Introduction and procedural history

1. By an application dated 18 January 2022, the Applicant is contesting the disciplinary measure imposed on her of dismissal from service pursuant to staff rule 10.2(a)(ix).

2. The Respondent filed a reply on 2 March 2022 urging the Tribunal to find that the disciplinary measure is proportionate to the gravity of the misconduct, due process was respected and accordingly, the contested decision should stand.

3. The Tribunal held a case management discussion on 26 September 2022 and hearings on the merits on 31 October, 1, 7 and 8 November 2022.

4. During the hearings on the merits, the Tribunal received testimony from: the Applicant; AM, then United Nations High Commissioner for nBT/F[u0 g0 G[(United)-87(Na)64(0 g0 G

from a refugee in exchange for RST assistance. Specifically, JM, a refugee, reported that, in January 2017, AG, another refugee, introduced him to the Applicant and AM. JM reported that he paid the Applicant and AM USD5,000 in exchange for RST assistance and that he allegedly never received such assistance. The IGO opened an investigation on 22 September 2020.[2]

8. On 17 March 2021, the IGO shared the draft findings of the investigation with the Applicant and invited her to comment, which she did on 24 March 2021.[3]

9. The IGO transmitted the final version of the investigation report with its annexes to the Division of Human Resources (DHR) on 6 April 2021. The IGO concluded that the Applicant had received money from JM in exchange for assistance with resettlement, that she had fabricated a refugee story for him and that she had created a fraudulent pre-screening assessment form.

10. By letter dated 5 May 2021 from the DHR, the Applicant was charged with engaging in corruption by receiving money from JM in exchange for assistance with his resettlement case, engaging in resettlement fraud by fabricating a claim for JM family and by creating and sharing a fraudulent pre-screening form. The Applicant was invited to provide her comments0 g0 G[(n)-9(ga)4(ging)-71(in)-71(re)7(se)3(tt)-3(leme)4(nt)-71(fr 6

sanction of dismissal pursuant to staff rule 10.2(a)(ix) was imposed on the Applicant.[7]

Submissions

The Applicant s case

13. The Applicant s case is summarized as follows:

a. The facts on which the disciplinary measure was based have not been established.

i. The investigation report fell short of providing and/or indicating cogent evidence to support the findings stated therein.

ii. The investigator failed and/or refused to interview key witnesses whose evidential value was of great importance in this matter despite repeated requests from the Applicant. Interviews and interaction with AM, AT, AG and BK was of paramount importance for purposes of corroborating JM s evidence. The Investigator did not interview the above-mentioned persons for fear of learning the truth which would have been contrary to the conclusion he already wanted to make.

iii. The investigator failed to ascertain the existence of the alleged meeting where money was paid. JM claims that he paid USD5,000 to the Applicant on 28 January 2017 at a building next to Java Coffee in Nankulabye, Kampala. The investigator did not ascertain whether the place called Java Coffee exists in Nankulabye. There is no Java Coffee in Nankulabye. Without ascertaining the existence of the place where the alleged meeting took place and whether the meeting itself took place, the investigation failed to prove that the Applicant received any

[7] Application, annex 9; reply,

where need be. By innocently sharing a pre-screening form, she did not violate any existing UNHCR procedure and/or regulation. The Resettlement case management Standard Operating Procedures (SOPs) encourage staff to assist each other where need be and therefore sharing of documents and information could not have been an inference of connivance to commit a cr

16. An analysis of:

Applicant and AM in Kampala, including when and where they took place, who attended, and what was discussed.

b. JM recounted the events that ensued, including that he received the email with the pre-screening assessment form from AM and that later, realizing that his case was not going anywhere, he followed up with 1 412.63 621.94 Tm0 g0 G|

his family, he grew upset, did not want other refugees to be taken advantage of, and decided to report the misconduct.

22. The fact that JM

f. AM t and her oral testimony are inconsistent. In her written statement, AM described one single instance in which JM and R went to her office together. At the beginning of cross-examination, AM confirmed that it was certainly the only time that they turned up together. However, she later stated that JM

re-traumatize AT. As TD testified, refugees are always re-interviewed about their refugee claim and resettlement needs during the resettlement process; it is an integrity measure. In any event, it was not AM
of interview.

h. The interaction between the Applicant and AM was inconsistent with the processes and functions prescribed in the SOPs with the purpose of preventing fraud. The onus is on the Applicant to explain why, despite her knowledge and experience, her actions blatantly deviated from the SOPs put in place to prevent fraud. The Applicant has failed to discharge that burden.

i. The sparse, unspecific, and disjointed wording of the Applicant and AM they corresponded about a specific case indicates that they were trying to conceal precisely that they corresponded about a specific case, and they had previously communicated and agreed on what to do about the

procedural flaws.

c. There is no merit or substance either to the Appli
TD was biased or co-conducted the investigation with the investigator. In accordance with her obligations as a UNHCR staff member, TD testified on matters related to her expertise and assisted the investigator with verifying informat she had access by virtue of her position. During the investigation and at the hearing, TD provided expert, impartial and reliable testimony informed by her resettlement experience in Uganda.

d. T AM was a reasonable and lawful exercise of his discretion, based on a critical assessment of the evidence produced, to decide what is relevant or not for the purposes of the investigation. AM friend, she was implicated in the misconduct, she had been separated from UNHCR for resettlement fraud, and she was not under a legal obligation to cooperate with the investigation or tell the truth. The investigato AM was not a reliable witness and would not provide credible evidence was warranted, and it is supported by the fact that AM these proceedings lacks credibility. In any event, even if not interviewing AM were considered a violation of due process, it would have been cured during the proceedings before this Tribunal, which heard AM as a witness.

e. With respect to AT, the record shows that the investigator contacted her on 17 December 2020, introduced himself as an IGO investigator, mentioned that he had interviewed JM and that JM had provided her number, and asked to interview her. AT s response implied that she did not want to be interviewed, which was confirmed by the fact that she did not reply to the investigator s follow-up messages on Monday, 4 January 2021 and Friday, 8

standard of proof, the Appeals Tribunal stated in *Molari*[10] that:

> 30. Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt it means that the truth of the facts asserted is highly probable.

