UNITED NATIONS DISPUTE TRIBUNAL	Case No.:	UNDT/NY/2020/041
	Judgment No.:	UNDT/2021/149
	Date:	2 December 2021
	Original:	English

Before: Judge Joelle Adda

Registry:

Introduction

1. On 29 September 2020, the Applicant, a staff member[illegible]

23. On 10 September 2021, according to Order No. 82 (NY/2021), the Applicant filed a final statement.

Consideration

Standard of review in disciplinary cases

24. The general standard of judicial review in disciplinary cases requires the Dispute Tribunal to ascertain: (a) whether the facts on which the disciplinary measure was based have been established; (b) whether the established facts legally amount to misconduct; and (c) whether the disciplinary measure applied was proportionate to the offence (see, for example, *Abu Hamda* 2010-

RS crying and asked what happened and Ms. RS told him that the Applicant had been disrespectful;

c. An Education Officer at the MFO told OIAI

e. The Applicant yelled at Ms. AP in front of other colleagues, for which she apologized the following day.

31. In response to the allegations by Ms. AP, the Applicant admits that she had asked Ms. AP to buy her breakfast but states that she did so because she was not well enough to go out and buy food herself. She also acknowledges that she had asked Ms. AP to put some vegetables, which she had brought to work, in a bowl and put it in the microwave, but she claims that she never asked Ms. AP to cook for her as there was only a microwave in the office. The Applicant recalled drawing a finger over a surface and telling Ms. AP that it was dirty, but she denies having yelled at her. The Applicant admits that she was rude once and apologized for her behavior the next day, although she denies having yelled at Ms. AP. The Applicant also denies that she grabbed Ms. AP by the arm.

32. With regard to the allegations raised by Ms. RL, the Administration made the following findings:

a. The Applicant made disrespectful and humiliating remarks at Ms. RL;

b. On multiple occasions, the Applicant asked Ms. RL to buy her

b. The Applicant asked Ms. RS to purchase food for her;

c. The Applicant asked vendor employees including Ms. RS to keep an eye on her water and refill it when it was empty and admonished them if they did not.

35. The Applicant denies that she humiliated, mistreated and shouted at Ms. RS. She also denies that she asked Ms. RS to purchase food for her. Regarding refilling water for her, she maintains that requests for water were commonplace in the office and other staff also made similar requests.

36. Based on the above-mentioned evidence, the Tribunal finds that the evidence establishes the following facts:

a. The Applicant asked vendor employees to buy food for her and prepare salads and "green juice" for her, which were not within their official duties. The Applicant does not dispute this fact;

b. The Applicant asked vendor employees to bring her water or coffee almost every day and occasionally returned the coffee telling them it was not hot enough. The Applicant does not dispute this fact. Other staff members considered this behaviour as the Applicant's treating them as "personal servants" or making "excessive" demands to them;

c. The Applicant publicly criticized vendor employees for their work. The Applicant admits that she drew a finger over a surface and told Ms. AP that it was dirty. The Youth & Adolescent Development Officer witnessed that the Applicant told Ms. RL that some things were not clean and also told her not to use a certain cleaning product as she may not like its smell. The Education Officer witnessed that the Applicant called Ms. RS "lazy" which made Ms. RS

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rude to Ms. AP once, for which she apologized the following day. The Education Officer witnessed that the Applicant's remarks made Ms. RS cry. The Field Assistant witnessed, on separate occasions, Ms. AP and Ms. RS crying because of the Applicant. The then Chief of MFO received several complaints from Ms. RS and Ms. RL that the Applicant was being disrespectful and humiliating to them. Ms. AP complained to the Youth & Adolescent Development Officer that the Applicant was disrespectful toward her;

e. The Applicant grabbed Ms. AP by the arm during a conversation concerning a disagreement over her duties. While the Applicant denies this allegation, Ms. AP's statement is corroborated by Ms. RS and as shown above, their statements were overall corroborated by other witnesses' testimonies and found to be truthful and credible. There is no evidence that questions the veracity of their statements with regards to this incident.

Whether the established facts legally amount to misconduct

Use of UNICEF's ICT resources

> 15.2. Exceptions shall be forwarded to the Chief of Platforms and Services where technical control adjustments may be made.

43. The Applicant's conduct further violates staff regulation 1.2(q) and the Standards of Conduct for the International Civil Service, which require staff members to use assets of the Organization only for official and authorized purposes, and it fell short of the standards of conduct required of her as an international civil servant in violation of staff regulation 1.2(b).

44. Therefore, the Tribunal concludes that the Applicant's conduct concerning her use of ICT resources without authorization amounts to misconduct.

Treatment of vendor employees

…

(d)

61. The Administration concluded that "[w]hile [her] conduct, viewed in its totality, does not preclude the continuation of the employment relationship, it nevertheless calls for a strong sanction".

62. Further, the Administration decided to remove the Applicant from any supervisory roles for a period of three years "[g]iven the detailed and consistent allegations concerning [her] supervisory shortcomings" during which time she was encouraged to take appropriate training courses.

63. The Tribunal finds that the Administration acted within the bounds of its discretion in finding that the Applicant's misconduct was serious in nature. She engaged in multiple conducts constituting harassment and abuse of authority over an extended period of time repeatedly toward three vendor employees under her supervision. Further, especially considering that the Applicant was the ICT focal point of the office, her unauthorized use of ICT resources of the O26 5(o)20(f)-17(O26liz2(of)-6( )-169(the

67. The Tribunal also notes that when a staff member with managerial responsibilities or in a senior position engaged in repeated actions constituting harassment

Conclusion

73. In light of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Joelle Adda

Dated this 2nd day of December 2021

Entered in the Register on this 2nd day of December 2021

(Signed)
Nerea Suero Fontecha, Registrar, New York