Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

NAVAS CASTILLO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Andrea Ernst, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Chief Service Manager / Information System Officer in the Field Technology Service of the United Nations Verification

disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity.

2. The Respondent contends that the application is without merit.

3. For the reason set out below, the application is rejected.

Facts

4. The Applicant was sanctioned for having assisted AA (name redacted for privacy reasons) in gaining employment with UNVMC, initially, as an independent contractor and, subsequently, as an employee of Trigyn (a private company to which UNVMC had outsourced certain tasks and functions) in accordance with

.

5. In -signed statement of 11 August 2023, which was filed in response to Order No. 060 (NY/2023) dated 25 July 2023, they provided a chronology of agreed facts. As the Appeals Tribunal stated in *Ogorodnikov* 2015-UNAT-
open to [the Dispute Tribunal] to conduct its own evaluation and then to substitute ibunal may therefore not examine facts already agreed by the parties, which are the following:

> In 2016, the Applicant met and entered into an intimate relationship with [AA], while he was on temporary deployment in Colombia. This relationship continued until at least June 2018, -November 2016).

when imposing the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(viii), against the Applicant?

b. If not, to what remedies, if any, isStaff Rule 10.2oith S

Section . It has been proved that officially [BP] was the only one who wrote an official memorandum to Human Resources on 21 September 2018 requesting the recruitment of three candidates, including . left the UNVMC in February 2019 while [A recruitment was done on 21 September 2018 .

14. The Respondent submits that
[BP], then Chief, Field Technology Service (FTS) to hire [AA] for the IC position with FTS, illustrated by sworn statements of the Applicant himself as well as his former supervisor, [BP], and [AA] . was nominally the hiring manager, but he stated that due to the urgency to fill the position, [his] multiple activities and his upcoming departure from the mission he had informally delegated the responsibility

15. The Respondent further contends that the Applicant recommended hiring [AA] as an IC with FTS, even though he knew that she did not fulfil the requirements for the position . In particular, the
not speak English although fluency in English was a required recruitment criterion for the position of an IC Communications Centre Operator within FTS at the material time, the Applicant told his then supervisor, [BP], that [AA] fulfilled the requirements for the position

16. The Tribunal notes that in
report, BP explains that he had agreed to hire AA
administration to implement the new service and the urgent need for personnel to . The Applicant had conducted the processing and final evaluations of the different job candidates, and when he informed BP that AA had been selected for the IC position, first reaction was negative as he knew the Applicant and AA had been seeing each , although he did not think of it as a serious relationship . The Applicant, however, had hat there was no longer anything between them, that she fitted the required profile and that their
.

17.

was BP, and not the Applicant, who actually took the decision to hire AA. It further follows from the quotations set out above that B s motivation for hiring AA was (a) pressure from the administration to deliver certain results, and (b) an urgent need for personnel. Accordingly, it was not undue influence from the Applicant. Due to AA, the Applicant rather intended to address BP skepticism by providing some personal assurances. In the circumstances, this seemed reasonable, and as BP then decided to hire AA, he thereby also accepted the risk. Accordingly, the Applicant cannot be blamed for withholding any information and thereby unlawfully influencing the selection decision ith AA.

20. Subsequently, AA also proved herself to be qualified for the job, as SL (the Applicant next supervisor), in his

recommended the hiring of [AA] as Trigyn staff because FTS ICs staff were subsequently hired by Trygin which was a common practice and protocol . Regarding the allegation of failing to disclose a relationship with [AA] to [SL] there was nothing to disclose because there was no relationship anymore with .

24. The Respondent submits that, on 21 January 2019, the Applicant instructed [AA] to apply for a position with Trigyn, a contractor providing services to the mission, which is documented by an e-mail from [the Applicant] to . In this email, the Applicant provided [AA] with the link to the vacancy notice, advised her that her CV would have to be in English, and told her to mention that she had been working for the FTS for six months . When Trigyn scheduled a phone interview with [AA], her colleague [JB], impersonated [AA], because the interview was conducted in English, which [AA] did not speak . On 4 April 2019, the new supervisor , recommended the extension of contract as an IC until 16 July 2019. SL was [AA] and the Applicant did not inform him about lack of English skills. In May 2019, started working for Trigyn remained in the ne, this time under the direct supervision of [UT, name redacted for privacy reasons who reported to the Applicant directly . When UT was on leave, reported directly to the Applicant , and the Applicant still did not disclose his relationship with [AA] to [SL] failure to disclose their relationship to [SL] did not lapse upon the recruitment of [AA] with Trigyn;

on-and-off relationship with [AA] while at the same time being her supervisor .

25. The Tribunal notes that, as stated above, SL explained that he approved hiring AA on a permanent basis in the Trigyn job due to her excellent work performance as an IC. SL underscored the responsibility of hiring [AA] was, . To do so, SL explained that Trigyn had advertised the job for which AA applied and was then selected after which, according to SL, [presumably, referring to himself] SL explained the recruitment process as follows: Trigyn, you give Trigyn the terms

of reference and they have candidates, since [it] is common we also provide them . SL further stated that AA livering well, we knew her and she was approved by Trigyn, it was an easy decision .

26. According to , he explicitly rejected having recommended AA for the Trigyn position as he stated that,

Rather, the Applicant explained that skills I saw in [AA] is that, for example, back then the warehouse was a complete mess. She came and put it in order, [she was] a very hardworking person who worked overtime. In fact, I would . The Applicant also explained that AA had told him that she had thought her contract was at risk. In response, the Applicant had

[SL], on your professionalism and on

27. In the interview statement of AS, she, on the other hand, stated that hiring AA w As stated above, AS, however, had a difficult relationship with AA for which reason the Tribunal will attach no evidentiary importance to this statement.

28. Consequently, the Tribunal finds that it is only reasonable to conclude that the basic reason why SL approved Trigyn hiring of AA was her competent performance as an IC and not the recommendation of the Applicant.

29. In the sanction letter, reference is also made to the Applicant not disclosing to SL that AA could not speak English. The Tribunal also finds that this allegation is misguided. Since SL is an English speaker (unlike most other investigation interviews, his interview was conducted in English and not in Spanish), he would also already have known that AA had limited English language skills before hiring her as he already knew her.

30. Concerning AA, he admits that he did not reveal this to SL in his closing statement. He, however, submits that he did not do so because he did not consider this important as they were no longer together. In

this regard, the Tribunal accepts

which tribunals may for good reason interfere with the exercise of administrative *Sanwidi*, para. 38).

42. The Tribunal notes that in the sanction letter, the USG/DMSPC found that the Applicant in violation of Staff Regulations 1.2(b), 1.2(m) .

43. The mentioned provisions provide as follows:

> [*Staff regulation 1.2(b)*]
>
> Staff 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;
>
> [*Staff regulation 1.2(m)*]
>
> A conflict of interest occurs when, by act or omission, a staff
>
> her official duties and responsibilities or with the integrity, s status as an international civil servant. When an actual or possible conflict of interest does arise, the conflict shall be disclosed by staff members to their head of office, mitigated by the Organization and resolved in favour of the interests of the Organization;
>
> [*Former staff rule 1.2(q) as per ST/SGB/2018/1/Rev.2 (Staff Regulations and Rules of the United Nations) in effect at the relevant time*]
>
> A staff member whose personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff
>
> such actual or possible interest to the head of office and, except as otherwise authorized by the Secretary-General, formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to a conflict of interest situation.

44. Consequently, the Applicant was under the obligation to act with a minimum level of

mitigate its impact and resolve it in accordance with its own best interests (staff regulation 1.2(m)). Finally, if the Applicant involvement in a matter could result in an actual or potential conflict of interest as per the facts, he should have formally excused himself therefrom (former staff rule 1.2(q)).

45. In the sanction letter, it is, however, not set out how the T[63fTm227.-(9[53 38.56eW*nq0.0000

we should get back together; otherwise, she even, on the lower floor of my apartment, she opened the window and said that she was going

I got home I called

54. To avoid any, at least, potential conflict of interest, the Applicant should, on the other hand, have formally excluded himself from any involvement in the selection process of AA as per former staff rule 1.2(q). Instead, it follows from the established facts that the Applicant conducted the processing and final evaluations of the different job candidates and recommended hiring AA. When AA was recruited, the Applicant should also have ensured that her reporting line to him was changed to avoid the appearance of any potential or actual conflict of interest.

Trygin AA

55. SL explained that he approved Trigyn hiring AA, but also that he was unaware of the relationship between the Applicant and AA. Considering the circumstances of the case, by failing to disclose this to SL, the Applicant breached his duty to do so under staff regulation 1.2(m) even if the romantic relationship had already ended/F1 12 Tf1 0 0 1 295.61 534.79 Tm0 G[(Tr)4(igyn)-181(hiring)-180(A)-7(A,e)4( )-9(A

for the Applicant to formally exclude himself or take other action to mitigate and remedy the situation with reference to former staff rule 1.2(q).

The Applicant supervising AA as an IC when undertaking operat

58. Considering the circumstances of the relationship between the Applicant and AA, he should further have limited his interactions with AA in the workplace as much as possible to avoid any potential or actual conflict of interest. This would reasonably have included excluding himself formally from supervising her. The Applicant failed to do so and was therefore in breach of staff rules 1.2(b) and (p), in this regard. With regard to staff rule 1.2(m), as BP was fully aware of the relationship, the Applicant was not in violation of this provision.

Conclusion on whether the established facts amount to misconduct

59. Accordingly, the Tribunal finds that, under *Sanwidi*, the USG/DMSPC acted within the scope of her discretion when finding that the Applicant had engaged in misconduct. This finding is, however, restricted to the limited situations described above and not all the circumstances outlined in the sanction letter.

Whether the sanction was proportionate to the offence?

60. In the sanction letter, the USG/DMSPC imposed on the Applicant the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, in accordance with Staff Rule 10.2(a)(vii .

61. Specifically, regarding the imposition of a disciplinary sanction, the matter of the degree of the sanction is usually reserved for the Administration, which has discretion to impose the measure that it considers adequate in the circumstances of the case and (see, para. 45 of *Appellant* 2022-UNAT-1216) disciplinary measure imposed on a staff member shall be proportionate to the nature

a disciplinary measure that it considers adequate to the circumstances of a case, and the Tribunal should not interfere with administrative discretion unless it is tainted *Specker* 2022-UNAT-1298).

62. The ultimate test, or essential enquiry, is whether the sanction is excessive in relation to the objective of staff discipline he most important factors to be taken into account in assessing the proportionality of a sanction include the seriousness of the offence, then length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the (see, paras. 70 and 72 of *AAD* 2022-UNAT-1267).

63. the sanction of termination is chosen by the Administration requirement of proportionality asks whether termination is the appropriate and necessary sanction for the proven misconduct or whether some other alternative sanction will be more suitable in the circumstances question to be answered in
has led to the employment relationship (based on mutual trust and confidence) being seriously damaged so as to render its continuation intolerable (See, paras. 47-48 of *Appellant*).

64. The Applicant, in essence, contends that the sanction is disproportionate and that his otherwise long and unblemished work record with the Organization has not been appropriately considered.

65. The Respondent submits that the imposed sanction is within the range of reasonable disciplinary options available to the Secretary-General and is consistent with settled [A 412ET50hC 0 1 49tant

terminating the employment relationship was too lenient . Since the sanction was not unreasonable, absurd or disproportionate it was proportionate to the .

66. The

is, in particular, so as he was awarded a full termination indemnity. Whereas separating him from service could appear harsh, the Applicant's wrongdoings was such that, in the given circumstances, the sanction did not lead to a perverse, absurd or even unreasonable result in accordance with *Sanwidi*.

Whether