UNITED NATIONS DISPUTE TRIBUNAL

8. The Applicant was away from the duty station at the time, so he forwarded the email to the Officer-in-Charge) of the Human Resources Management Service HRMS

9. On his return to the duty station, the Applicant realised that the OiC did not respond to N

10. On 21 June 2017, the Applicant responded to N with information regarding policies of the Organization.

11. N wrote two emails in response to the Applicant on the same day. The second email reads:

> as your inference about the applicability of Staff Regulation 1.2(b) and Staff Rule 1.2(i) are concerned, they may be correct with regard to the need for probity, integrity, honesty and truthfulness. However, to extend the inference to cover the Performance Management and Development System is May I suggest that you leave the determination of whether the extension of the provisions of the SR to Performance Management is a stretch to OHRM (since I have reported the matter to OHRM in view of your long silence) and to the Ethics Office. Plagiarism, theft of intellectual property or intellectual assets is a serious matter. I suspect that you have not studied the issue very well; I suggest that you should. You should also seek the advice of the lawyers on applicable jurisprudence.

12. The Applicant responded to N as follows:

> You assume that everyone in the organisation waits to receive and respond to your mails and queries with a sense of urgency that need not be accorded to any other item. We received your query and processed it in the order of priority of items, which need not be explained to you.
>
> Since you have written to OHRM, let OHRM get back to you. But that will not bar ECA HR from providing its point of view, which shall also be communicated to OHRM.dlT177.17 0 1 218..17 877.17 0 1 218..17 877.17 0 1 2

> this Mr. N referred to part of the testimony made by [the Applicant] against him during a different investigation that took place in August 2017.
>
> d. [the Applicant] insider knowledge to ridicule and hum demeaning and an extremely belittling experience of his United Nations experience.

20. An investigation panel was established on 7 October 2019. It conducted its investigation in Addis-Ababa, Ethiopia from 14 to 21October 2019.

21. The Panel issued its investigation report issued on 5 June 2020. It concluded that during the exchange of messages in June 2017 with Mr. N, the Applicant used language that caused offense and humiliation to Mr. N. and his words were demeaning, intimidating and humiliating. The Panel also concluded that the exchanges of messages cannot constitute a onetime event as they happened during the course of several days in June 2017, and that the sequencing of messages is no justification for the use of insults containing aggressive and inappropriate words by both staff members. The Panel stated:

> 123. The use of such language by [the Applicant] is particularly troubling as he is expected to adhere and uphold the highest standards of conduct as Chief Human Resources and because of his expected knowledge of rules and regulations with regard to conduct and discipline matters. [the Applicant] did not seek a different way to resolve the conflict with Mr. [N] as escalating the matter to ECA senior managers but decided to engage in a war of insults with Mr. [N].
>
> 124. The Panel ascertains that [the Applicant] used his official position to access information about Mr. [N] which later was used in the exchange of messages in June 2017 and the subsequent fact-finding investigation.
>
> 125. There is clear and conclusive evidence that [the Applicant] continued handling Mr. [N] human resources matters after filing of his complaint in July 2027[*sic*] and there was no segregation of [the Applicant] which may have negatively impacted the handling of Mr. [N] [the Applicant].
>
> 126. Finally, the Panel concludes that there is clear and conclusive evidence that [the Applicant] consider Mr. [N] not fit for work in the Organization and there is prevalence of evidence that [the Applicant] used his official position and authority to influence the career of Mr. [N] which ended with his separation from the Organization.

according to Annex IV of ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules), only the USG of the Department of Management Strategy, Policy and Compliance DMSPC , Ms. Catherine Pollard, has the authority for the disciplinary process. Absent formal delegation of authority at the time the Applicant was charged and sanctioned, any actions taken by both Ms. Lopez and Ms. Thanabalasingam were done without authority and were therefore unlawful.

28. The Panel was biased and failed to comply with its terms of reference. The Panel did not investigate the apparent contradictions and inconsistencies in statements, emails and testimonies.
allegations/claims at face value without any consideration of his motives, ignored own emails to the Applicant and focused sol

29. The Applicant submits that not only did the Respondent fail to consider relevant matters, and ignore those that are irrelevant, he also failed to meet the standard for harassment required by ST/SGB/2008/5.

30.

58. The Tribunal notes that, commencing 1 April 2022, the Applicant served his sentence for the administrative measures portion of the sanction under Ms. Deborah Ernst, Chief of Human Resources at the United N ationsOffice in Vienna, until 31 July 2022. The Applicant has already completed this training in Vienna and more under the mentorship of Ms. Ernst. The Applicant therefore complied with the administrative sanction, which has been fully implemented.

59. In conclusion, the application is granted only as it relates to the disciplinary measure. The disciplinary decision is therefore rescinded.

60. The Applicant must be placed in the same position he had before the sanction was applied.

Conclusion

61. In light of the foregoing, the disciplinary decision is rescinded.

(Signed)
Judge Francesco Buffa
Dated this 7th day of October 2022

Entered in the Register on this 7th day of October 2022

(*Signed*)
Abena Kwakye-Berko, Registrar, Nairobi