



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1268

**Leila Gharagozloo Pakkala
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2021-1597
Date of Decision:	1 July 2022
Date of Publication:	19 August 2022
Registrar:	Weicheng Lin

Counsel for Appellant: Monika Ona Bileris

Counsel for Respondent: Francisca Lagos Pola

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Leila Gharagozloo Pakkala (Ms. Pakkala) is a current staff member serving as a Senior Advisor at the D-2 level with the United Nations Children’s Fund (UNICEF) in Geneva.
2. She filed an application with the United Nations Dispute Tribunal (UNDT) challenging the imposition of certain administrative measures, namely: to issue her a written reprimand and to place it in her Official Status File (OSF) for a period of five years, to remove her from supervisory functions for two years, and to require her to undertake appropriate training to enhance self-awareness and improve people management skills.
3. On 29 June 2021, the UNDT issued Judgment No. UNDT/2021/076,¹ rejecting Ms. Pakkala’s application and finding that the imposition of the administrative measures was procedurally and legally sound as well as factually supported.
4. Ms. Pakkala has now filed an appeal with the United Nations Appeals Tribunal (Appeals Tribunal) arguing *inter alia* that the UNDT erred in fact and law with regard to its determination that the administrative measures were properly imposed without violation of her due process rights.
5. For the reasons set out below, we dismiss the appeal.

Facts and Procedure

6. Ms. Pakkala commenced service at the UNICEF Uganda Country Office in March 1998 as a P-4 Advisor. She served in different capacities and locations before being assigned to the D-2 level position of Regional Director, East and South Africa Regional Office (ESARO). In June 2019, she was assigned to her current D-2 level position of Senior Advisor, Strategic Partnerships, in the Office of the Executive Director based in Geneva.
7. On 6 March 2018, the Office of Internal Audit and Investigations (OIAI) at UNICEF received a complaint of harassment and abuse of authority against Ms. Pakkala from a staff member at ESARO. OIAI received a second complaint from another staff member shortly thereafter.

¹ *Gharagozloo Pakkala v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/076 dated 29 June 2021 (the impugned Judgment).

8. On 10 January 2019, OIAI informed Ms. Pakkala that she was the subject of an investigation into allegations of harassment and abuse of authority. She was interviewed on 6 February 2019 regarding these allegations and was invited to submit any additional information afterwards, which she did on 17 March 2019.

9. On 23 July 2019, OIAI issued its Investigation Report setting out the results of not only the investigation into the initial two complaints but also several others, which were received during the course of interviews from other UNICEF staff members.

10. On 22 October 2019, the Director, Division of Human Resources (DHR), UNICEF informed Ms. Pakkala that she was being charged with harassment and abuse of authority regarding her treatment of staff members.² The charge letter referred to complaints from 11 different staff members who reported to Ms. Pakkala. In particular, the charge letter stated:

Specifically, it is alleged that you engaged in a pattern of behaviour that included directing disrespectful and humiliating remarks towards [the staff members who had made the complaints], intimidating them, demeaning them and creating a hostile work environment. Furthermore, as a manager and supervisor, you were not seen to consistently serve as a role model and meet the special obligation to uphold the highest standards of conduct.

11. The charge letter gave Ms. Pakkala 14 days to submit further evidence in response, which she did via counsel on 20 November 2019. In her 21-page response letter, counsel for Ms. Pakkala *inter alia* argued the following:³

The manner in which the OIAI investigation was conducted, charges levied, and Ms. Pakkala informed of said charges resulted in a denial [of] due process. Additionally, there were numerous procedural irregularities with regard to the investigation, subsequent OIAI Report, and resulting charge letter. The decision was based on omissions of fact and erroneous conclusions, and the evidence does not support any finding of misconduct. ... The investigation Report should be rendered null and void, and all charges against her must be dropped with immediate effect.

² Office of the Director, DHR, UNICEF, letter to Ms. Pakkala (charge letter), 22 October 2019, page 10, para. 29.

³ Legal Counsel for Ms. Pakkala, letter to the Office of the Director, DHR, UNICEF, 20 November 2019, page 1.

12. On 8 January 2020, the Director, DHR, informed Ms. Pakkala of the final outcome of the investigation into the charges of misconduct against her. In her letter (the reprimand letter), the Director, DHR, said:⁴

... The Charge Letter contained specific allegations against you, made by a number of witnesses. I invited you to submit your comments, which you did on 20 November 2019. Additionally, your counsel made legal submissions on your behalf.

... You deny harassing any colleagues. You make various criticisms of the evidence in this case, and you have submitted evidence to support your contentions. I do not intend to rehearse your submissions. However, I have considered all of your submissions, and took them into account in making my decision.

... After a careful assessment of the report and the supporting documentation, together with your submissions, I am not satisfied that the facts indicate that your conduct meets the legal definition of harassment or abuse of authority, within the meaning of CF/EXD/2012-007 (Prohibition of Discrimination, Harassment, Sexual Harassment and Abuse of Authority). I will therefore not proceed further with the disciplinary process.

... However, the investigative process has surfaced a pattern of behavior that you have exhibited over a significant period of time and which is concerning. While there may not be evidence of specific incidents of harassment, it clearly emerged that your behavior as a leader did not meet the high standards expected of an international civil servant at your level of seniority.

Specifically,

- Your management style was perceived as autocratic.
- You were felt to be dismissive of staff members' views and appeared unwilling to take on board different views and perspectives.
- Your conduct could be demeaning, to the point of reducing colleagues to tears.

... As a senior member of staff, you are expected to set an example for colleagues at all times. Instead, your conduct and management style caused distress to a number of colleagues and it appears that you have failed to appreciate the effect that your behavior has had on others.

... While it is clear that you have excellent technical skills, that is only part of the skillset that a senior manager must possess. The Executive Director has made it clear that we must all embody UNICEF's core values. Senior staff members in particular are

⁴ Office of the Director, DHR, UNICEF, letter to Ms. Pakkala, 8 January 2020, pages 1-3, paras. 3-10.

accountable for creating a workplace culture that is caring and respectful toward all staff. Regretfully, I have concluded that you have not consistently made this a priority.

... I am therefore satisfied that your conduct warrants the issuance of a Written Reprimand. In addition, I have decided to take additional administrative measures. You will be removed from all supervisory functions for a period of two (2) years from receipt of this letter and you will be required to undertake appropriate training geared to enhancing self-awareness and improving your people management competence.

... This Reprimand shall be placed in your Official Status File, where it shall remain for a period of five (5) years. You may submit any comments you may have on the report and/or on the reprimand within 15 calendar days. Your comments will be placed in your File with this Reprimand.

13. On 20 January 2020, Ms. Pakkala submitted her comments on the administrative measures. She followed up with an application at the UNDT on 20 March 2020 challenging the decision of the Organization to impose the above administrative measures (the contested decision).

14. On 29 June 2021, the UNDT issued the impugned Judgment, finding *inter alia* that the imposition of the administrative measures on Ms. Pakkala was procedurally and legally sound as well as factually supported.⁵ The UNDT found no merit in Ms. Pakkala's claim that her due process rights were violated purportedly because the Organization provided no concrete examples regarding her behavior shortcomings vis-à-vis other staff members. The relevant allegations were clearly specified in the charge letter.⁶ Moreover, the ultimate finding of the investigation was favorable to Ms. Pakkala in that no disciplinary proceedings ensued. In addition, the UNDT also noted that Ms. Pakkala was afforded the opportunity to provide comments at every step of the process and was represented by counsel since the issuance of the charge letter. As such, the UNDT concluded that Ms. Pakkala's due process rights were respected.

15. Regarding Ms. Pakkala's challenge that there was no factual basis for the administrative measures, the UNDT accepted that there was supporting documentation available to the decision-maker. It found that the facts were established on a preponderance of the evidence.⁷

⁵ Impugned Judgment, para. 50.

⁶ *Ibid.*, para. 14. In the charge letter (Annex 4 to the application), the Director, DHR, gave detailed accounts and examples of behavior and managerial shortcomings that were received from at least 11 complainants during the course of the investigation.

⁷ Impugned Judgment, para. 22.

16. The UNDT also dismissed Ms. Pakkala's argument that the administrative measures constituted disguised disciplinary measures and that they were disproportionate to the alleged conduct. It reasoned that the applicable law is clear on the distinction between disciplinary and administrative measures. The content of the reprimand letter was not meant to be punitive but was rather informative and cautionary in nature as it highlighted to Ms. Pakkala her behavioral shortcomings as a senior manager.

17. The UNDT furthermore accepted that the removal of Ms. Pakkala's supervisory functions was a rational response on the part of the Organization to temporarily shield staff members while remedial steps were taken. The requirement for training was remedial in nature and not intended to be punitive. The UNDT thus rejected Ms. Pakkala's contention that the imposition of the administrative measures was disproportionate.

