDT observed that Mr. Brown was not allowed to refresh his memory by consulting relevant records.²⁰ It held that his request to do so did not indicate evasiveness but was reasonable given the numerous meetings he had attended with UNISFA staff during the period in question.

¹⁵ Impugned Judgment, para. 29.

¹⁶ *Ibid.*, paras. 60-61.

¹⁷ *Ibid.*, paras. 41-43.

¹⁸ *Ibid.*, para. 57.

¹⁹ *Ibid.*, paras. 44-46.

²⁰ *Ibid.*, para. 48.

27. The UNDT also identified several factors that could explain Mr. Brown's limited recollection of the events during the investigation. These included the extended timeframe – spanning the COVID-19 pandemic – during which Mr. Fultang's location was under review, as well as the fact that multiple staff members shared varying locations with Mr. Brown. Additionally, Mr. Brown was asked to recall general meetings that had taken place many months earlier.²¹ The UNDT concluded that, although Mr. Brown was “more silent when facing open questions (...), posed many years after the facts occurred, when asked specific concrete questions, he answered and told what he recalled”.²² The UNDT held that, even if Mr. Brown exercised caution in recalling facts or in “stating hypothetical places of Mr. Fultang's residence, especially when those statements could have an unforeseen impact to his colleague”, such caution did not amount to a lack of cooperation.²³

28. Last, the UNDT found that the Administration's conclusion that Mr. Brown knew where Mr. Fultang resided was based on mere conjecture. It emphasized that the fact that they met in their private lives did not imply that Mr. Brown knew where he lived.²⁴ Furthermore, it held that the Secretary-General failed to demonstrate that Mr. Brown “always and effectively knew where Mr. Fultang was residing in each moment, or had any knowledge of Mr. Fultang's relationship with the owners of any of the premises where he may have met Mr. Fultang”.²⁵

Procedures before the Appeals Tribunal

29. On 19 December 2024, the Secretary-General filed an appeal against the impugned Judgment with the Appeals Tribunal, to which Mr. Brown responded on 4 February 2025.

Submissions

The Secretary-General's Appeal

30. The Secretary-General requests the Appeals Tribunal to reverse the impugned Judgment and uphold the contested decision.

²¹ *Ibid.*, paras. 55-56.

²² *Ibid.*, para. 48.

²³ *Ibid.*, para. 59.

²⁴ *Ibid.*, para. 50.

²⁵ *Ibid.*, para. 57.

31. The Secretary-General contends that the Administration had established, based on a preponderance of the evidence, that Mr. Brown – “had the information about Mr. Fultang’s accommodation at the material time based on evidence on the record, consisting of the screenshots of WhatsApp messages, e-mail correspondence, and the OIOS interview records” and that he “failed to disclose information about the Apartments when he was interviewed as a witness on 10 March 2021, or in the e-mail correspondence of 17 March 2021, and that [he] recalled this information only when he himself became the subject of an investigation into his own conduct”. The Secretary-General further argues that the UNDT erred in finding that these established facts did not amount to misconduct.

32. In this regard, the Secretary-General first submits that the UNDT erred in finding that the scope of Mr. Brown’s responsibilities as a Security Officer excused his failure to cooperate with the duly authorized investigation into Mr. Fultang’s conduct. The Secretary-General emphasizes that Mr. Brown’s obligation to cooperate with the investigators did not stem from his position as a Security Officer, but rather from his general status as an international civil servant and United Nations staff member.²⁶

33. The Secretary-General further notes that, although Mr. Brown did not know at “each moment” where Mr. Fultang was residing, he was nonetheless aware that “for significant periods of time Mr. Fultang resided in the Apartments rather than in the MowiCribs hotel and yet (...) kept this pertinent information to himself rather than fulfilling his obligation to cooperate with the duly authorized investigation by disclosing it to the OIOS investigator”.

