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

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Judgment No. 2023-UNAT-1340



**Mubashara Iram**  
**(Appellant/Respondent)**

**v.**

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

## JUDGMENT

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Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Gao Xiaoli
Case Nos.:	2022-1704 & 2022-1705
Date of Decision:	24 March 2023
Date of Publication:	8 May 2023
Registrar:	Juliet Johnson

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Counsel for Ms. Iram:	Raja Muhammad Farooq
Counsel for Secretary-General:	Patricia C. Aragonés



7. On 7 November 2019, Ms. Iram was interviewed by OIAI.<sup>6</sup> On 20 November 2019, she submitted an official statement to the investigation with supporting documents. On 26 December 2019, OIAI issued its investigation report concluding that she had failed to observe the standards of conduct and referred the matter to the Division of Human Resources (DHR) for appropriate action.

8. On 23 January 2020, the Director, DHR, issued a charge letter against Ms. Iram for misconduct on account of seven allegations: (a) bullying V01, (b) making abusive comments towards V01's child, (c) repeatedly and unwelcomingly calling and messaging V01 and V02 after work-hours, (d) insulting V02 in the presence of other WASH personnel during a team meeting, (e) bullying V03, (f) shouting at V03 in the presence of V01, and (g) repeatedly and unwelcomingly touching and hugging V03 after he had told her that it made him feel uncomfortable.<sup>7</sup> On 24 February 2020, she responded to the charge letter.

9. By the 11 May 2020 letter from the Deputy Executive Director (DED), Management, UNICEF, Ms. Iram was informed of the contested Decision.<sup>8</sup> DED

11. On 18 October 2020, she filed a rejoinder.<sup>12</sup> On 9 March 2022, she indicated a desire for an oral hearing. By Order No. 38 (GVA/2022) of 15 March 2022, the UNDT informed the parties that the case would be determined on the papers. On 17 March 2022, she filed a motion requesting leave to submit additional comments and supporting documents. By Order No. 40 (GVA/2022) of 21 March 2022, her motion was denied.

*The Impugned Judgment*

12. On 26 April 2022, the UNDT rendered the impugned Judgment granting the application in part, rescinding the contested disciplinary measure and replacing it by that of demotion of one step in grade with deferment, for three years, of eligibility for consideration for promotion, and ordering the Secretary-General to reinstate Ms. Iram and effect any back payments accordingly.

13. In addition, the UNDT decided that, should the Secretary-General elect to pay compensation in lieu of reinstatement, she shall be paid, as an alternative, a sum equivalent to 12 months of her net-base salary at the rate that she would have been paid had she been demoted at the time of her separation, minus the termination indemnity that she received upon her separation. The UNDT ordered that payment of that amount was due within 60 days of the date on which the Judgment becomes executable.

14. The UNDT found that, given the timeline of the reported incidents, the contemporaneous evidence on record, and the fact that the complainants had been separately reporting said incidents to Senior Management, SFO,





note that a performance evaluation report, covering the relevant period in 2017, assessed her favourably.

26. She submits that it is implausible that the discontentment, if genuine, could have remained silent for three years. The UNDT ignored that the mode and manner of the complaints underwent substantial improvement over time. The UNDT failed to adjudge the credibility of witnesses. Given that 31 of 38 allegations were dropped, and the principle of *falsus in uno, falsus in omnibus*<sup>20</sup>, the UNDT should have dismissed the remaining allegations as unsubstantiated.

27. Ms. Iram maintains that the narrative by her

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carried out fact-finding.<sup>26</sup> Furthermore, V02's conflict of interest was not considered. Her supervisors abused their authority. The UNDT failed to consider the witnesses identified by her and provide reasoned responses to her arguments.

**The Secretary-General's Answer**

36. The Secretary-General requests that the Appeals Tribunal dismiss Ms. Iram's appeal.

37. The Secretary-General argues that the UNDT correctly concluded that the facts upon which the disciplinary measure was based, had been established by the Administration by clear and convincing evidence. The UNDT correctly found that the established conduct constituted misconduct and that Ms. Iram's due process rights had been respected.

