
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/028
Judgment No.: UNDT/2022/023
Date: 14 March 2022
Original: English

Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TOKHI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Matthias Schuster, UNICEF
Alister Cumming, UNICEF

Introduction

1. At the time of the application, the Applicant served as an Operations Officer, on a fixed-term appointment at the P-4 level with the United Nations Children’s Fund (“UNICEF”). He was based in Maiduguri, Nigeria.

Procedural History

2. On 20 April 2021, he filed an application before the United Nations Dispute Tribunal sitting in Nairobi to challenge the Respondent’s finding of misconduct (for violation of staff regulation 1.2(a), staff rule 1.2(f), (and the provisions of UNICEF’s policies in the matter) and the consequent decision to separate him from service pursuant to staff rule 10.2(a)(xix).

3. The Respondent filed his reply on 24 May 2021 stating the impugned decision was lawful.

4. On 24 January 2022, the Tribunal issued Order No. 007 (NBI/2022) to advise the parties that this matter would be adjudicat (s i

arguments with. On this particular evening, the Applicant tells the court, the argument between them “reached to a level” where both V01 and he used “bad” and “demeaning language.” Although theirs had been a “normal working relationship,” the argument that evening included accusations of sexual harassment of her by him; which accusations he was hearing of for the first time.

9. The Applicant was not aware that a fellow colleague who was at the gathering had recorded the argument between him and V01.

10. On 15 April 2020, OIAI informed the Applicant that it was conducting an investigation into allegations that:

a) On 16 November 2019, in a Maiduguri guesthouse whose bedrooms were occupied by the Applicant, V01 and other UNICEF personnel, the Applicant grabbed V01 behind her head/neck, pulled her face to his and kissed her on the lips and face without her consent;

b) On 31 December 2019, during a party, the Applicant kissed V01 on her mouth without her consent and tried to force a kiss on her on two other occasions;

During the same party, he kissed another colleague on her mouth in addition to kissing and grappling her breasts while she was visibly drunk;

c) On 8 February 2020, the Applicant unlocked the door to V01’s room and without her consent entered, jumped in to her bed and touched her under her waist and all over her body;

d) On 31 March 2020, he spoke to V01 in the presence of Maiduguri Office staff using very derogatory, demeaning and abusive words.

11. The Applicant responded to the allegations on 16 April 2020.

12. On 17 April 2020, OIAI interviewed him.

19. The Respondent submits that the Applicant was afforded his due process rights throughout the disciplinary process, which process led to the facts being established clearly and convincingly. The sanction meted out to the Applicant was appropriate and proportionate.

Considerations

20. The general standard of judicial review in disciplinary cases requires the Dispute Tribunal to ascertain: (a) whether the facts on which the disciplinary measure was based have been established; (b) whether the established facts legally amount to misconduct; (c) whether the disciplinary measure applied was proportionate to the offence; and (d) whether the accused staff member was awarded due process in the disciplinary proceedings (see, for example, *Abu Hamda* 2010-UNAT-022, *Haniya* 2010-UNAT-024, *330-GO-44004-F015-UNAT-0821* 0 595.32 842.04 reV, *Wishah* 2015-UNAT-537). The Tribunal will consequently follow this standard in the review of the present case.

21. The Appeals Tribunal has consistently held that when the disciplinary sanction results in the staff member's separation from service, the alleged facts must be established by clear and c/F1 9.96 Tf1 0 0 1 414.43 777 Tm0 g0 G[()] TJETQ852.87 9(a)-5(nd)vie

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Applicant referred to alleged sexual habits of the victim (V01 was in sum repeatedly and publicly referred to by the Applicant of being a woman of loose morals who was “sleeping around”) and that took place on the UNICEF compound in the presence of multiple colleagues, so interfering with work and violating para. 2 of the POLICY/DHR/2020/002.

36. The incident, which confirms the attitude of the Applicant toward V01, caused mental distress to her, as a result of verbal offenses and attacks; it was the final straw that entailed the recolle

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