

# **2023-UNAT-1394, Sajiv Nair**

## **UNAT Held or UNDT Pronouncements**

The UNAT held that there was a clear disjunct in the UNDT's decision to grant Mr. Nair's application only in relation to the disciplinary measures (but not the administrative measures), and at the same time, rescinding the actual disciplinary decision. The UNAT noted the confusion presented by UNDT's finding that "no misconduct occurred at all", while at the same time accepting that Mr. Nair had "repeatedly reacted and used hostile language" which justified, in the UNDT's view, the imposition of administrative measures. The UNAT held that the administrative measures under Staff Rule 10.2(b) are imposed within the disciplinary context and that there must be a finding that some misconduct occurred to impose them.

The UNAT found that there was clear and convincing evidence that Mr. Nair committed misconduct in the email exchanges. The UNAT held that Mr. Nair did not act in the manner expected of a senior human resource professional by directing statements towards another that were abusive, demeaning and belittling. This conduct qualified as harassment under the applicable legal framework, and thus the Administration's disciplinary decision must be upheld.

The UNAT found that the UNDT's decision with respect to sanction was excessively lenient. Having regard to cases of similar misconduct, the UNAT held that the sanction of loss of two steps in grade, deferment of consideration for promotion for two years, and the other administrative sanctions, were cumulatively too severe. The UNAT concluded that the administrative measures coupled with the written censure would have been sufficient. Noting that the administrative measures and the deferment of promotion were now moot, the UNAT replaced the loss of two steps in grade and with a written censure.

## **Decision Contested or Judgment/Order Appealed**

In Judgment No. UNDT/2022/108, the United Nations Dispute Tribunal granted the application of Mr. Nair and rescinded the Administration's decision to impose on him certain disciplinary measures, following a finding of misconduct in the form of harassing e-mails that he sent to another staff member. However, the UNDT upheld the administrative measures imposed on Mr. Nair for this misconduct.

The Secretary-General appealed.

## Legal Principle(s)

It is not open to the Administration to impose a sanction, whether disciplinary or administrative, without a finding that some misconduct has occurred. The distinction in Staff Rule 10.2 between the sanctions of disciplinary and non-disciplinary or administrative measures is one of degree, with the gravity of the sanction of a disciplinary measure being more severe than that of an administrative measure.

A senior staff member's aggressive and abrasive tone cannot be justified even where the other staff member contributed to the tension.

The task of the Dispute Tribunal is not to determine the issue of sanction afresh and impose on an employee a sanction which it considers to be more appropriate. Rather, an assessment of proportionality requires the review and balancing of competing considerations to determine whether less drastic and more suitable means might better have accomplished the necessary disciplinary objective. The 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.

Consistency between disciplinary and other measures imposed on staff members who commit the same or similar misconduct ensures that different employees are treated similarly and not disproportionately in relation to the same or similar misconduct. Consistency arises both contemporaneously between employees in relation to specified misconduct and historically in an assessment of prior instances of the same or similar misconduct.

## Outcome

Appeal granted in part

## Outcome Extra Text

The disciplinary decision is upheld; however, the disciplinary measure of loss of two steps in grade is vacated and replaced with written censure.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Sajiv Nair

## Entity

ECA

## Case Number(s)

2022-1765

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

4 Dec 2023

## President Judge

Judge Sandhu

Judge Ziadé

Judge Savage

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Disciplinary measure or sanction

Harassment (non-sexual)

Non-disciplinary/administrative measures

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2019/8

Staff Regulations

- Regulation 1.2(a)
- Regulation 1.2(f)

Staff Rules

- Rule 10.1
- Rule 10.2(a)
- Rule 10.2(b)

## Related Judgments and Orders

2012-UNAT-209

2023-UNAT-1370

2023-UNAT-1311

2017-UNAT-781

2017-UNAT-761

2015-UNAT-586

2010-UNAT-084

2018-UNAT-859

2018-UNAT-873