**The Secretary-General's Appeal**

38. The Secretary-General requests that the Appeals Tribunal uphold the contested Decision.

39. The Secretary-General argues that the UNDT erred in law acthaNTew0 Tcjthoed-3.9 (ss r)5.1ct7 (s)5.1 (i)2.

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**Considerations**

*Ms. Iram's request for an oral hearing*

46. Ms. Iram requests an oral hearing, stating: “The substantial set of documents were submitted and it seems that some important points cannot be comprehended just based on the documented records. It is therefore crucial and important to conduct an oral hearing.” Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). Under Article 18(1) of the Rules, a request for an oral hearing may be granted if it would “assist in the expeditious and fair disposal of the case”. In the present case, the Appeals Tribunal does not find that an oral h8(8(in

50. Paragraph 21 of the Standards of Conduct for the International Civil Service specifies as follows:

Harassment in any shape or form is an affront to human dignity and international civil servants must not engage in any form of harassment. International civil servants have the right to a workplace environment free of harassment or abuse. All organizations must prohibit any kind of harassment. Organizations have a duty to establish rules and provide guidance on what constitutes harassment and abuse of authority and how unacceptable behaviour will be addressed.

51. Staff Regulation 1.2 (Basic rights and obligations of staff), in relevant parts, provide:

Core values

...

(b) Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality,

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towards the end of the team meeting, Ms. Iram walked into the room and started shouting at V02, saying: “What are you people doing, what are you hiding from me?”

66. Ms. Iram’s allegations on appeal (that the incident was framed, V01 and V03 have an interest in the outcome of the case and no independent witnesses have testified to this allegation) is without merit. As outlined above, V01 and V03 are credible witnesses, and Ms. Iram’s habit of verbally abusing her colleagues has also been demonstrated by other (“independent”) witnesses.

*Allegation (e)*

67. The UNDT correctly found that there is clear and convincing evidence that Ms. Iram bullied V03 by showing him sanitary pads, discussing her menstruation (“period”) in front of him, and accusing him of being gender insensitive. V03 stated during his 30 November/ 1 December 2018 interview that Ms. Iram, a few days before her stretch assignment, showed her menstrual pads to him and called him gender sensitive when she realized that he felt ashamed about the situation; Ms. Iram’s behaviour made him feel uncomfortable. V01, in her 28 November 2018 statement, testified that Ms. Iram showed menstrual pads to V03 at the office, asking him whether he knew what that was. Ms. Iram also told V03 that she was having her period and that she was going to use the pads.

*Allegation (f)*

68. There is also clear and convincing evidence that Ms. Iram shouted at V03 on 24 November 2017. V03, in his 30 November/1 December 2018 witness statement, stated that on 24 November 2017, Ms. Iram yelled at him in front of other colleagues and told him that he had no moral character. This is confirmed by the 28 November 2018 witness statement of V01 who stated that at the end of 2017, Ms. Iram shouted at V03 and said he had no guts to support the team. There is also a 27 November 2017 e-mail of V03 to Mr. Go. where V03 stated: “Last week, I was on official travel from Sukkur to Hyderabad and then onwards from Hyderabad to Karachi along with Iram and [T.]. As soon as we reached back office, she yelled at me and said that I did not support her in her conversation with [T.]. (...) In front of the other colleagues, she informed me that I have no moral character to speak out in front of the foreigners and I am afraid of them. (...) As soon as I replied, she shouted at me to keep quiet.”

*Allegation (g)*

69. Finally, there is clear and convincing evidence that Ms. Iram repeatedly touched and/or hugged V03 after he had expressly told her that such contact made him feel uncomfortable. In his 30 November/1 December 2018 interview, V03 stated that Ms. Iram had touched and hugged him in front of other colleagues even though he had told her on several occasions that he did not like her doing that. She would not listen to him but tell him that he was her brother and therefore, she could touch him. V01 confirmed in her 9 December 2018 witness statement that Ms. Iram used to hug V03 and that he stopped her many times saying that he was uncomfortable and did not like that. However, Ms. Iram did not stop but used to say that he was like her brother. Both witnesses are credible. Their statements are not only corroborated by the statement of another witness, Mr. K., but also by Ms. Iram's own statements during the investigation process. Mr. K., in his 24 September 2019 interview, said that Ms. Iram would hug him many times and ask: "How are you my brother?", and she would also be hugging many other male colleagues and would always loudly say: "How are you my brother?" With regard to Mr. K., Ms. Iram stated in her 7 November 2019 interview: "I used to go in his room. So, like in a local way of giving respect, he used to put his hand on his chest. So, I just used to pat on his shoulder the way elder sister does with the younger brother. This is what, yes, I used to do it like so many times. But he never, never said anything. Like he does not like this or something like that." It becomes clear from this statement that Ms. Iram touched Mr. K. although he, by putting his hand on his chest when she entered his room, had clearly indicated that he did not wish any physical contact with her.