18. The UNDT thus concluded:⁸

... The Tribunal finds that the administrative measures imposed on the Applicant were rational and proportionate to the established facts, as well as to address the concerns that UNICEF had about her conduct and did not constitute disguised disciplinary measures as they are of a different nature than disciplinary measures, targeted specific behaviours, have a limited application in time, and do not necessarily play a role in future selection exercises.

... The Applicant claims that the administrative measures imposed on her were tainted by personal prejudice, malice, ill-will, bias, and discrimination by UNICEF officials. The Tribunal reiterates its finding that the facts in support of the imposed administrative measures were established as per the required standard and, recalling that it is settled jurisprudence that an applicant has the burden of proving bad faith on the part of the Organization, finds that the Applicant has failed to prove the alleged flaws of the decision-making process.

... In sum, the Tribunal finds that the decision to impose administrative measures on the Applicant was procedurally and legally sound, as well as factually supported.

19. On 11 August 2021, Ms. Pakkala filed an appeal against Judgment No. UNDT/2021/076, and the appeal was registered with the Appeals Tribunal as Case No. 2021-1597.

20. The Secretary-General filed his answer on 11 October 2021.

⁸ *Ibid.*, paras. 48-50.

Submissions

Ms. Pakkala's Appeal

21. Ms. Pakkala first submits that the UNDT was incorrect in its finding that the allegations were made clear in the reprimand letter. She argues the measures imposed on her were not backed up by any facts or examples, and therefore, it was impossible for her to defend herself. Importantly, Ms. Pakkala says she was not able to fully comment on the allegations of her managerial shortcomings as they were never spelled out to her. This resulted in a violation of her due process rights.

22. Ms. Pakkala argues the allegations in the charge letter were vague, ambiguous and unsubstantiated and made only by a select number of staff members who considered her to be “aggressive” or “demeaning”. These allegations often lacked specificity and often conflicted with other staff members’ testimonies, which praised her for being a good and respectful leader. Additionally, Ms. Pakkala submits if she had had any managerial shortcomings throughout the years, those would have come up in her reviews and would have been administratively addressed then. This never happened, and to the contrary, she was regularly praised throughout the years by top management, specifically for her managerial skills and capabilities.

23. Ms. Pakkala argues further that the UNDT erred in law and fact in determining the administrative measures imposed on her did not have a disciplinary effect. She maintains that the UNDT failed to recognize that the effect of the administrative measures imposed was in fact punitive and failed to correct any alleged managerial shortcomings. In particular, she notes how she went from effectively overseeing some 3,000 staff members to managing zero of them. This is necessarily a demotion, which is a disciplinary measure.

24. Ms. Pakkala also notes that contrary to the UNDT’s conclusion, she will have to report whether she was the subject of an investigation and whether subsequent disciplinary or administrative actions were taken for both internal UNICEF and external job applications. The reprimand letter will carry a stigma in her subsequent job applications. She further claims that having the reprimand letter on her file for a period of five years is excessively long and thus disproportionate.

25. Finally, Ms. Pakkala argues that the UNDT failed to determine whether any mitigating factors were taken into consideration when deciding the proportionality of the administrative measures imposed.

26. Ms. Pakkala asks the Appeals Tribunal to reverse the UNDT Judgment and to rescind the administrative measures.

The Secretary-General's Answer

27. The Secretary-General submits the UNDT was correct to dismiss Ms. Pakkala's application because the imposition of the administrative measures was not an arbitrary act but was rather taken after a thorough investigation conducted by OIAI. The contested decision was based on numerous interviews conducted during the investigation, together with supporting documentation, and Ms. Pakkala's comments in response to the charge letter.

28. Ms. Pakkala's due process rights were fully respected throughout the process as she was given ample opportunity to respond to the facts and circumstances of the allegations. She was adequately apprised of all the allegations against her to which she submitted a detailed response on 20 November 2019. Hence, her due process rights were fully respected.

29. Ms. Pakkala's claims that the Administration did not provide concrete examples of her managerial shortcomings are not sustainable. The Investigation Report showed that there were legitimate questions about Ms. Pakkala failing to act as a role model at times and not promoting a harmonious work environment. Most significantly, the Chief of Human Resources in one of the departments where Ms. Pakkala previously worked qualified the exchanges that she had with her as "aggressive, sarcastic and demeaning". Other accounts noted how Ms. Pakkala had humiliated staff members in front of others.

30. As the Appeals Tribunal held in *Elobaid*,⁹ the requirements for imposing administrative measures are different from those required prior to taking disciplinary action.

31. Finally, the Secretary-General submits that Ms. Pakkala has failed to demonstrate errors of fact or law that would warrant reversal of the UNDT Judgment. Many of Ms. Pakkala's contentions are mere repetitions of arguments made before the UNDT and fail to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute (Statute).

