

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Firas Shaker Mihyar (Mr. Mihyar) has filed an appeal of Judgment No. UNDT/2023/040 (impugned Judgment) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).¹
2. In the impugned Judgment, the Dispute Tribunal dismissed his application challenging the disciplinary sanction of written censure and loss of two steps in grade. This sanction was re-imposed following the Dispute Tribunal's prior rescission of the disciplinary measure and remand for redetermination in Judgment No. UNDT/2022/085 (Prior UNDT Judgment).
3. For the foregoing reasons, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. Mr. Mihyar has been employed with the United Nations since 2005. At the time of the events in question, he held a fixed-term appointment with the United Nations Development Programme (UNDP) at grade P-4, step XII, at the United Nations Assistance Mission for Iraq (UNAMI).²
- 5.

14. With regard to the sanction

- 5) Operational necessity with respect to the recruitment was considered inapplicable, because no operational requirement can justify misconduct;
 - 6) Limited involvement in recruitment was not a mitigating factor, because while his involvement was short (four days), he conducted himself in the direct opposite of what was required;
 - 7) Occurrence of allegedly similar procedural regularities in other duty stations was considered inapplicable, as actual or perceived violations in other duty stations do not excuse Mr. Mihyar's conduct.
25. In the 2022 Sanction Letter, the USG/DMSPC concluded as follows:¹⁹

to the requisite standard of proof, that the

33. The Dispute Tribunal held that Mr. Mihyar misunderstood the Prior UNDT Judgment, and that the Tribunal had ordered the Administration to consider mitigating factors, but not how much weight to give to those factors.²⁴

34. The Dispute Tribunal was satisfied that the Administration had duly considered the nature and gravity of Mr. Mihyar's misconduct as well as all the aggravating and mitigating factors in accordance with the proportionality analysis in .²⁵

35. The Dispute Tribunal concluded that Mr. Mihyar had failed to demonstrate that the disciplinary measure imposed in the 2022 Sanction Letter was disproportionate to the offence, and accordingly, upheld the measure. Having found no illegality, the Tribunal rejected Mr. Mihyar's requests for remedies.²⁶

36. Mr. Mihyar filed an appeal of the impugned Judgment on 23 July 2023, to which the Secretary-General responded on 18 September 2023.

Submissions

Mr. Mihyar's Appeal

37. Mr. Mihyar submits that the impugned Judgment contradicts the Prior UNDT Judgment on the same case, and requests that the UNAT rectify this unfairness.

38.

he was the only person treated unfairly and subject to discipline; (g) OAI excluded a key witness in this case, namely the hiring manager; (h) he had unblemished long years of service including in hardship duty stations; (i) there was no personal gain or loss to the Organization; and (j) Mr. Mihyar had no personal interest in the recruitment and his actions were in good faith based

45. Mr. Mihyar insists that he should not be subject to any sanctions because he was following the directives of his supervisor.

46. Mr. Mihyar submits that he has undergone acute stress from this process which dates back to 2016, with the investigation ending in 2019, and this has had an adverse psychological impact on his well-being.

47. Mr. Mihyar concludes that he should not be subject to any unwarranted sanctions so that his professional standing can be safeguarded.

The Secretary-General's Answer

48. The Secretary-General recalls that the Prior UNDT Judgment was not appealed by either party, and thus neither party can relitigate the Dispute Tribunal's findings in that case. These findings include that the facts upon which the sanction was based were established to the requisite standard, that they amounted to misconduct, and that Mr. Mihyar's due process rights were respected.

49. The Secretary-General argues that the UNDT correctly noted that the Administration had provided a thorough analysis of sanctions in comparable cases and gave a detailed explanation as to how this past practice had been taken into account in imposing the sanction on Mr. Mihyar.

50. The Secretary-General submits that the UNDT

59. In his appeal brief, Mr. Mihyar dedicates several sections (Sections III through VII) to the Prior UNDT Judgment.

60. Article 11(3) of Dispute Tribunal Statute (UNDT Statute) provides:

The judgements and orders of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

61. In _____, ²⁹ we decided that, "

Any disciplinary measure imposed on a staff member shall be proportionate to the

fundamental obligations of integrity and honesty under the United Nations Charter and the Staff Regulations and Rules.

71. Second, as the preeminent international organization, the United Nations is supposed to be administrated in a credible and transparent way. Improper manipulation of the recruitment process at issue undermined the credibility of this Organization. To this extent, such immaterial loss may have imposed more severe impacts on the Organization than any financial loss.

72. Third, as a staff member with long service and having been involved previously in recruiting exercises, Mr. Mihyar should have been familiar with the Organization's regulations. That is to say, long service and recruiting experience could not only be considered as a mitigating factor, but might also act as an aggravating factor, as Mr. Mihyar is expected to perform at a higher standard in light of his cumulative working experience in the Organization. Nonetheless, we are sympathetic to Mr. Mihyar's claim that his long years of service should not have been considered "inapplicable", as the Administration determined in this case. We note that in the 2022 Sanction Letter several of the comparable cases that the Administration used to support the discipline imposed, expressly included "long service" as a mitigating factor.³⁵ Thus, the Administration's finding that long service was "inapplicable" is not consistent with

Judgment

86. Mr. Mihyar's appeal is dismissed, and Judgment No. UNDT/2023/040 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

Judge Gao, Presiding

Judge Colgan

Judge Sandhu

Judgment published and entered into the Register on this 1st day of August 2024 in New York, United States.

Juliet E. Johnson, Registrar