



Judgment No. 2022-



THE UNITED N

CC (8:18 pm): No thats sexual harassment.

AA (10:01 pm): Yeah it got very uncomfortable

AA (10:01 pm); All of this taking place in Spanish

AA (10:02 pm): So [BB] not full aware

AA (10:09 pm): He ask me if I used the stove a lot. I told him no because my boyfriend cooks for me. Him say he will come cook for me and I shouldn't worry because he will bring everything. Me say oh really and him say yes. So me say yeah man hoping he was joking cuz from what I can remember him married. Is when the inspection done and him repeat it and ask me when him can come like which date me see say d man serious. So me tell him my schedule is crazy and would not allow for a meet up. Him then proceed to say if it is because my boyfriend would get jealous? If it is that I am not allowed friends. I said no my bf would never get jealous over a "friend". I am allowed to have friends like everyone else

31 August 2018

CC (12:28 am): I can imagine. Good thing he never come alone.

AA (12:50 am): Yrp

AA (12:51 am): When him a tell (BB) fi leave me mek sure signal [BB] and tell him no leff me wid him

AA (12:52 am): So [BB] stayed until he left and then I explained to [BB] what was happening when d man a talk pure Spanish

CC (12:53 am): Lawd gee. U have to be firm with him. Him never say those things to me but he always felt creepy and a stare inna u eyes or dig out u hand middle

CC (12:54 am): Once my lady boss ask him, say that she aware that he makes inaaptopritae comments and gestures and I shouldn't be afraid to report it

CC (12:54 am): But dem nah go support u, if u do that, so I just avoid him and keep seriuos face

CC (1:00 am): Is him authority figure him a try use as influence, cus who cudda want him?

AA (1:02 am): Me say massah

7.

8. Also on 31 August 2018, upon her return to office, AA met with DD, who was AA's supervisor, and gave the latter a verbal account of the incident during the residential security inspection.

9. Again, on 31 August 2018, Mr. Ramos presented his Residential Security Measures (RSM) inspection report to the international organization for which AA was working, with a copy to AA among others, saying that the UNDSS found that AA's residence was not recommended for occupancy.

10. On either 31 August 2018 or 1 September 2018, AA met with CC in person and further shared her thoughts and feelings about the residential security inspection.

11. According to AA, on 14 September 2018, she went to the Head of her organization to report the incident, and to seek advice and counsel on the appropriate way forward.

12. On 26 October 2018, AA filed a complaint of inappropriate behavior against Mr. Ramos, stating that, during the residential security inspection, Mr. Ramos had "consistently displayed unprofessional behaviour and inappropriate sexual advances towards [her]". She recounted what had happened between her and Mr. Ramos, between her and BB, and between her and CC.

13. On 4 December 2018, OIOS received a report of possible prohibited conduct

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and Mr. Ramos' account regarding the unwelcome comments lacked credibility. OIOS referred Mr. Ramos' case to the Office of Human Resources (OHR) for appropriate action.

15. In a

30 August 2018, in violation of Staff Regulations 1.2(a) and 1.2(f), Staff Rule 1.2(f), and ST/SGB/2008/5 titled “Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority”.

18. The ASG/OHR recalled the procedural history of the case and concluded that both AA and BB had provided largely consistent account of the incident, whereas Mr. Ramos’ account of the incident was not credible, and his explanations of his conduct lacked consistency. Moreover, the ASG/OHR found that Mr. Ramos had been afforded due process throughout the investigation and subsequent disciplinary process. The ASG/OHR informed Mr. Ramos that, in determining the appropriate action, the USG had taken into account the Secretary-General’s past practice in relevant cases and considered whether any mitigating or aggravating factors applied to his case. The ASG/OHR further informed Mr. Ramos that, in light of the nature of his conduct, his name would be added to the Organization’s ClearCheck database.

19. On 12 February 2020, Mr. Ramos filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) to contest the decision to separate him from service.

The UNDT Judgment

20. On 14 July 2021, the UNDT issued Judgment No. UNDT/2021/082, rejecting Mr. Ramos’ application. The UNDT probed the issues that Mr. Ramos had raised in respect of the motive and credibility of the complainant and witnesses, the investigative findings and the legal conclusions. The Dispute Tribunal found that the USG had failed to consider the issue of AA’s Spanish language skills when assessing the facts, as that was a relevant circumstance and the disciplinary sanction was essentially based on what Mr. Ramos had said to AA in Spanish and the reasonableness of her emotional reaction thereto. The UNDT also found that the USG had made a procedural error when she had failed to explicitly state which category of misconduct under ST/SGB/2008/5 that Mr. Ramos was found to have committed following a finding of misconduct. But the Dispute Tribunal otherwise rejected Mr. Ramos’ challenge of the credibility of AA and other witnesses,² and found that AA’s account was credible,³ that the factual findings set out in the sanction letter had been proved by clear and convincing

² Impugned Judgment, para. 31.

³ Paragraph 70 of Judgment No. UNDT/2021/082 says: “... the Tribunal finds that the Applicant’s account is credible and ...”. This is clearly a typo. Logically, the sentence should read “... the Tribunal finds that AA’s account is credible and ...”.

evidence,⁴ and that the USG had acted within the scope of her discretion when concluding that Mr. Ramos had committed misconduct during the residential security inspection in the form of sexual harassment.⁵

Procedure before the Appeals Tribunal

21. On 9 September 2021, Mr. Ramos appealed Judgment No. UNDT/2021/082 to the Appeals Tribunal, and the Secretary-General submitted an answer on 16 November 2021.

Submissions

Mr. Ramos' Appeal

22. Mr. Ramos requests that the Appeals Tribunal vacate the UNDT Judgment in its entirety, rescind the separation decision and remove all adverse material from his file. Alternatively, Mr. Ramos requests that the Appeals Tribunal award him, at a minimum, two years' net base salary as compensation. He further requests that, in any case, the Appeals Tribunal order that his name be removed from the ClearCheck database.

23. Mr. Ramos submits that the UNDT erred in fact in rejecting his arguments concerning the ulterior motive and credibility of AA, BB and CC, and in finding that the factual findings set out in the sanction letter had been proven by clear and convincing evidence.

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significant for the credibility of her account. As for BB, Mr. Ramos contends that BB was biased and his motive was tainted. In his view, BB harbored animosity towards him, as he had on several occasions alerted BB's supervisors about BB's dereliction of duties. Moreover, BB resented the use of Spanish and made derogatory comments about the people from Spanish-speaking countries. In violation of the applicable rules, BB prepared a parallel report concerning the security of AA's apartment which unlawfully undermined Mr. Ramos' assessment and benefitted AA. Regarding CC, Mr. Ramos maintains that the fact that CC was a close friend of AA's committed to supporting AA affected her reliability as a witness. Mr. Ramos noted that CC had spread unsubstantiated rumors against him, thus showing animosity towards him.

25. As for the UNDT's conclusion about the factual findings in the sanction letter being proven by clear and convincing evidence, Mr. Ramos contends that the evidence in the record does not support the UNDT's findings that AA appropriately understood everything Mr. Ramos had said to her in Spanish, that he had described AA as "bonita", that his passing and innocuous comment on his cooking skills and a hypothetical cooking competition in jest had an improper sexual innuendo, and that his reference to a "fire" when inspecting AA's bedroom had an improper sexual innuendo. The Dispute Tribunal ignored the implausibility in AA's account that Mr. Ramos would tell her that her apartment was not safe, but immediately insist on coming and cooking for her in the apartment. Mr. Ramos maintains that those factual errors resulted in a manifestly unreasonable decision as they amounted to finding AA's account established, despite its implausibility and lack of corroboration.

26. Mr. Ramos maintains th(a)7 (m)-7.3g7tamu-8.3 (o)-h4 Tc 8.56(s t)21.9 (h)(c)0.5 (k)-4.w.1 tam isp. v

into consideration, ii) that the USG had acted within the scope of her discretion when concluding that he had committed sexual harassment, despite having made a serious

and later during the UNDT hearing, clearly demonstrates that she found Mr. Ramos' sexually suggestive comments inappropriate and unwelcome.

31. The Secretary-General also submits that the Dispute Tribunal correctly determined that the sanction was proportionate and it did not fall outside the scope of his discretion. He believes that considering the seriousness of Mr. Ramos' actions and his exploitation of a security inspection to engage in sexual harassment of a junior staff member, when he was vested with a particular power and authority towards AA, the disciplinary measure imposed on him was neither obviously absurd nor flagrantly arbitrary. The Secretary-General notes that the sanction imposed on Mr. Ramos was not the most severe available, as it allowed him to receive some emoluments, namely, termination indemnity and compensation in lieu of notice.

Considerations

32. The main issue for consideration and determination in the present appeal is whether the UNDT erred in law or in fact resulting in a manifestly unreasonable decision, when it found

shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals or otherwise abuse the power and authority vested in them;

...

(f) ... [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

Section 3

conduct is sexual in nature does not turn on the intentions of the perpetrator but on the circumstances surrounding the conduct, the type of conduct complained of, the relational dynamics between the complainant and the perpetrator, the institutional or workplace environment or culture that is generally accepted in the circumstances, and the complainant's perception of the conduct.⁸ The conduct does not have to be intentional to be of a sexual nature.⁹

39. Furthermore, se 0.2 ISEM BT/LBody wrspe12 79 (r6mTc 0.017 Tw 1.872 (i)-8.4-MCITd[(s)-7.8 (exu

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succeed before the UNDT. As already noted in Krioutchkov¹¹ and Aliko,¹² the Appeals Tribunal is not an instance for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. This is because “[i]n the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal”.¹³ When it comes to an alleged error of fact, the appellant has the burden to convince the Appeals Tribunal that it resulted in a manifestly unreasonable decision.¹⁴ This has not been the case here and moeent,

Appeals Tribunal is persuaded that the UNDT correctly assessed that this was what occurred in the present case.

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48. Moreover, Mr. Ramos' non-recommendation report directly contradicted what he had said just before in English so that BB could understand. In this regard, BB testified to the UNDT that he was surprised by the fact that Mr. Ramos' official report did not recommend AA's residence for occupancy, because Mr. Ramos had said the opposite in English during the inspection. Specifically, BB recalled Mr. Ramos as saying to him in English that "this place is a nice place, [he liked] this place and would recommend it to other people who come to Kingston and would like to stay". Although Mr. Ramos had spoken highly of the residence, his report eventually stated that the residence was not recommended for occupancy.

case. Moreover, AA's testimony evidenced that although it would be advisable to obtain security clearance before moving into the residence, as a Jamaican, and thus a local, she knew the neighbourhood and her landlord was aware of the fact that she needed security clearance for the rental of the property.

52. Furthermore, the written evidence on the record shows that BB, in his capacity of security officer, commented on Mr. Ramos' recommendations and report, often rebutting them as "recommended but not mandatory". During his testimony before the UNDT, BB denied having accommodated AA's security interests by lowering the standard of recommendations. He also gave information about some other residences with similar problems having been approved in the past. The fact that the final approval of AA's residence was apparently in accordance with BB's general comments leads the Appeals Tribunal to dismiss Mr. Ramos' grounds of appeal that BB's observations were "in violation of the rules" or that he was biased against Mr. Ramos.

53. On the contrary, in light of the ultimate decision to approve AA's residence, the Appeals Tribunal is convinced about the reasonableness of BB's clarification according to which inspectors followed a practice whereby they could give staff members some time to comply with the policies, before eventually deciding on the recommendation of a residence. It is also important to highlight, as did the UNDT, that BB's position regarding the recommendation of AA's residence eventually prevailed, against Mr. Ramos' disapproval of the apartment.¹⁶

54. Despite the discussion above regarding the credibility of AA's testimony, which is needed to address the issues raised in Mr. Ramos' appeal, what matters the most in the present case is that the relevant parts of the conversation were held in Spanish and only AA could have understood them since BB does not speak Spanish, a fact known to both Mr. Ramos and AA. To help

55. On another note, there was no error of law in the UNDT Judgment when it found that the sanction letter made no finding regarding AA's Spanish skills, but still did not rescind the decision in question. In light of the jurisprudence cited above according to which sexual harassment can happen regardless of the scale of impact on the victim, the Appeals Tribunal does not find this a relevant omission in the sanction letter. Moreover, considering Mr. Ramos' own admission that AA was fluent in Spanish and was able to lead the conversation in Spanish, the Appeals Tribunal also dismisses Mr. Ramos' claim that AA was not able to

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the apartment. The Appeals Tribunal hence concludes that the UNDT did not err in its assessment on this matter.¹⁸

58. In light of the above, the Appeals Tribunal is not persuaded that AA fabricated the incident in revenge for Mr. Ramos' refusal to approve her apartment, as Mr. Ramos alleges. His reasoning is, moreover, not consistent with AA's social media messages with CC only a few hours after the inspection, in which she confided to her friend what had happened in her apartment. Nor is Mr. Ramos' line of reasoning consistent with what AA told BB immediately after the inspection, when she asked him to stay in order to share with him her confusion and anguish about Mr. Ramos' utterances during the inspection. More convincing was AA's detailed and consistent account of events, corroborated by the testimonies of BB, CC and DD.

59. According to AA's testimony before the UNDT, she tried to be polite throughout the inspection, also because she saw Mr. Ramos as a senior influential official with connections. Although she was not sure about Mr. Ramos' intent at the beginning of the conversation, his comments during the inspection created an intimidating work environment. At first, Mr. Ramos created confusion in AA's mind about his intentions, when he commented that she was "bonita" after her answer that she had no dependents and his observation that she was "solita, solita" (alone, alone). Then, already in the flat, during the conversation about cooking, Mr. Ramos admitted that he would win a cooking competition against AA's boyfriend and proposed to cook for AA, even though conceding that this subject could have caused some sensitivity and discomfort in AA.¹⁹ Mr. Ramos' claim that there was no connection between cooking and sex, apart from being naïve, does not take into account the fact that sexual harassment often comes within the context of a conversation. In this regard, AA said that she had brought to light the information about having a boyfriend who used to cook for her in an attempt to set a limit for Mr. Ramos, who then said that he was "joking while working", making her think that he would cease his sexual innuendos. However, when the inspection came to the bedroom, AA was certain that Mr. Ramos had overstepped the boundaries of what was considered to be an appropriate behaviour.

60. Regarding Mr. Ramos' conduct in the bedroom, his own statement to the OIOS reveals that after having seen underwear in plain sight in a untidy bedroom, he exclaimed in Spanish, "Oh, this is where the action takes place!", before clarifying that "action" referred to "sex with

¹⁸ *ibid*, para. 46.

¹⁹ *ibid.*, para. 50.

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66. There is one aspect of the appeal which merits appreciation which did not merely repeat previous arguments already presented and rejected at the first instance level. Mr. Ramos takes issue with the fact that the UNDT used the adjective “credible”, arguing that this indicates that the UNDT applied a lower standard of review when dealing with disciplinary measures, which require that the fact be established by clear and convincing evidence. Mr. Ramos was specifically referring to AA’s physical appearance, the connection between cooking and sex, the alleged comments in the bedroom and at the end of the inspection.

67. The standard of review in disciplinary matters is settled in the Appeals Tribunal’s unambiguous jurisprudence, according to which a judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilised during the course of the investigation by the Administration. In this context, the UNDT is “to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the

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72. In summation, the UNDT was in a position to assess the candour and demeanour of the witnesses, the contradictions in Mr. Ramos' oral evidence, the consistency of each witness statement when compared to other witnesses testifying in relation to the same incident, and

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clearly that staff members who sexually harass their colleagues should expect to lose
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Judgment

76. Mr. Ramos' appeal is dismissed and Judgment No. UNDT/2021/082 is affirmed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Judgment published and entered into the Registry on this 12th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar