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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/009

Judgment No.: UNDT/2024/027

Date: 1 May 2024

Original: English

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**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:**

## **Introduction**

1. On 24 March 2023, the Applicant, a former staff member of the United Nations

Following this, V01 initiated family reunification proceedings to allow the Applicant to reside in the Netherlands with her.

... In December 2019, the Applicant signed a formal declaration to maintain an exclusive relationship and conduct a joint household with V01.

... In March 2020, the Applicant visited V01 in the Netherlands. He stayed in the Netherlands until July 2020. While in the Netherlands, he stayed partly with V01 and partly with his friends.

... During the Applicant's stay in the Netherlands in 2020, V01 discovered that he and AB were in a romantic relationship. V01 discovered this when she saw sexually explicit material (pictures and videos) of the Applicant and AB on the Applicant's mobile phone. When she saw this, V01 took photographs and a video of the material using her mobile phone. On 17 March 2020, V01 confronted the Applicant about his relationship with AB. On 31 March 2020, V01 confronted AB and sent to AB copies of the images V01 had taken from the Applicant's mobile phone.

...

## **2. Physical assault of V01**

... It is agreed that in March or April 2020, the Applicant had an argument with V01 which escalated into a fight.

... It is agreed that the fight between the Applicant and V01 took place in V01's apartment in the Netherlands.

... It is agreed that after the fight, the Applicant left V01's apartment.

...

## **3. Threat to disseminate sexually explicit material of V01**

### **a) Threat dated 18 March 2020**

... It is agreed that on 18 March 2020, the Applicant sent a WhatsApp text message to V01 in which he threatened to disseminate sexually explicit material showing V01, which was recorded with the Applicant's living room camera in Syria at a time that the Applicant and V01 were in a romantic relationship. Specifically, in the WhatsApp message, the Applicant stated:

“FYI, you idiot, on that same laptop you were spying on, you have amazing footage and videos of the lovely nights spent in my living room, my bedroom and the former Beit Al Hadara [...] All the history is saved, so if you play it smart and make a copy of anything, these



12/6/2020 17:07 - +963 998 865 488: if you get closer

12/6/2020 17:07 - +963 998 865 488: there's plenty of that

12/6/2020 17:07 - +963 998 865 488: That's what I was able to obtain now"

... V01 had on 15 May 2020 confronted the Applicant about recordings that V01 alleged had been made without her consent.

**c) Threat dated 16 June 2020**

...



UNICEF in any capacity for his friend's use without prior authorization from UNICEF. Specifically:

... On 1 June 2021, when the Deputy Representative, SCO visited the Applicant's home to seize UNICEF assets which had been issued to the Applicant for official use, the Applicant did not have in his possession his UNICEF-issued mobile phone device. The Applicant had given the device to a friend of his for his friend's personal and profRI his

## **Consideration**

### *Legal framework*

7. Staff regulation 1.2(b) (Basic rights and obligations of staff) on core values provides that “[s]taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status”.

8. Staff regulation 1.2(q) (Basic rights and obligations of staff) on use of property and assets provides that “[s]taff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets”.

9. Staff Rule 1.2(g) (Basic rights and obligations of staff) on general rights and obligations provides that “[s]taff members shall not disrupt or otherwise interfere with any meeting or other official activity of the Organization, including activity in connection with the administration of justice system, nor shall staff members threaten, intimidate or otherwise engage in any conduct intended, directly or indirectly, to interfere with the ability of other staff members to discharge their official functions. Staff members shall not threaten, retaliate or attempt to retaliate against such individuals or against staff members exercising their rights and duties under the present Rules”.

10. ICTD/STANDARD/2018/010 (UNICEF Standard on acceptable use of ICT [an abbreviation of information and communication technology] Resources) governs UNICEF’s policy on staff members’ use of information and communication technology. These provisions of ICTD/STANDARD/2018/010 are consistent with the provisions of CF/IC/2001-029 (Personal Use of UNICEF’s Information Technology Systems), which was in effect in 2016 at the time of the relevant conduct.





admitted that his fight with V01 “may have actually caused a miniscule red mark” on V01.

19. The Respondent further submits that V01’s evidence is corroborated. BC (name redacted for privacy), who was V01’s neighbor in the Netherlands, attended to the bruise on V01’s hand following the fight. Contrary to the Applicant’s assertion, V01 stated that she went to BC’s apartment after the fight where BC attended to her. The Applicant has failed to provide any evidence to support his allegation that BC was not V01’s neighbor. The Tribunal notes that BC’s statements to the UNICEF Office of Internal Audit and Investigations (“OIAI”) are not inconsistent with the Applicant’s own account of the incident, as during the investigation, the Applicant stated that there was talking and shouting between him and V01 and he did not dispute the evidence that he left V01’s apartment after the fight. BC stated that she heard loud voices from V01’s apartment during the fight and she stated that after the Applicant left V01’s apartment, V01 came to her apartment. With respect to the bruise on V01’s hand, BC stated that “[V01’s] hand was “a bit red”, and that BC “applied some oils.” These similarities attest to the credibility of her statements to OIAI.

20. The Tribunal notes that during cross-examination, the Applicant admitted that he left V01’s apartment after their fight. He admitted that because he left V01’s apartment, he had no way of knowing whether anyone attended to the bruise on V01’s hand. Accordingly, taken together, the Applicant’s denial of V01’s evidence with respect to this conduct is without merit.

21. Based on the above, the Tribunal concludes that it is established that there is clear and convincing evidence that the Applicant physically assaulted V01 during the course of their argument.

Making threats to disseminate sexually explicit material of V01

22. The Sanction Letter states:

... On 18 March 2020, you sent a WhatsApp message to V01 in which you threatened to disseminate sexually explicit material of V01 which you recorded without her consent when you were in a romantic relationship with her in Syria.

... Between 18 March 2020 and 12 June 2020, you provided sexually explicit material of V01 which you recorded without her consent to AB, Child Protection Officer, Tartous Field Office, Syrian Arab Republic, in order for AB to threaten V01 with dissemination of the material.

... On 16 June 2020, you sent an email to V01, with a link to eight sexually explicit videos of her, in which you threatened to disseminate sexually explicit material of her and create an “erotic website” in V01’s name with sexually explicit material that you recorded without her consent when you were in a romantic relationship with her in Syria.

...

23. The record clearly establishes the Applicant’s actions with respect to this conduct. The Applicant does not deny that he sent the message dated 18 March 2020 and email dated 16 June 2020 to V01 threatening to disseminate sexually explicit material showing V01. The Applicant does not deny that he provided the sexually explicit material showing V01 to his romantic partner, AB in order for AB to threaten V01 with dissemination of the material.

24. The Applicant’s assertion that his motivation for engaging in the conduct—namely that he did so because V01 threatened to disseminate sensitive and private material showing him and AB and blackmailed him—is not relevant to the consideration that he engaged in the conduct. There is no justification for the Applicant to threaten and provide AB with material to threaten V01 with dissemination.

25. In regard to the issue of the Applicant recording the explicit material without V01’s consent when they were in a romantic relationship in Syria, the Tribunal finds that the facts are established by clear and convincing evidence. The Tribunal finds no

merit in the Applicant's argument that V01 consented to the recording of the sexually explicit material that the Applicant used to threaten her. It is clear from the record that V01 was unaware that the Applicant recorded their intimate moments. This is also clear from her reaction to AB's threat of 12 June 2020. Following this threat, V01 sent a WhatsApp message to the Applicant asking him, "Where is this coming from?" in reference to the sexually explicit image that AB had sent to her.

26. At the hearing, the Applicant played a video clip of V01 in the living room of his home in Syria taken by the camera used to film the explicit sexual material. The clip merely shows V01 glancing at a space in the Applicant's living room while she brushed her hair with her hand and took a sip of water from a bottle, none of which has anything to do with glancing at a camera. Contrary to the Applicant's assertions, the video clip showing V01 does not show V01 glancing at any camera, nor does it support his assertions that V01 was aware that she was being recorded.

27. It follows from the above that the fact the Applicant made threats to disseminate sexually explicit material of V01, recorded without her consent, is established by clear and convincing evidence.

Erasing the content of the Applicant's UNICEF-issued mobile phone device during an investigation into the allegations involving him

28. The Sanction Letter states:

... On 1 June 2021, with intent to obstruct the investigation, you erased the content of your UNICEF-issued mobile phone device which you were asked to hand over in connection with the investigation into the allegations that V01 made against you.

29. The Tribunal finds that the evidence on file clearly shows that on 1 June 2021, the Applicant erased the content of his UNICEF issued mobile phone which he was asked to hand over in connection with the investigation into the allegations that V01 had made against him. When he erased the phone's content, he knew that the phone was being recovered from him for the purpose of the investigation—he was duly

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Viewing files with sexually explicit titles on his UNICEF-issued(7lwSt1 12 Tf1sA1 02.3900000912 0 612



Tribunal further explains that this means that the Dispute Tribunal should “objectively assess the basis, purpose and effects of any relevant administrative decision” (see *Samandarov* 2018-UNAT-859).

40. In the Sanction Letter, the Administration imposed on the Applicant the disciplinary measure of dismissal, in accordance with staff rule 10.2(a)(ix). In determining the appropriate sanction, the Administration considered the nature of the Applicant’s actions, the past practice of UNICEF in matters of comparable misconduct, as well as whether any aggravating or mitigating factors apply to the Applicant’s case.

41. The Respondent submits that the sanction imposed on the Applicant—dismissal—was not blatantly illegal, arbitrary, excessive, abusive, discriminatory, or absurd in severity.

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**Conclusion**

47. In view of the foregoing, the Tribunal rejects the application.

*(Signed)*

Judge Joelle Adda

Dated this 1<sup>st</sup> day of May 2024

Entered in the Register on this 1<sup>st</sup> day of May 2024

*(Signed)*

Isaac Endeley, Registrar, New York