⁹ *Elobaid v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-822.

Ms. Pakkala has failed to discharge her burden of satisfying UNAT that the impugned Judgment is defective.

32. In conclusion, the Secretary-General submits that the contested decision constituted a lawful and reasonable exercise of administrative discretion and thus requests the Appeals Tribunal to uphold the UNDT Judgment and to dismiss the appeal in its entirety.

Considerations

33. The question for decision on appeal is whether the decision to impose the administrative measures on Ms. Pakkala was a lawful and reasonable exercise of discretion.

34. Staff Rule 10.2(b) permits the imposition of administrative measures that shall not be considered disciplinary measures. These include the kind of measures applied in this instance. Such measures are not intended to be punitive in nature but are aimed at efficiency and performance management in the interests of the Organization. The purpose of Staff Rule 10.2(b) is to permit remedial or corrective action. If there is a rational connection between the purpose of Staff Rule 10.2(b), the purpose of the decision to impose the administrative measures, the information upon which the decision is based and the reasons for the decision, then the exercise of discretion will pass the test of rationality and will be lawful.

35. There is no getting away from the fact that the imposition of administrative measures may carry some stigma for the staff member. Nonetheless, since the imposition of administrative measures does not require any finding of misconduct or inflicting a penalty, there is no need to establish the facts justifying them on clear and convincing evidence.

36. The letter of the Director, DHR of 8 January 2020 clearly set out the rationale for imposing the administrative measures. The Director, DHR stated that after a careful assessment of the report of all the relevant information she was not satisfied that the facts indicated harassment or abuse of authority and thus there was no basis for discipline. However, the investigative process had surfaced a pattern of behavior exhibited by Ms. Pakkala over time which was cause for concern and justified the administrative measures. While, as the Director, DHR clearly appreciated, the evidence of alleged harassment was not clear and convincing, in her opinion there were reasonable grounds to believe that Ms. Pakkala had not conducted herself in accordance with the high standards expected of an international civil servant at her level of seniority.

37. It is not necessary to explore the details of the complaints against Ms. Pakkala. Some of them are admittedly inadequately substantiated, sometimes based on hearsay and occasionally trivial. But, looked at overall, there was indisputably a problem with Ms. Pakkala's style of management. Ms. Pakkala's response takes issue with some of the details of the complaints but nonetheless confirms that the most significant relevant incidents took place. She has different interpretations or perspectives of what transpired. However, she appears not to appreciate that there was an identified problem with the tone and style in which she conducted herself.

38. The wide-ranging allegations of several staff members, some of them holding senior positions, leave little doubt that Ms. Pakkala's management style was perceived as autocratic and problematic. Her colleagues found her to be dismissive of their views and different perspectives and her conduct at times demeaning and insensitive. While Ms. Pakkala had excellent technical skills, her interpersonal skills left something to be desired and her deficiency quite evidently impacted negatively upon the workplace culture. There was considerable unhappiness, consistently experienced, among her subordinates. Remedial action was justifiably called for.

39. It is important to emphasize that we are not here concerned with misconduct. There is no evidence that Ms. Pakkala is guilty of misconduct. The problem is rather one of compatibility or fit. Such matters are best managed by those responsible for their assessment and with appropriate authority and skill to remedy them. As stated, provided there is a rational basis for the measures and they are proportionate, there will be no basis for judicial interference.

40. The removal of Ms. Pakkala's supervisory functions for two years was indeed far-reaching, but not beyond the bounds of rationality or proportionality. Relationships in the workplace had been damaged. The view of the Director, DHR that a lengthy cooling-off period was desirable was therefore one which a reasonable employer could legitimately take. Likewise, there is no basis to interfere with the decision to place the reprimand in Ms. Pakkala's official status file for five years. It will stand as an appropriate reminder that a higher standard of interpersonal conduct is expected of her.

41. There were accordingly reasonable grounds justifying the imposition of the administrative measures, which fall within the range of reasonable and proportionate responses aimed at enhancing self-awareness and improving Ms. Pakkala's people management competence.

42. The evidence establishes convincingly that Ms. Pakkala's due process rights were fully respected throughout the process. She was given a full and ample opportunity to respond to all the allegations.

43. In the premises, the UNDT did not err in dismissing the application. The appeal must accordingly be dismissed.

Judgment

44. Ms. Pakkala's appeal is dismissed and Judgment No. UNDT/2021/076 is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Halfeld

Judgment published and entered into the Register on this 19th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar