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Case No. UNDT/GVA/2011/047

Judgment No. UNDT/2011/181

7. On 31 January 2008, a Human Resources Specialist fr

14.

23. By Order No. 128 (GVA/2011) of 26 August 2011, the Tribunal informed the parties, *inter alia*, of its intention to require the presence of the Complainant at a hearing and asked the Respondent to provide it with her contact details.

24. On 7 September 2011, the Respondent provided the Tr

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that she had provided details. In addition, the fact-finding panel found that none of the witnesses called by the Applicant had confirmed his statements, that there was nothing to confirm his statements to the effect that it was the Complainant who had asked if she could cook and clean for him and that the Applicant's affirmation that the aim of her complaint was to change division seemed to be unfounded;

d. In addition, the Applicant committed an abuse of authority when he took it upon himself to criticize the Complainant's work in order to

h. The sanction imposed is proportionate to the misconduct committed and is within the discretionary authority of the Secretary-General;

i. There is no need for the Tribunal to order additional investigations or production of other documents, since those requests by the Applicant relate to facts outside the scope of this dispute.

Consideration

Regularity of the procedure

31. In contesting the sanction of dismissal imposed on him, the Applicant first maintains that the investigation process to establish the facts allege, Yv-HHYIdSF, v-YvFH-YOYMY'

brought with him half a bottle of whisky and a bottle of wine, drank most of the contents himself. He then drove the Complainant to a place where she was to meet a friend of her mother's. Lastly, the Complainant confirms that, once she had arrived at the friend's home, she telephoned the Applicant, as he had requested, to say that she had arrived and to thank him for the dinner.

36. On the other hand, the Applicant categorically denies having made the remarks reported by the Complainant which resulted in the disciplinary sanction.

37. The Complainant claims that, as soon as she entered the Applicant's car to go to the restaurant, he insistently asked her whether she wanted to come to his home to clean and cook because he lived alone. Then during the meal the Applicant, who had been drinking a lot, allegedly told her that he soon grew tired of the women whom he dated and preferred relationships that did not last longer than two or three months. He apparently also told her about encounters with women when he was on mission abroad. He allegedly also told her that he could discover the personality of people simply by looking at their faces, but that for her he needed to "see everything", which she interpreted as meaning that he needed to see her body. In addition, the Complainant claims that, while she was in the Applicant's car after dinner, he insisted that she should come and sleep at his home that very evening and on other weekends.

38. Both to the investigators and at the hearing during which he confronted the Complainant, the Applicant flatly denied having said these things.

39. The Tribunal must therefore, to decide on the truth of the facts alleged, assess the credibility of the Complainant's statements and, for this purpose, consider only the parts of those statements that are corroborated by testimony or documentation.

40. It appears from the case record that, in the days immediately following the incident, the Complainant reported the facts in a consistent manner to five different people, as confirmed by the statements of those people or other written documents. First, on Monday, 28 January, or two days after the dinner, she confided in an ESCAP female staff member of the same nationality as herself and

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44. The Applicant claims that the Complainant was manipulated by malicious

... [Staff members] shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status.

Proportionality of the sanction

54. It now remains for the Tribunal to decide wheth

58. In this case, the Tribunal considers that the misconduct committed is particularly serious because the Applicant was a senior official directly supervising the Complainant, who was only an intern, because he never acknowledged having even made a mistake and because he made no apology. On the contrary, when faced with the accusations against him, he tried to discredit the Complainant by making the implausible claim, including at the hearing, that it was she who had insisted several times that he should take her to a restaurant for dinner and that she had made advances to him there which he had rebuffed.

59. The Tribunal therefore considers that the sanction imposed is not disproportionate to the misconduct committed and that the application should thus be rejected.

Conclusion

60. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 24th day of October, 2011

Entered in the Register on this 24th day of October, 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry