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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/034

Judgment No.: UNDT/2021/090

Date: 28 July 2021

Original:

### **The Application and Procedural History**

1. The Applicant was a Communications Specialist with the Country Office of the United Nations Development Programme (“UNDP”) in Tanzania.

2. In this application, filed on 25 March 2019, the Applicant challenges the Respondent’s decision to separate her from service of the Organization on grounds of misconduct with compensation *in lieu* of notice and without termination indemnities.-3(e)4(s)] TJET60.000



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22. On 18 December 2018, the Associate Administrator, UNDP, issued his decision to separate the Applicant from service with compensation *in lieu* of notice and without a termination indemnity. The sanction was based on a review of the various investigation reports and the Charge Letters.

23.











**Disclosure of confidential information contrary to staff regulation 1.2 (i)**

43. Instances of this disagreement were that firstly, Mr. Rodriguez did not agree that the disclosure of information to the Ramada corporation was harmful since it assisted UNDP Tanzania to secure the quality, services and standards that Ramada offers when such facilities are needed.

44. Another issue that was raised was that there is no evidence that the Applicant's

because the person against whom the complaint was being made was not a United Nations employee. There was certainly some doubt as to whether the contents of the email were already in the public domain. The charge in this case was proved by clear and convincing evidence.

46. The next charge was the use of the United Nations agency's letter head. The letter head should not have been used by the Applicant. But this could easily have been cleared up by the withdrawal of the email and the reissue of it by the Applicant. Apparently, this is exactly what was done. But the procedure used to discover it was lawful and the Applicant was given an opportunity to refute it, which she attempted to do. The crux of the matter on this charge was whether it was the kind of charge that would attract dismissal. The Tribunal does not think that it should.

**Whether the Applicant was Chief of Communications contrary to staff rule 1.2.**

47. Staff rule 1.2 provides that:

(h) Staff members shall not intentionally misrepresent their functions, official title or the nature of their duties to Member States or to any entities or persons external to the United Nations.

48. The Tribunal is of the view that using the designation Chief of Communication was a minor misrepresentation which showed a level of unprofessional behaviour but nothing requiring more than a reprimand. TQ0.T-1vplcatt havsmrgeud b40(th)-11(a)4(n)] TJETQ0.0000091

Due process would have required that his evidence on the issues would be relevant and helpful in establishing whether the charges could be proved by clear and convincing evidence. The idea that he may not have been credible and therefore his evidence could not be relied upon was not a proper determination to be made by the investigator in a case such as this.

50. While the investigators may have had reason to be suspicious of the RC/RR's conduct and statements during the course of the events in question and their investigation, the evidence he gave should have been included in the investigation report from the beginning and properly weighed rather than excluded or suppressed (placing it in a foot note or reference) to give the impression that it was of little consequence.

### **The Communications Company and conflict of interest contrary to staff regulation 1.2**

51. Staff Regulation 1.2 of the United Nations Staff Regulations and Rules states that:

(g) Staff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party including family friends and those they favour.

(m) A conflict of interest occurs when by act or when by act or ac3

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When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.