34. The Secretary-General also contends that the reports that Mr. Brown provided to OIOS following his interview on 10 March 2021 misrepresented Mr. Fultang’s residence as being at the MowiCribs Hotel. The Secretary-General observes that, during the OIOS investigation into Mr. Fultang’s conduct, Mr. Brown failed to disclose that he had met Mr. Fultang at his accommodation, had picked him up from there on approximately eight occasions, and had even attended a party at Mr. Fultang’s residence while they were in Entebbe.²⁷

²⁶ The Secretary-General relies on Staff Rule 1.2(c), paragraph 20 of the Standards of Conduct for the International Civil Service and Section 6.2 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

²⁷ WhatsApp messages from a group of UNISFA staff members in Entebbe, which included Mr. Brown and Mr. Fultang. The Secretary-General specifically submits that “[b]etween April and September 2020, [Mr. Brown] met, picked up by car, and visited Mr. Fultang at various locations Mr. Fultang used as accommodations” (appeal brief, para. 6).

35. The Secretary-General underscores that Mr. Brown only partially disclosed this information at a later stage, specifically when he himself became the subject of an investigation which, rather than justifying his omission during his initial OIOS interview, as the UNDT suggested, further demonstrates that he initially failed to disclose relevant information.²⁸

36. Second, the Secretary-General contends that the UNDT erroneously held that the contested decision was premised on the assumption that Mr. Brown intended to “objectively give help to Mr. Fultang in committing his fraud”.²⁹ The Secretary-General observes that a staff member’s intention to assist another staff member or to act with any particular motivation is not a prerequisite for establishing misconduct based on a failure to provide OIOS with accurate and complete information. On the contrary, a breach of the obligation to cooperate with an ongoing investigation may be established regardless of intent.

37. Similarly, the Secretary-General challenges the UNDT’s finding that Mr. Brown could be “considered to have been a bit, but not to have been a liar; his statements to the investigator cannot be seen as misleading, objectively deceptive, nor incorrect”.³⁰ The Secretary-General argues that a “staff member’s refraining from providing all relevant information necessary to discover the truth of the facts being investigated would be qualified as a misconduct; such qualification would not require providing ‘misleading’ [information] being ‘objectively deceptive’ or ‘incorrect’”. In any event, the Secretary-General notes that the additional information Mr. Brown submitted on 17 March 2021, after consulting his records, was misleading, as it suggested that Mr. Fultang resided in the MowiCribs Hotel, despite Mr. Brown knowing that this was not the case.³¹

38. Last, the Secretary-General submits that the UNDT erred in fact and in law when it held that the Administration’s determination that Mr. Brown knew or should have known where Mr. Fultang was residing was based on conjecture. In this regard, the Secretary-General notes that, contrary to the UNDT’s findings, Mr. Brown was allowed to consult his records following his 10 March 2021 interview and had ample time to provide additional responses to the OIOS investigators. The Secretary-General also observes that, contrary to the UNDT’s conclusion, Mr. Brown was not asked to respond to questions regarding events that had occurred “many years” earlier, but rather between six and eleven months prior to his interview. Consequently, the

²⁸ Transcript of Mr. Brown’s interview dated 19 April 2021, p.13: 209-216.

²⁹ Impugned Judgment, para. 44.

³⁰ *Ibid.*, para. 60.

³¹ E-mail from Mr. Brown to OIOS dated 17 March 2021.

Secretary-General contends that it is “highly improbable” that, mere months after the facts occurred, Mr. Brown had forgotten that he had visited Mr. Fultang at his apartment for a party or had picked him up from his apartment.

Mr. Brown’s Answer

39. Mr. Brown requests the Appeals Tribunal to dismiss the appeal, affirm the impugned Judgment and award him USD 10,000 in costs for abuse of process.

40. Mr. Brown clarifies certain facts of the case. First, he recalls that his task was limited to calling UNISFA staff members once a week to inquire about their well-being, not to verify the accuracy of the information they provided. Second, he states that his OIOS interview on 10 March 2021 lasted only a few minutes and consisted of just two questions, one of which concerned whether he recalled where Mr. Fultang was residing a year earlier. Last, Mr. Brown questions the “aggressive and vague” nature of the OIOS investigator’s questioning, against which he filed a complaint of unethical behavior.

41. Mr. Brown contends that the Secretary-General’s arguments merely repeat those that were unsuccessfully presented before the Dispute Tribunal.

