

UNITED NATIONS DISPUTE T

Facts

6.

to a *divulgence* *et cetera* " *violation* " *misconduct* " *retaliation* " *absence of professional collaboration* and retaliation. This led to a second review by Internal Audit Division, OIOS (IAD/OIOS).

On 30 March 2020, [the former RSG] resigned and the Secretary-General appointed [PG, or the new RSG (name redacted for privacy reasons)] as the Acting RSG.

On 8 May 2023, the Applicant was requested to respond to formal allegations of misconduct.

On 30 June 2023, the Applicant responded with comments.

On 14 July 2023, the Applicant submitted her resignation. The Applicant requested her resignation to take effect on 18 August 2023.

On 7 August 2023, the Applicant received the contested decision *sanction letter*.

The parties' submissions

9. *Contentions* may be summarized as follows:

a. The Applicant was never the subject of any complaint of misconduct. The allegations against her arose solely from the *disclosure* of the information technology equipment of OIM staff members and the retrieval of *communications* *related to* *the* *work* *of* *the* *Applicant* *and* *her* *colleagues*. Those communications were all related *to* *the* *work* *of* *the* *Applicant* *and* *her* *colleagues*. The charges against the Applicant relate *to* *the* *work* *of* *the* *Applicant* *and* *her* *colleagues* and even *to* *the* *work* *of* *the* *Applicant* *and* *her* *colleagues*. This case exemplifies the *work* *of* *the* *Applicant* *and* *her* *colleagues*.

b. Proof that the actions of the Applicant and her colleagues were justified *and* *not* *adverse inferences* from this decision to cover up critical evidence exonerating the actions of the Applicant *and* *her* *colleagues*.

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policy allows for use of United Nations devices for personal matters. This understanding was established especially during the COVID-19 pandemic. (Footnote 52.349)

1. The disciplinary o gcuwtg"lo r qugf "d{ 'vj g"Cfo kputcvkp"ohcku Cfo kputcvkp"oh

BP, an Investment Officer in OIM, in the context of contemplation of interfering with

d. Wj gj gt"vj g"uclh'o go dgtø"fwg"process rights were respected during the investigation and disciplinary process.

Whether the Applicant was a whistleblower

14. Cu'è'r tgrko kptct{'o cwgt.'vj g'Vtkdwpclly knrf gvgtø kpg'vj g'kuuwg'qh'vj g'Cr r rñecpva" y j kungdny gt"ucwu'Vj g'Cr r rñecpva"qyj gt"cti wo gpw"ctg"vq"dg"eqpukf gtgf "cu"cpf " when they are raised, in the evidence evaluation process.

15. The Applicant alleges that instead of offering her protection as a staff member who speaks up against the abuse of authority, the Administration has targeted her for engaging in a protected activity. According to her, the sanction imposed on her gzgo r ñhgu"vj g"Cf o kputcvkpa"øj qukwk{"vq"y j kungdny gtu"y j q"cwgo r v"vq"tgr qt v"

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Vj g'Cr r decp v' t gur qpug'y cu' yj cv'ö]VU_'uj qwf 'r wuj 'dcent'qp'] cxkpi "]BP] return to his ugevkpö.

55. In her oral testimony, when confronted over the above response, the Applicant explained that the context of her response was that she wanted to make sure that the issue was thought about holistically, since there were many other temporary job openings which could have been used to recruit BP.

56. The fact, however, that the Applicant did not mention the existence of other portfolios but only bluntly stated that TS should ðpush backö nullifies her explanation about the context of her response.

57. It is worth noting that the Applicant was in the European Public Equity team and not in the North American Public Equity team. Her concern about BP' t'gwtpkpi " to North American Equity, which was not even her team, is curious. Her explanation that BP could be more helpful in the External Managers team where she would be at the P-4 level sits uncomfortably with her blunt suggestion that ö[TS] should push back on having [BP_'t'gwtp"vq"] ku'ugevkpö0"

58. On the same day, 9'Cr tki'4242."O U'cungf "GJ "cdqw'c'r qukdng"öugr ctcvg"l on 1 o ggkpi ö"y kj "the new RSG and indicated that she could talk to him together with the Applicant since she and the Applicant were öxgt{ "o wej "qp"yj g"uco g'r ci gö. In response, EH advised that MS should email the new RSG directly and added: ö[t]alking vqi gj gt'ku'c'i qqf 'kf gcö0

59. The Applicant thanked MS for emailing the new RSG requesting a call. In response, EH informed the Applicant and MS that he had learnt yj cv'ö]BP] has once again changed her bio on [LinkedIn, an online professional networking platform] ó no more infrastructure ó now she is back to [North American] gs wkvö.