70. Ms. Iram's allegations on appeal (that the investigation report stated that Mr. Go. could not recall any such incident and no other person besides V03 reported such incidents, the allegation lacks concrete evidence with specific details as to the date and place of any such incident) is without merit. As explained above, the allegation is corroborated by Ms. Iram's own witness statement and the account of Mr. K. V03 had specified during his interview that the hugging incident in front of Mr. Go. took place in the office a few days before Ms. Iram's stretch assignment. While it is true that Mr. Go. could not remember the incident, he did not deny it, either.

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deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal.

78. Article 7 (Time limits for filing appeals) of the Rules sets out the time limit for submitting the appeal as follows:

1. Appeals instituting proceedings shall be submitted to the Appeals Tribunal through the Registrar within:

(a) 60 calendar days of the receipt by a party appealing a judgement of the Dispute Tribunal;

...

79. Under Article 29 (Calculation of time limits) of the Rules,

[t]he time limits prescribed in the rules of procedure:

...

(b) Shall include the next working day of the Registry when the last day of the period is not a working day;

...

80. In *Rehman*<sup>37</sup>, we held:

(...) The 60-day time limit started to run when the parties received the UNDT Judgment on 14 March 2018. The last day of the 60-day period was 13 May 2018 which was a Sunday and thus not a working day which is why the time limit included the next working day pursuant to Article 29(b) of the Appeals Tribunal [Rules of Procedure]. The filing of the appeal on Monday, 14 May 2018, was therefore timely.

81. Likewise, in *Sirhan*<sup>38</sup>, we found:

(...) Article 29(b) of the Rules provides that the time period shall include the next working day of the Registry when the last day of the period is not a working day. Sunday is not a working day for the Appeals Tribunal. Accordingly, the parties had until the close of business on 19 February 2018 to file their appeals. (...)

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<sup>37</sup> *Rehman v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-886, para. 20.

<sup>38</sup>

82. In the present case, the impugned Judgment was issued to the Secretary-General on 26 April 2022 and the last day of the 60-day time limit fell on Saturday, 25 June 2022. Saturday is not a working day for the Appeals Tribunal which is why the time limit included the next working day pursuant to Article 29(b) of the Rules. The filing of the appeal on Monday, 27 June 2022, was therefore timely. Accordingly, contrary to Ms. Iram's argument, the Secretary-General's appeal is receivable *ratione temporis*.

*Merits of the Secretary-General's appeal*

83. We find that the UNDT erred in law and exceeded its jurisdiction when it concluded that the disciplinary sanction of separation from service with compensation in lieu of notice and with termination indemnity was not proportionate to the misconduct, rescinded it and replaced it by a more lenient measure.

84. According to Staff Rule 10.2 (Disciplinary measures),

(a) Disciplinary measures may take one or more of the following forms only:

(i) Written censure;

(ii) Loss of one or more steps in grade;

(iii) Deferment, for a specified period, of eligibility for salary increment;

(iv) Suspension without pay for a specified period;

(v) Fine;

(vi) Deferment, for a specified period, of eligibility for consideration for promotion;

(vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;

(viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;

(ix) Dismissal.

...

85. Staff Rule 10.3 (Due process in the disciplinary process) provides that

...

(b) [a]ny disciplinary measure imposed on a staff member shall be proportionate to the nature and gravity of his or her misconduct.

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UNICEF, SFO, WASH Section in Karachi, were grave: both her supervisors, WASH Specialist Mr. Al. (from March 2015 until July 2017) and WASH specialist V02 (from January until October 2018), testified that they quit their job because of Ms. Iram's behaviour. In his 24 September 2019 interview, Mr. Al. testified that the two years working with Ms. Iram were very tough and stressful for him and he did not want to remember those days. WASH Specialist V02, on 27 November 2018, testified that when he joined UNICEF, he was looking for career progress. However, continuous stress and problems with Ms. Iram affected him so much that he decided to leave UNICEF. He specified: "I was unable to work under those conditions and I did not see any solutions. I was getting overstressed." V01 and V03 both testified that their health was substantially affected by Ms. Iram's behaviour.

89. Under these circumstances, the disciplinary sanction cannot be regarded as disproportionate but was necessary to protect the efficiency of the workplace and the health of other staff members. Otherwise Ms. Iram would have been able to continue working for UNICEF, and there was a risk that her behaviour would not substantially change. It was thus reasonable for the Administration to separate t





**Judgment**

93. Ms. Iram's appeal is dismissed and the Secretary-General's appeal is granted. Judgment No. UNDT/2022/039 is hereby modified as follows:

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