42. Mr. Brown challenges the Secretary-General’s factual account of the events. Specifically, he alleges that the Secretary-General’s claim that, between April 2020 and September 2020, he met with Mr. Fultang at various locations Mr. Fultang used as accommodations is baseless and constitutes “undocumented conjecture”. Similarly, he contends that there is no evidence that he regularly picked up Mr. Fultang from his apartments. He further argues that the Secretary-General’s assumption that giving occasional rides to Mr. Fultang implied visiting his accommodation also lacks merit. On the contrary, Mr. Brown asserts that he clearly explained to the OIOS investigators where he met Mr. Fultang, stating that these meetings, like those with other colleagues, were not official and generally occurred in public places.³² He also explains that “his transport to Mr. Fultang (and others) was from and to various locations and that the claims of socializing with Mr. Fultang were demonstrably wrong”.

43. Mr. Brown submits that the Secretary-General’s argument – that the UNDT erred in finding that Mr. Brown’s responsibilities as a Security Officer excused his failure to cooperate with

³² Mr. Brown refers to the transcript of his interview dated 19 April 2021, p. 12: 184-188.

the duly authorized investigation into Mr. Fultang's conduct – betrays its bias. On the contrary, Mr. Brown argues that the UNDT correctly concluded that, since he contacted the UNISFA staff members by e-mail or text messages to check on their well-being or saw them in public locations, knowledge of their accommodations was irrelevant. Mr. Brown adds that the UNDT properly rejected the Secretary-General's erroneous presumption that "incorrect or incomplete information, or an inability to recall specific information, given in an interview" equates to "an intentional failure to cooperate, i.e., suppression of evidence". In this regard, Mr. Brown notes that the UNDT appropriately listed various factors justifying his initial inability to recall the different locations where he met Mr. Fultang and highlighted that he made a good faith effort to answer the investigators' questions in subsequent statements.

44. Mr. Brown contends that the Secretary-General's argument – that the UNDT erroneously held that the contested decision was premised on the assumption that Mr. Brown intended to engage in fraud – is "frankly disingenuous" as the contested decision stated that Mr. Brown's alleged failure to cooperate "consisted in misrepresenting information concerning Mr. Fultang's residence, i.e. withholding first-hand information about the matters asked, namely, Mr. Fultang's misrepresentations of his claim for reimbursement of expenses". Mr. Brown adds that there was no reason for the Administration to assume that he retained such information, emphasizing that he had no knowledge of what reimbursement claims Mr. Fultang had submitted or what personal accommodation arrangements he had made.

45. Last, Mr. Brown submits that the UNDT appropriately found that the Administration's determination – that he knew or should have known where Mr. Fultang resided – was based on conjecture. He points out that the Secretary-General's arguments to the contrary merely repeat those already submitted before the UNDT. He further highlights that he was not permitted to consult his records before or during the two OIOS interviews but was nevertheless "blamed" for failing to recall specific details.

Considerations

46. In the present case, both parties agree that the facts on which the disciplinary measures were based have been established by a preponderance of the evidence. The issue before this Tribunal is whether the UNDT erred in concluding that Mr. Brown's conduct did not amount to misconduct.

Whether the UNDT erred in concluding that the established facts did not amount to misconduct

47. We find that the UNDT erred in this aspect, for the reasons set out below.

48. Firstly, the UNDT reasoned that because Mr. Brown was not tasked with verifying Mr. Fultang's residential address in his official capacity, he could not be faulted for failing to provide that address during the investigation. In doing so, the UNDT conflated Mr. Brown's official duties with his obligations as a witness.

49. Mr. Brown was interviewed as a witness in connection with the investigation into Mr. Fultang's conduct. In the Oxford English Dictionary, a "witness" is defined as "one who gives evidence in relation to matters of fact under inquiry".³³ As such, the witness is bound to provide a full, truthful, and accurate account of matters within his or her knowledge, to the best of his or her recollection.

50. Moreover, the obligation to cooperate with duly authorized investigations is a guarantee of the United Nations' integrity framework. Staff Regulation 1.2(b) provides that "[s]taff 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".

51. Under Staff Rule 1.2(c), "[s]taff 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".

52. This duty is further elaborated in Section 6.2 of ST/AI/2017/1, which provides:

Pursuant to staff regulation 1.2 (r) and staff rule 1.2 (c), staff members are required to fully cooperate with all duly authorized investigations and to provide any records, documents, information and communications technology equipment or other information under the control of the Organization or under the staff member's control, as requested. Failure to cooperate may be considered unsatisfactory conduct that may amount to misconduct.

53. Obviously, Mr. Brown's obligations as a witness are distinct from those arising from his official functions as a Security Officer. They stem from his status as a United Nations staff member and his duty to uphold the integrity of the Organization. While it is clear that

³³ https://www.oed.com/dictionary/witness_n (accessed on 4 November 2025).

verifying staff members' addresses did not fall within his official functions, this did not relieve him of the obligation to disclose, during the investigation, information that he personally knew or had observed.

54. Secondly, the UNDT suggested that “the issue regarding [Mr. Brown]’s factual knowledge of where Mr. Fultang resided during the period in question [was] based on conjecture”.³⁴ We cannot agree.

55. The record demonstrates that Mr. Brown withheld material information during his initial interview on 10 March 2021. At that time, the OIOS investigator clearly indicated that the interview concerned allegations of fraud related to Mr. Fultang’s expense claims. Given the investigator’s specific questions, Mr. Brown should have understood that the inquiry focused on Mr. Fultang’s actual place of residence.

56. Nonetheless, Mr. Brown provided only generic and vague responses and referred to meetings with Mr. Fultang at unspecified locations. He did not disclose that he had: i) repeatedly visited Mr. Fultang’s apartments; ii) picked him up from his residence on multiple occasions; and iii) attended a private party hosted by Mr. Fultang at his apartment. Only on 19 April 2021 — after being informed that he was himself a subject of investigation — did Mr. Brown admit knowledge of these facts.

57. This delayed disclosure suggests not a failure of memory, but a deliberate withholding of information. As the Secretary-General correctly noted, Mr. Brown had ample opportunity to consult his records: during the 10 March 2021 interview, he requested time to do so, and the OIOS investigators permitted him to submit additional information later. Despite this, he failed to provide the relevant details.

58. Moreover, social interactions with a colleague, such as regular transportation, repeated visits, and attendance at a private party, are not trivial or forgettable events. They constitute precisely the type of close, personal engagements one would reasonably remember, especially within a few months. Indeed, contrary to the UNDT’s observation, the OIOS investigators’ questions were not “posed many years after the facts occurred”.³⁵ The fact that Mr. Brown recalled

³⁴ Impugned Judgment, para. 49.

³⁵ *Ibid.*, para. 48.

none of these interactions until confronted with evidence strongly supports the conclusion that his initial omissions were intentional.

59. It is established, to the standard of a preponderance of the evidence, that Mr. Brown knew that Mr. Fultang's actual address was not the MowiCribs Hotel. This determination was not based on assumption or conjecture, but on corroborated testimony and documentary evidence. Mr. Fultang's failure to disclose this information risked misleading or obstructing the investigation into Mr. Fultang's misconduct.

60. Thirdly, the UNDT held that the "charges against [Mr. Brown were] essentially based on the assumption that his statement to investigators [was] intended to objectively give help to Mr. Fultang in committing his fraud".³⁶ This assumption has no basis.

61. From the contested decision, it is clear that Mr. Brown was charged with failing "to cooperate with the duly authorized investigation concerning Mr. Fultang".³⁷ Accordingly, the Administration imposed on him the disciplinary measures of written censure and loss of two steps in grade for failing to comply with his obligations under Staff Regulation 1.2(b) and Staff Rule 1.2(c). Mr. Brown was not charged with participating in or facilitating Mr. Fultang's fraud. Had that been the case, the disciplinary measures would have been harsher.

62. Fourthly, the UNDT considered factors that are irrelevant to the issue of whether Mr. Brown fulfilled his duty to cooperate with the investigation. The UNDT noted, for example, that Mr. Brown had performed his duties under difficult circumstances and had used his personal vehicle to assist stranded staff. While commendable, these actions pertain to job performance, not to truthfulness in an investigation.

63. The obligation to cooperate with an investigation is distinct from performance evaluation. A staff member cannot invoke past service or personal hardship as a justification for withholding information in a disciplinary investigation. Such reasoning would undermine the impartiality and effectiveness of internal oversight mechanisms. These factors are relevant to the overall assessment of proportionality of the sanction imposed, not to determining culpability for misconduct.

³⁶ *Ibid.*, para. 44.

³⁷ Sanction letter dated 16 January 2024.