60.

OIM staff member, name redacted for privacy reasons) "y j qø"eqpvtcev"ku'wr "kp"Lypgö [sic] and stated that ð[p]utting [BP] back would not be harmonious and this is where 77' "qh'Hwpf ø'u'cuugu'ctg"o cpci gf ö.

61. The Applicant disputes the import of this document on the basis that the document is incomplete and incorrect. She explains that the replacement was for RH who was on a P-4 level post (not a P-3 level post) and that the suggestion was to offer a lateral move within the Public Equity team for BP.

62. The Applicant does not, however, sufficiently indicate what was missing from the document or what she believes is the correct information. Her explanation that the replacement was for RH who was on a P-4 level post and that the suggestion was to offer a lateral move within the Public Equity team for BP does not support her assertion that the email exchange is incomplete.

63. In the email of 8 April 2020 in response to EH, the Applicant wrote, copying MS<ðBefore our call with [the new RSG] today, can you tell us what impression you think [the new RSG] has about [BP]? Does he know she is most definitely part of the r tqdrgo A'Y g'y kn'tgkphqteg"vj ku'r qkø"vqf c{."vj cpmö.

64. When cross-examined about why she needed to get the information on the new RSGø'u'ko r tguukp"cdqw'BP, the Applicant responded that her intention was to tell the new RSG that BP was part of the problem in the OIM. She explained that BP was the right-hand person to the former RSG and was part of the toxic culture because he corrupted her. Further, she stated that the new RSG had reached out to her and her colleagues to find out what needed to be done and how they were to move forward. According to the Applicant, her actions did not amount to affecting BPø"ectggt"ukpeg" BPøP-4 level status was already being decided.

65. Vj ku"gzr rcpvukp"eqptcf lew"vj g"Cr r rncpø"r qukkp"stated earlier that she wanted to make sure that the issue was thought about holistically, since there were many other temporary job openings which could have been used for BP.

66. Questioned about whether she had reinforced this point when she communicated with the new RSG, she could only remember that a conversation was held but not how it flowed. The Tribunal considers that it is strange that the Applicant

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about holistically, since there were many other temporary job openings which could have been used to recruit BP.

84. The fact, however, that the Applicant did not mention the existence of other portfolios but only bluntly stated that TS should "push back" nullifies her explanation about the context of her response.

85. When cross-examined about why she needed to get the information on the new RSG's impression about BP, the Applicant responded that her intention was to tell the new RSG that BP was part of the problem. She explained that BP was the right-hand person to the former RSG and was part of the toxic culture because he corrupted her. She further stated that the new RSG reached out to the Applicant and her colleagues to find out what needed to be done and how they were to move forward. According to the Applicant, her actions did not amount to affecting BP's P-4 level status was already being decided.

86. As stated earlier, that she wanted to make sure that the issue was thought about holistically, since there were many other temporary job openings which could have been used for BP.

87. Questioned about whether she had reinforced this point when she communicated with the new RSG, she could only remember that a conversation was held but not how it flowed.

88. That the Applicant specifically requested for this information from EH, yet she could not recall whether she raised it with the new RSG, is not credible.

89. The Tribunal finds the arguments that: (a) the Applicant had no control over or interest in BP's position; (b) she had no decision-making authority over the proposed P-4 level infrastructure position; (c) she was never involved in BP's position; (d) BP has demonstrated no harm to her

P-3 level position at the OIM following the conclusion of her temporary assignment at the P-4 level.

99. Kof ggf."cm'vj g"gxkf gpeg"cpf "vj g"Vtkdwpcn'u"kp fpi u"above are relevant to this issue. The email and text message exchanges referred to earlier constitute clear and convincing evidence that the Applicant collected and shared information or comments suggestive of collaborative efforts or contemplations to impede BPø'r tqhgukqpcn' circumstances, including her return to her P-3 level position at the OIM following the conclusion of her temporary assignment at the P-4 level.

Whether the Applicant engaged in collecting and sharing information or comments suggestive of collaborative efforts or contemplations to share information given to her in good faith by BP in group discussions disparaging BP and in the context of contemplation of interfering with her professional circumstances

100. At the oral hearing, the Applicant admitted to having shared documents with colleagues, but she explained that the documents were attachments to an old resume and were public documents. She also stated that she did not share BPø'r gtupcrñj kuyt { " r tqhg"øRJ Rö, a type of resume used by the United Nations) with EH.

101. This explanation is, however, against the weight of evidence. The Applicant does not deny that on 9 April 2020 cpf "y kj "vj g"uwlgev"rkg"õ]BP_ö."GJ "uj ctgf "y kj " her and other colleagues that he noticed from BPø'dkqgraphy that her previous time working at the United Nations was not mentioned. EH stated that he would make sure that the new RSG knew about that. EH asked if the Applicant, TS or MS had BPø'RJ R" from the time when she returned to the United Nations after a period working with another employer. In tgr qpug."vj g"Cr r rkecpv"ugpv"vq"GJ "vy q"go ckñ"öy kj "uqo g" dceni tqwpf "kphqto cvkpö"qp"BP.

102. Still on 9 April 2020, the Applicant sent to her personal email

v. The Applicant also shared information given to her in good faith by [BP], including [BP] resume, in group discussions disparaging [BP] and in the context of contemplation of interfering with [BP] professional circumstances.

114. Consequently, the Tribunal finds that all the five sub-areas of misconduct which grounded the allegation that the Applicant, together with other senior managers at the OIM, UNJSPF, engaged in a course of behavior targeting

118. In her oral testimony, the Applicant admitted that she was aware that EH was meeting with the representative of the United States Permanent Mission to the United Nations. She further admitted that she received the email of 13 September 2019 which was a preparation to go to the various Permanent Missions, and she responded in the alleged manner. She, however, did not think that they were doing anything wrong by going to the Permanent Missions. Her position at the time was in full support of EH going to the United States Permanent Mission, and other colleagues going to their respective Permanent Missions.

123.

sensitive information to the media. She was not sure whether any of her colleagues spoke to the press.

132. Vj g'Tgur qpf gpw'ecug'ku'r tgo kugf 'qp'GJ æ'go cki'qh'8'F gego dgt'423; . 'y j lej " was copied to the Applicant informing her that EH had shared with MR confidential information critical of the former RSG ðvq'hqty ctf "vq"]a media entity_ö0GJ 'hqty ctf gf " j ku'go cki'vq"O T"kp"y j lej "j g"y tqvg<ðKlwuv"y cpvqf "vq"o cng"uwtg"vj ku'uw r ngo gpvcn' information, which is not in my memos, gets to the [news media] tgr qtvgtö0

133. Qp"34"F gego dgt"423; ."kp"tgur qpug"vq"GJ æ'go cki'uj ctkpi "cp"ctvæng"qp"vj g" [Investment Fund] posted on [a news media website], the Applicant wrote: ðVj cpm'hqt" vj ku'Vj g'ctvæng"o gpvqpu"kp"pwo gtqwu'r rægu"æpxgukpi "kp"o qtg"gzvgtpcn'o cpci gtuø" y j lej "uqwpf u'rknq"qwuqwtckpi "vj g'hwpf ö0GJ "tgr rkgf <ð[gu'ó [MR] picked up on this too. Very useful for the staff union. Little by little things are coming out. The reporter is very interested in doing more profiles on us. She apparently has a copy of the ALM [unknown abbreviation] study and our new benchmarks and asset allocation so

perceived to cause offence or humiliation to another person, when such conduct interferes with work or creates an intimidating, hostile or offensive work environment. He also relies on sec. 1.4 which provides that harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another.

147. Had this charge been brought under the harassment policy, the Tribunal would find that AA and BB did not receive the messages and never saw them, they could not have been annoyed, alarmed, abused, demeaned, intimidated, belittled, humiliated or embarrassed, in terms of the United Nations harassment policy.

148. However, the charge against the Applicant is not that she harassed AA and BB, but that she used her official United Nations-issued mobile phone to exchange with SP numerous messages in which they used offensive and derogatory nicknames and/or made disparaging remarks concerning AA and BB.

149. Therefore, it is not relevant that AA and BB did not see the messages and were not hurt by them. The relevant provisions are staff regulations 1.2(a) (failure to respect the dignity of AA and BB), 1.2(b) (failure to uphold the highest standards of integrity), 1.2(f) (failure to conduct herself at all times in a manner befitting her status as an international civil servant), and 1.2(q) (failure to use the official device only for official purposes).

150. The key elements of the charge are the use of the Applicant's official United Nations-issued mobile phone to exchange messages, which bore offensive and derogatory nicknames and/or disparaging remarks concerning AA and BB, all elements of the charge as laid have been proved.

151. The Tribunal finds the charge that between September 2020 and June 2022, using her official United Nations-issued mobile telephone, the Applicant exchanged with SP, Senior Programme Management Officer, OIM, numerous messages in which

they used offensive and derogatory nicknames and/or made disparaging remarks concerning AA and BB proved by clear and convincing evidence.

Whether the established facts amount to misconduct under the Regulations and Rules

152. That the established facts amount to misconduct under the Staff Regulations and Rules is not disputed. The Applicant contravened staff regulations 1.2(a), 1.2(b), 1.2(f), and 1.2(q) and staff rule 1.2(c) and also contravened secs. 1.3 and 1.8 of ST/SGB/2019/8 by engaging in collecting and sharing information or comments suggestive of collaborative efforts or contemplations to, as per the sanction letter:

- i. undermine [BP] professional standing,
- ii. influence the new RSG against [BP],
- iii. instill animosity and hostility against [BP], and

investigator NY (name redacted for privacy reasons) was sharing confidential information with her and her colleagues was very disappointing, to say the least. The information which was shared by NY was that EH *öpggf u'vq'f ghgpf 'j ko ugrh'vj cv'vj gtg'* was no concealment in any sort. He may actually be able to turn things around as a false accusation. I would much appreciate it if you could secretly convey this message *vq'j ko 'uq'vj cv'j g'ecp'r tgr ctgö'*

162. Questioned about the above interaction which involved NY leaking to the Applicant and her colleagues vital information about the OIOS investigation, the Applicant stated that she would not consider the information confidential because within OIM they knew that the former RSG was investigating a number of staff members including EH.

163. Even when Counsel for the Respondent explained to her that the information related to a meeting between OIOS auditors and EH regarding his alleged performance gap and that it was before the meeting that NY was informing them what kind of questions would be asked in the meeting and then how EH should respond, the *Cr r rlecpw'u'tgur qpug'y cu'vj cv'uj g'vj qwi j v'vj g'kphqto cvkqp'y cu'eqphk gpvcmf'uj ctgf'* among them (in the OIM) and that she did not see a problem with that. She further mentioned that these would be normal questions one would get if their performance was being audited.

164. Such a response coming from a senior staff member of the United Nations underlines the fact that the imposed sanction was justified. All factors considered, the Tribunal finds that the disciplinary measure imposed on the Applicant is proportionate to the offences, also noting that the Administration has broad discretion in sanctioning misconduct even if the sanction is considered harsh or severe (see, the Appeals Tribunal in *Egian* 2023-

Following the interview, she was given the audio-recording of her interview and was given an opportunity to submit written statements on the topics discussed during the interview. In the allegations memorandum of 8 May 2023 from the Administration, the Applicant was provided with supporting documentation, was informed of her right to seek the assistance of counsel and was given the opportunity to comment on the allegations against her. Her comments were duly considered and addressed in the sanction letter.

166. Vj g" Vtkdwpcn' ci tgguy kj " vj g" Tgur qpf gpv" vj cv' eqpvtct { " Wr qp` i

