

Judgment No. 2023-UNAT-1394



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regulations and administrative issuances and your 8 victories in the UNDT. They have summarily failed to impress me (...) Grow up, learn to work, learn to respect yourself and your environment. Stop wasting my time – again with your meaningless diatribe.

N.: [6:18 pm] ... I do not seek to impress you or anybody else in the Organization. (...) Grow up. Hunker down and study. Do not cost the Organization any losses through your laziness to learn.

Nair: [6:28 pm] ... I am not surprised that bullies like you still exist in world organisations such as the UN. (...) I come from a family of civil servants with relatively modest means. My ego therefore is infinitesimally minute as compared to you given that you derive your sense of self-worth from what your family does or owns. (...) Very soon you will run out of words for these rantings – your bandwidth of the English language and its limits are increasingly evident.

N.: [7:25 pm] It is possible that you have over-achieved given your modest background. Which must explain your arrogance, crudity, and exaggerated sense of your self-importance. (...) You have neither the intellect nor the capacity to make a contribution. You have no capacity to learn. If you did, you would have known that your priority should be to deal with the issue before you – a corruption of the ePerformance system, not provoke and engage in the writing of meaningless drivel to me.

Nair: [7:40 pm] ... Your efforts at personal vilification and dis

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13. Mr. Nair also repeatedly made reference to Mr. N. needing to “grow up”, such as:

[11:20 am] Instead of putting a lid on your rantings, you chose to indulge in this useless volley of threats, abuse, insults and intimidation. Do you not have any work at all? Grow up. Else you will be treated like a juvenile.

[2:44 pm] I suggest you enroll for the Kindergarten school here – not only will they teach you manners, but also how to relate with other human beings.

14. The next day, on 23 June 2017, Mr. N. filed a complaint of harassment and abuse of authority against Mr. Nair. On 30 June and 6 July 2017, Mr. Nair lodged complaints of harassment, abuse, intimidation, and disparagement against Mr. N. Both staff members’ complaints were based on the email chain above.

15. On 30 June 2017, Mr. N. wrote to the ECA Legal Advisor and advised that he had “decided to stand down [his] complaint” but that this decision was “without prejudice to [his] right to re - submit it in the future (within the time limit prescribed by law) should circumstances warrant”.<sup>2</sup>

16. In the meantime, the ECA Executive Secretary approved the establishment of a fact-finding

*Investigation and disciplinary process*

18. On 14 August 2019, Mr. N. decided to resubmit his complaint of 23 June 2017 against Mr. Nair. He alleged that: <sup>4</sup>

- a. Several emails from [Mr. Nair] made him feel belittled and humiliated and that [Mr. Nair] provoked him into having the exchange.
- b. The exchange of emails was premeditated and improperly motivated ' conduct since [Mr. Nair] being CHRO had access to [Mr. N.'s] Official Status File (OSF) and [Mr. Nair ] was aware of previous sanction brought against [Mr. N.] and the conditions attached to it.
- c. The abuse o1 (0.01 Tc -0.014 2 (r(o)-1t)-9C /LBo7) (a)2 3 -1.566 Td (c.)Tw -2.663e9o y u2uTc 0 Tt-9.7 ( 0)-5.1

because of his expected knowledge of rules and regulations with regard to conduct and





required Mr. Nair to serve in another human resources section of the Organization for three months and be mentored for twelve months by another senior human resources professional.

31. On 15 July 2021, Mr. Nair filed an application with the UNDT challenging the sanctions decision. His application also included a motion for anonymity.

*Dispute Tribunal proceedings*

32. On procedural matters, the UNDT first found that, contrary to Mr. Nair's contentions, the Allegations Memorandum was approved and authorized by the official with the requisite delegated authority.<sup>10</sup> The UNDT found no special circumstances or justification for granting anonymity to Mr. Nair.<sup>11</sup> The UNDT also rejected Mr. Nair's argument that he was not charged under the applicable iteration of the relevant Secretary-General's bulletin.<sup>12</sup>

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41. The Secretary-General submits that the UNDT improperly usurped the Secretary-General's authority to hold staff members to the highest standards of integrity embodied in Staff Regulation 1.2(b). He argues that the finding of the UNDT that contrary to the decision of the USG/DMSPC, Mr. Nair's conduct did not constitute harassment, did not follow the rulings of the Appeals Tribunal in matters such as *Sanwidi*<sup>20</sup> that in judicial review of misconduct decisions, due deference should be given to the Secretary-General. In addition, the Secretary-General contends that the UNDT failed to apply the relevant legal framework and committed a factual error in focusing on Mr. N.'s e-mails to find provocation without considering whether Mr. Nair's e-mails met the definition of harassment as set out in ST/SGB/2019/8. Mr. Nair's e-mails met the me

standards set out in (2)(h)-2.71(N) 6.3.7(a)-7.6(a)-2.3.2(c) and (9) 21(a)(6)(a)-(b)(14) T.W. 3.11(c)-6.4.4(d)(1)-54(w)-2.3 ((

44. Mr. Nair argues, with reference to the Appeals Tribunal's judgment in *Samandarov*,<sup>21</sup> that due deference to the Secretary General on matters of discipline "does not entail uncritical acquiescence" and that the UNDT was permitted to interfere where a sanction is disproportionate or lacking in proportionality pursuant to the decisions of *Samandarov* and *Sanwidi*.

45. Mr. Nair argues that the UNDT did not consider the evidence in *Case No. 2023-UNAT-1394* (15.2 (d)).

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66. In *Sanwidi*, this Tribunal recognized that “the principle of proportionality means that an

accomplished the necessary disciplinary objective<sup>41</sup> As recognized in *Rajan*,<sup>42</sup> factors to be considered 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. This is however not a closed list.

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