64. In summary, the Secretary-General correctly submitted that “it [had] been established (...) to the standard of the preponderance of the evidence that [Mr. Brown] failed to cooperate with the duly authorized investigation concerning Mr. Fultang”.³⁸

65. In *Banaj*, we held that “a staff member’s failure to cooperate with a duly authorized investigation may amount to misconduct”.³⁹

66. Mr. Brown contended that the disciplinary measures were retaliatory and that the investigation was pre-determined. Under established jurisprudence, the staff member bears the burden of proving that a decision was arbitrary or tainted by improper motive — unless the Administration fails to disclose its reasons — in which case the burden shifts to the Administration.⁴⁰

67. In this case, the Administration provided detailed, evidence-based reasons for the contested decision. Mr. Brown offered no credible evidence of retaliation beyond his own assertions. The OIOS investigation was fact-based and multi-sourced. There is no indication of retaliation or pre-judgment.

Whether Mr. Brown’s due process rights were observed

68. Having concluded that Mr. Brown’s failure to cooperate with the duly authorized investigation concerning Mr. Fultang constituted misconduct, we must determine whether his due process rights were respected.

69. Mr. Brown argues that he was not permitted to consult his records before or during the two OIOS interviews. However, we find that, following the 10 March 2021 interview, he was given the opportunity to provide reports, which he did on 17 March 2021. We also note that Mr. Brown was duly informed of the allegations, given an opportunity to respond, and granted access to the evidence against him.

70. Therefore, we find that Mr. Brown’s due process rights were fully respected.

³⁸ Sanction letter dated 16 January 2024.

³⁹ *Elmira Ela Banaj v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1357, para. 95.

⁴⁰ *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201, paras. 5 and 38.

Whether the disciplinary measures imposed were proportionate to the offence

71. As we have consistently held, the Administration enjoys broad discretion in determining the appropriate disciplinary measure. Judicial review is warranted only where the sanction is blatantly illegal, arbitrary, excessive, abusive, discriminatory, or absurd in severity.⁴¹

72. In this case, the Secretary-General conducted a comprehensive assessment of relevant factors in determining the appropriate sanction, which included: i) the deliberate nature of Mr. Brown's omissions, which constituted a breach of the highest standards of integrity expected of staff members; ii) the seriousness of the underlying fraud investigation and the resulting harm to the Organization, including the waste of investigative resources and obstruction of the investigative process; iii) the consistency of the sanction with those imposed in comparable cases, ensuring uniformity in disciplinary practice; and iv) Mr. Brown's length of service, which was duly recognized as a mitigating factor.⁴²

73. The sanction imposed serves legitimate administrative objectives, including accountability, deterrence, and the preservation of institutional integrity. It is, accordingly, rationally connected to the misconduct and proportionate to the gravity of the violation.

74. Therefore, we are of the view that the sanction falls within the permissible range under Staff Rule 10.2(a). As we noted in *Koutang*⁴³ and *Konaté*,⁴⁴ even severe sanctions may be upheld if they are rationally connected to the misconduct and consistent with administrative practice. This Tribunal will not substitute its own judgment for that of the Secretary-General where the latter has exercised his discretion reasonably and in accordance with the principles of equity and fairness.

Conclusion

75. For the foregoing reasons, we find that Mr. Brown, both as a staff member and as a witness, had a clear obligation to provide full and truthful information during the OIOS investigation. His failure to disclose material facts, particularly after being given time to consult his records, constituted a violation of Staff Regulation 1.2(b) and Staff Rule 1.2(c), and, therefore, amounts to misconduct. The Administration duly exercised its disciplinary authority. The sanction imposed

⁴¹ *Ravi Karkara v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1172, para. 72; *Portillo Moya v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-523, paras. 19 and 21.

⁴² Annex to the Sanction letter, paras. 67-72.

⁴³ *Koutang v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-374, para. 30

⁴⁴ *Konaté v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-334, para. 21.

is proportionate and falls within the Administration's discretion. The contested decision should be affirmed.

76. The UNDT erred in law in concluding that Mr. Brown's conduct did not amount to misconduct. Accordingly, the impugned Judgment must be reversed.

77. In the absence of illegality, Mr. Brown's request that he be awarded USD 10,000 in costs for abuse of process is without merit.⁴⁵

⁴⁵ *Yolla Kamel Kanbar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1082, para. 45.

Judgment

78. The Secretary-General's appeal is granted, and Judgment No. UNDT/2024/090 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 31st day of October 2025 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Ziadé

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 15th day of November 2025 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar