



## **Introduction**

1. The Applicant is a former Chief, Geographic Information Systems (GIS) Officer with the United Nations

Case No.: UNDT/NBI/2016/055

Judgment No.: UNDT/2019/010

UNV candidate for a UNV post in the context of a recruitment process where she sat on the interview panel and made recommendations to the hiring manager with respect to the technical proficiency of the candidates, resulting in a real or appearance of conflict of interest.<sup>8</sup>

12. On 25 February 2016, the Applicant submitted her comments on the allegations having been-159(0 g0 G[ )] TJETEMC /P AMCID 1/La2le )42(a)4(lI)-3(e)-5( Tf11)-5h591.7 Tm0 g0 G( )

the Tribunal issued Order No. 072 (NBI/2018), to put the Applicant on notice that the subject of the current proceedings is the decision in her disciplinary case and the present application cannot be broadened on other grievances such as she may have in relation to her benefits and entitlements. The Applicant was also directed to seek leave of the Tribunal before making any further submissions in her case.

17. During the hearing on 21 June 2018, the Applicant, who insisted that her resignation was forced, was directed to file with the Registry, within three days, email communications she had with her UNOCI supervisors before her resignation. The Applicant had also informed the Tribunal that she had filed several additional documents on the evening preceding the hearing. Having no record of such a filing on -filing portal, Counsel for the Respondent addressed emails to the Registry on 26 June 2018 and 2 July 2018 inquiring as to whether the afore-mentioned documents had indeed been filed.

18. On 3 July 2018 the Applicant informed the Registry that she had understood the directions from the Tribunal to mean that she should file the email communications at the same time as her closing submissions. She transmitted the email communications to the Registry and to the Respondent on 4 July 2018. Counsel for the Respondent informed the Tribunal of his objection to these submissions on the same date.

19. On 10 August 2018, the Applicant filed the additional documents referred to at paragraph 17 above. The Tribunal noted testimony in the hearing regarding the circumstances that are either not contested or of limited relevance, or both, i.e., that there was shortage of personnel in her Section; that the other candidate obtained another UNV position at the same time; that the wife of the Chief Civilian Personnel was employed at UNOCI; that the Applicant expressed her reluctance to grant access to the GIS database to an untrained person prior to the interview; that her husband was qua curriculum vitae did not suggest the same. As such, the Tribunal decided that the parties' interests did not merit re-opening of the evidentiary proceedings on account of

these documents.

20. On 14 August 2018, the Applicant sent an email to the Respondent copying the Registry, containing, *inter alia*, some polemics regarding the closing submission filed by the Respondent. The Tribunal was forced to reiterate its Order to the Applicant on 22 August 2018 when the Applicant persisted in making submissions in her case after

25. Her role in the interview 00 re1M4630.00000912 0 612 7 was her role in the interview 00 re1M

members of senior management generally goes unreported because the Conduct and Discipline Team CDT in UNOCI is known for its biased and racially discriminatory operations.

31. The sanction imposed was too severe as she did not have an improper motive.

this incident she had never committed misconduct.

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a mutual agreement but rather he was forced to resign. She thought resignation on 27 May 2015, 30 days after he was recruited, and the subsequent OIOS fact finding interview concluded the matter.

33. The Applicant maintains that she was forced to resign her position despite her illness because she was given the option of resignation or the prospect of an abandonment of post process against her being initiated. She became ill because of emotional stress, her family suffered financial distress since her salary was stopped due to the delay in her sick leave approval and delays in other entitlements.

34. The Applicant seeks the following remedies:

- a. compensation for all her medical expenses,
- b. compensation for loss of her job,
- c. relocation grant, her salary and benefits at the P-3 step 2 level; and
- d. education grant of USD50,000.

35. The scope of this case is limited to the disciplinary sanction imposed on the Applicant, i.e., a demotion by one grade and a fine. Other allegations go beyond the scope of this case.

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measure on her given that she had submitted her resignation from the Organization prior to receiving the sanction letter is incorrect. On 26 May 2016, she remained subject to the Staff Regulations and Rules, which allow for the imposition of disciplinary measures on staff members of the Organization.

37. The facts are established by clear and convincing evidence. The Applicant has not contested the facts material to the misconduct.

38. At the hearing, the Applicant provided differing, and internally contradictory, accounts concerning the reason why she did not disclose that one of the candidates for the UNV position was her husband. She first argued that the interview was only a formality and its outcome a foregone conclusion; however, this is belied by the fact

the hiring panel to assess the technical proficiency of the two candidates. Finally, the Applicant claimed that she had a high workload at the time of the selection exercise and that she had intended to tell the hiring manager but forgot to do so; however, this does not explain why she did not inform the hiring manager when participating in the interviews as a member of the hiring panel.

39. None of the different explanations offered by the Applicant justify her failure to disclose that she was married to one of the candidates in the hiring process, in which

had been without employment for quite some time and that she was very happy for him to be hired for the UNV position demonstrates that she wanted him to be selected for the position. It explains her failure to disclose her marital relationship with one of the candidates during the recruitment process.

40. Finally, the Applicant also stated that the hiring manager should have known that one of the candidates was related to her because she had recommended him to the hiring manager; however, just because a staff member recommends an external job applicant for a position does not necessarily mean that they are related. In any case, it is undisputed that the hiring manager was unaware that the selected candidate was the

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involved an inherent lack of integrity in violation of staff regulation 1.2(b). Contrary

may have had since then flow from that decision. They are not linked to the sanction in this case.

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and disciplinary process.

## **Considerations**

### *Jurisdictional issues*

47. The scope of this case, as delineated by the application, is limited to the decision on the finding of misconduct and disciplinary sanction imposed on the Applicant, *i.e.* claims related to her separation from the Organization and various entitlements do not identify any concrete administrative decisions and have not been submitted for management evaluation. As such, they are not properly before the Tribunal.

48. The Applicant's claim for compensation and benefits is not a claim for a specific measure on her given that she had submitted her resignation from the Organization prior to receiving the sanction letter on 30 May 2016 is incorrect. At the hearing, the Applicant conceded that, while she had submitted her signed resignation letter on 25 May 2016, her resignation became effective only on 30 June 2016, close of business, and that she remained a staff member until that point. Hence, on 25 May, the date of the issuance of the sanctioning decision, as well as on the date when it was received by her, she remained subject to the Staff Regulations and Rules, which allow for the imposition of disciplinary measures.

### *Merits*

49. The Applicant admitted the main facts material to the allegations of misconduct, namely that on 2 March 2015, she participated, as a subject-matter expert, in the interviews of the two candidates for the UNV position, one of which was her opinion was required to make a determination on the two





reasonable to expect that the selection process is not only fair, but also  
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22. We refer to the persuasive holding by the Administrative Tribunal of the International Labour Organization (ILOAT) in *Varnet v. UNESCO*, Judgment No. 179, where the ILOAT stressed that:

It is a general rule of law that a person called upon to take a decision affecting the rights and the duties of other persons subject to his jurisdiction must withdraw in cases in which

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personnel. The Tribunal considers the matter to be so fundamental that no specific knowledge is required to appreciate the problem. While the Applicant denounces nepotism at UNOCI, examples offered by her do not suggest spousal participation in the selection processes which could have confused her as to acceptance of such practice. The Tribunal agrees with the Respondent that none of the different explanations offered by the Applicant justify her failure to disclose that she was married to one of the interviewees. Rather, these shifting justifications indicate that she was aware that her participation in the panel would not have been accepted.

57. In conclusion, the impugned decision correctly found that the established facts legally amount to misconduct.

*Proportionality of sanction*

58. The most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.<sup>11</sup> The Tribunal agrees with the Respondent in this case lies mainly in the subjective element, being the marked failure to uphold minimal standards of integrity, and concerning the material element, in seriously endangering the reputation of the Organization and the co-panellists. ~~There was,~~ however, no lasting damage to other interests, considering the prompt, within one month, husband and the fact that the other candidate secured another position.

59. As concerns her employment record, the Applicant had eight years of service and, absent evidence to the contrary, never any problems with discipline. These circumstances were considered mitigating in another case relied upon by the Respondent<sup>12</sup>, who nevertheless, had not found any mitigating circumstances in the present case. The Tribunal observed, ~~however,~~ however, that the Applicant appeared

unremorseful for her actions and, as stated in the hearing, did not acknowledge any fault on her part and requested that she be cleared off all charges. In the investigation, her strategy was to blame other persons and the Mission in general. This attitude in the [redacted] is indicative of an irredeemable lack of understanding of the concept of impartiality and conflict of interest, and largely offsets the mitigation on account of the hitherto unblemished record.

60. Looking into the [redacted] recalls that in the aspect of promulgated rules, the prohibition of acting in the conflict of interest is consistently borne out by three different instruments, staff regulations 1.2(m) and staff regulation 1.2(b), staff rule 47 (c) and, the most express of them, ST/AI/273. As concerns the practice, disciplining staff for the related infractions took place mainly for violations of procurement rules and outside activities<sup>13</sup>, with only two other instances of a conflict of interest in the recruitment process where staff members did not disclose their prior knowledge of the candidates to whom they were not related. In these cases, the sanctions were: written censure after waiver of referral to the Joint Disciplinary Committee and a written censure and one-month salary fine.<sup>14</sup> These cases may be distinguished based on a more remote connection with the candidates and a lack of personal and financial gain involved. In other cases involving conflict of interest, the sanctions ranged from written censure to dismissal. Factors of aggravating impact on the sanction apparently were: acting through deception, prolonged state of breach, generating financial gain.

61. The Tribunal notes, moreover, that the measure of demotion by grade was applied in matters involving lesser cases of misrepresentation and fraud, such as where a staff member submitted to the Organization, in connection with his recruitment, a secondary school report card containing altered grades; or made [redacted] TJeand outsid-mJETF





