



## **Introduction**

1. On 23 January 2018, the Applicant, a Procurement Assistant at the GS-5 level, step 10 with the United Nations Children's Fund ("UNICEF"), filed an application contesting (a) "the decision to impose the disciplinary sanction of loss of two steps within-grade for failure to formally disclose a potential conflict of interest" and (b) "the subsequent decision to grant the Applicant a limited one-year appointment instead of a regular two-year extension".

2. The Respondent argues that the disciplinary decision against the Applicant was based on valid legal principles and that her misconduct was established by clear and convincing evidence. The Respondent further argues that the appeal against "the subsequent decision to grant the Applicant a limited one-year appointment instead of a regular two-year extension" is not receivable.

## **Facts and procedural history**

3. The Applicant joined UNICEF on 23 October 2002 and has served in different capacities (as a General Service staff member) within the Supply Division in Copenhagen. The Applicant commenced service, first as a Technical Assistant in 2002, and has since served as a Shipping Assistant in 2005, a Contracts Assistant from 2006-2007, and as a Procurement Assistant from 2008-2018. The Applicant's

which has any commercial interest in the work of UNICEF, or a common area of activity with UNICEF.

5. On 5 April 2016, the Supply Division sent a Memorandum to the Principal Advisor of UNICEF Ethics Office and the Director, Division of Human Resources requesting advice with respect to the allegations of conflict of interest against the Applicant.

6. On 14 April 2016, UNICEF Director of Supply Division referred the allegation of potential conflict of interest to the UNICEF Office of Internal Audit and Investigations (“OIAI”).

7. The Applicant’s access to files from the International Transport Unit was discontinued after the Supply Division became aware of the allegations of conflict of interest against the Applicant.

8. The investigation established that the Applicant’s husband had been employed by UNICEF vendors during the years 2000-2009, 2013-2014, 2014- until the date that the investigation was concluded. The investigation noted that the Applicant’s husband held various roles with the UNICEF vendors during these periods ranging from Sales Manager to Senior Strategic Sales Director Nordics.

9. The investigation found that the Applicant did not disclose these roles to the Ethics Office, and that the non-disclosure amounted to potential conflict of interest. The investigation further established that the Applicant misrepresented the facts about her husband’s employment when completing and submitting the annual Conflict of Interest Declaration to the Ethics Office.

11. On 29 September 2017, the Applicant submitted her response to the charges.
12. On 25 October 2017, UNICEF issued a disciplinary measure letter which found that there was clear and convincing evidence that the Applicant failed to fully and accurately disclose her husband's contractual relationship with UNICEF. The Applicant was informed that her conduct resulted in breach of her duty to disclose potential or apparent conflicts of interest and to meet her disclosure obligations during the periods 2008-2009, 2013-2014 and 2014-March 2016 under the applicable staff regulations and rules, and the UNICEF Executive Directive on Financial Disclosure and Declaration of Interest Statements (CF/EXD/2007-002 and CF/EXD/2012-003).
13. On the basis of the findings in the disciplinary measure letter dated 25 October 2017, the Applicant was sanctioned with loss of two steps within grade.
14. On 25 October 2017, the Applicant was informed that she would be granted a limited one-year extension of appointment instead of the standard two-year extension.
15. On 24 November 2017, the Applicant was formally notified that her contract would be extended for one year.
16. On 23 January 2018, the Applicant filed the present application.
17. The present case was reassigned to Judge Alexander W. Hunter, Jr. on 1 January 2019.
18. On 25 February 2019, the parties filed their respective closing submissions.











Case No. UNDT/NY/2018/068

Judgment No. UNDT/2019/110





of the final RFP for Services for the provision of logistics/freight forwarding services, involving a vendor the Applicant's spouse worked for.

42. The Applicant only wrote to UNICEF on 3 March 2016, and subsequently disclosed the relationship in her 2015 disclosure form that was signed on 10 May 2016.

43. The Tribunal is of the view that the legal framework is sufficiently clear in determining that a conflict of interest may exist even where there is only the possibility that the staff member or the private business with which he or she may have association could benefit from such association. The Tribunal finds that the Administration profit fro0.00000912 0 612 792 reW\*nBT/F1 12 Tf1 0 0 1 99.384 570.82 Tm0 g0 Gvpfit d

Case No. UNDT/NY/2018/068

Judgment No. UNDT/2019/110

full and accurate information. The Conflict of Interest Disclosure Statement signed by the Applicant in the years 2008, 2009, 2013 and 2014 (being the years her spouse was employed with UNICEF vendors) required the Applicant to respond to the following question:

To the best of your knowledge, does your spouse and/or dependent child(ren) have any interest in, or association with, any entity with which you may be required, directly or indirectly, to have dealings on behalf of the Organization, or which has any commercial interest in the work of UNICEF, or a common area of activity with UNICEF?

53. The Applicant failed to fully and accurately disclose her spouse's relationships in her financial disclosures forms by responding with a "No" to the above question in each instance, even though her spouse was employed by a UNICEF vendor at the time of her signing the statement. Her response was in breach of her obligation as an international civil servant to provide full and accurate information in forms certified by her.

54. The Appeal0 0 1215 TmoBT/F4teaq0.0( )] TJET@.000000.0( )] TJ9.385n3A9.69[(The)2(a)46\*nRa

conflict of interest by failing to disclose her spouse's employment with UNICEF vendors, including in the mandatory annual Conflict of Interest Disclosure Statement signed by her in the years 2008, 2009, 2013 and 2014, being the years her spouse was employed with UNICEF vendors.

*Was the disciplinary measure imposed proportionate to the misconduct?*

57. The jurisprudence on proportionality of disciplinary measures provides that the Tribunal will give due deference to the Secretary-General unless the decision is manifestly unreasonable, unnecessarily harsh, obviously absurd or flagrantly arbitrary. Should the Dispute Tribunal establish that the disciplinary measure was disproportionate, it may order imposition of a lesser measure.

58. However, it is not the role of the Dispute Tribunal to second-guess the correctness of the choice made by the Secretary-General among the various reasonable courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General (see *Sanwidi* 2010-UNAT-084; *Said* 2015-UNAT-500; *Hepworth* 2015-UNAT-503; *Portillo Moya* 2015-UNAT-523).

59. The Tribunal notes that the Applicant does not contest the proportionality of the sanction imposed (loss of two-steps within grade). She contends that the sanction was unwarranted as she did not breach her obligations of disclosure of conflict of interest.

60. Having determined that the Applicant was in breach of her obligations and her actions amounted to misconduct, the Tribunal finds that the sanction imposed (loss of two-steps within grade) was proportionate to the Applicant's misconduct.

61. In particular, the Tribunal notes that the Administration took mitigating circumstances into account by acknowledging that there was informal knowledge





UNICEF submits that whilst the former was informed by the need to mitigate the risk to UNICEF from potential conflict of interest, which measure resulted in the modification of some of the Applicant's tasks, the latter was caused by the Applicant's refusal to perform the new tasks that were assigned to her during the investigation and disciplinary processes.

66. UNICEF submits that rather than to perform the tasks assigned during these periods, the Applicant expressed her preference to continue working on the tasks she was most comfortable with and knowledgeable in. However, her request could not be granted given the potential risk to UNICEF.

67. Without prejudice to the foregoing, the Respondent notes that the Applicant's appointment was recently renewed from 1 January 2019 to 31 December 2019. As such, any argument that the Administration supplemented the Applicant's disciplinary sanction with an administrative measure is without merit.

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71. The Tribunal notes that on 25 October 2017, the Applicant was informed that she would only receive a limited



77. Without prejudice to the foregoing, the Tribunal finds that since the Applicant's appointment was recently renewed from 1 January 2019 to 31 December 2019, the issue of the two-year renewal is now moot as the Applicant has been granted a second year on her contract.

**Conclusion**

78. In light of the foregoing, the application is dismissed.

*(Signed)*

Judge Alexander W. Hunter, Jr

Dated this 17<sup>th</sup> day of June 2019

Entered in the Register on this 17<sup>th</sup> day of June 2019

*(Signed)*

Nerea Suero Fontecha, Registrar, New York