43. The clear and convincing standard of proof is codified by section 8.1(a) of UNHCR/AI/2018/18. The Appeals Tribunal further explained in *Negussie*[11] that

> 45 Evidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn from other direct evidence.
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> 46. an be

Acted in concert with AM

45. The conduct in relation to which the Applicant is alleged to have been acting in concert with AM is set out in the dismissal letter as follows:

> (i) On 14 February 2017, Ms. AM sent an email to Mr. JM with the pre-screening assessment form. There was no legitimate reason for Ms. AM s action.
>
> (ii) Mr. JM produced a letter dated 23 June 2018 fro Resettlement Unit to Ms. T (who was registered as his sister), notifying that her resettlement application had been submitted to Hub in Nairobi. The letter is undoubtedly false. There is no record that Ms. T s case was submitted to any resettlement country.
>
> (iii) Mr. JM and Ms. AM engaged in exchanges about the return of the money.
>
> (iv) There is evidence that Ms. AM had previously engaged in similar conduct.

46. The Tribunal notes that to be acting in concert the Applicant had to have knowledge of AM s suspicious activities listed above. Nothing in the foregoing sequence of activities between AM and JM connects directly with the Applicant in the sense that it can be said she had such knowledge.

47. The main documentary evidence that is cited in the dismissal letter as having established that the Applicant acted in concert with AM is two emails. Firstly, the email dated 1 February 2017 from AM to the Applicant, with a draft of a refugee claim Tm02.54 Tm0 g0 G[0.050.384 243.65 Tm0 g0 G[(c)] TJETQ0.00000912 0 612 792 reW*n4 TJETt T

mentions that they have spoken to someone before.

62. This version of events put forward by the Applicant was corroborated in all material respects by the evidence of AM. This added to the fact that her version was at s

Java Coffee near where there was supposed to have been another building where the money hand over, took place. There was a failure to exhaust all avenues to interview persons said to have been eyewitnesses at the meeting, namely AT, BH, AG and AM. The Applicant s denial that she had ever met JM or attended the meeting was not fully investigated by interviewing

credible.

Money paid by JM was in exchange for assistance with re- settlement

73. The evidence as to handing over money comes only from JM. As to its alleged purpose, his story that it was for re-settlement is not credible. If JM had paid it for re-settlement fast tracking, which did not materialise, after he alleges he saw the Applicant put the money in her purse, there is no logical reason on record as to why he only pursued AM for money and not the Applicant.

74. On the record, JM had the Applicant s email address since he received the forwarded email from AM with the pre-screening form. His indications under cross-examination that he did not see it was not convincing. He could not explain under cross-examination why if he believed she had taken the bribe he did not try to contact the Applicant.

Fabricated a refugee claim for JM s family

75. The findings reflected in the dismissal letter as to fabrication of a refugee claim point to the content of the pre-screening form that was emailed to AM by the Applicant. That content, like the content of the word document emailed to the Applicant by AM before she sent back the pre-screening form, concerns a refugee claim by AT.

76. The significant missing evidence for considering how the Respondent determined that the claim was fabricated is the

fabricated the information by elaborating on information provided in the document sent to her by JM include reference to a comparison of the two documents as showing that this was done. The finding is that a review of the said documents clearly shows that Applicant did not merely share interview notes with AM as she alleges.

78. Instead, the review shows, according to the Respondent, that the Applicant revised the text sent by AM. This the Respondent says, is apparent because the two documents contain sentences that are identical and include the same spelling, grammar and punctuation mistakes. The conclusion is drawn that the Applicant revised AM s document and forgot to correct or delete parts of it. However, this was never put to the Applicant during the investigation. She had no opportunity to comment on it before she was dismissed.

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79. On a review of the documents it is indeed strange that there are six lines that are identical to those in Ms. AM s document. However, there are alternate possible reasons for this including that the Applicant added those six lines to the pre-assessment form she prepared months before. She may have done so at the same time that she made another admitted change to her own document, namely, to add the priority level.

80. The level she indicated was normal priority . This is not consistent with the actions of a person trying to embellish the refugee story to make it moTJETQ0.00000912 0 612 792 re

content of the pre-screening assessment form does not support that the Applicant fabricated any part of the story.

Created a fraudulent pre-screening assessment form which was then sent to JM

82. TD, in her testimony at the hearing appeared to accept that the Applicant genuinely interviewed AT some time ago but failed to follow up on it. She, however, stated that it would be unusual to get the information gathered in the case and do nothing while in Nakivale. In those circumstances it is entirely credible that what was in the pre-screening form was from her original notes and not any embellishment to assist JM as alleged.

83. There was no evidence on record before the dismissal decision was made

interview at pages 32 to 39[15]:

86. The evidence of TD seeks to shed doubt on the Applicant s story by suggesting that it is not credible that she would not follow up on such a harrowing account..000018243 0 612 792 reW*nBT/F1 8.04 Tf1 0 0 1 229.01 700.54 Tm6F1 12 nB3738.738w[(s)-1v