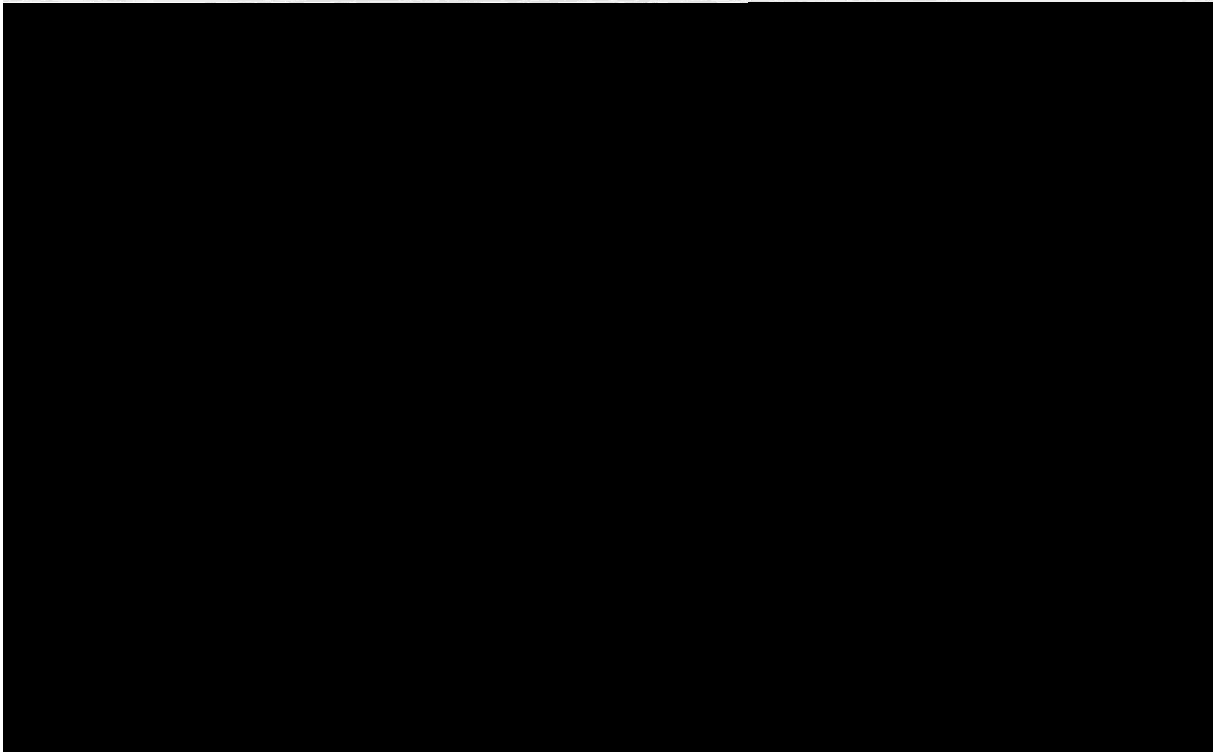


Judgment No. 2019-UNAT-913



Counsel for Respondent/Applicant " o# med A\$dou%&' (A

Counsel for Appellant/Respondent! Jo#n ' tompor

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§. This constitutes misconduct under C-102/2012-0063, Decs E 1.023 and 2.033

c. The appropriate sanction is dismissal.

12. In its Judgment of 17 July 2019, the UNAT rescinded the contested decision to dismiss Mr. 'iddi and replaced the disciplinary measure of suspension with a three-month period. The UNAT set in lieu compensation amounting to one month's net salary based on Mr. 'iddi's salary on 4 November 2010. Finding there is no evidence of bad faith, the UNAT rejected his claim for compensation under Article 10 of the UNAT Statute.

13. Given that the evidence is essential, based on witness testimonies, the UNAT held

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requests that the UN, T; s **8** rd of compensation in lieu of rescission be reduced. In support of the
 'secret r. -5ener I argues that the UN, T erred in fact and law in finding that there **8** s not clear
 and convincing evidence that " r. 'iddi7i # d#re tened to -ill ot#er st ff mem\$ers. The UN, T
 \$ sed its conclusion on the finding that the **8**itness statements **8**ere unreli \$le%" r. 'iddi7i did
 not identif. specific st ff mem\$ers in #is t#re t% nd #is t#re t **8** s not sufficientl. serious. In
 finding the **8**itness statements **8**ere not reli \$le% the UN, T noted the. **8**ere not t -en under o t#
 s re7uired in Nyambuza.⁴ **As 6er** the facts of this case are distinguished from Nyambuza in
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mount to misconduct. The sanction is proportionate to the offence and the staff members' due process rights were respected.

The UN's finding that there was no clear and convincing evidence that Mr. Siddiqi had threatened to harm identified staff members

29. The finding that the UN, T erred in its finding to manifestly unreasonable decision when it held that Mr. Siddiqi did not threaten to harm identified staff members and did not mention unspecified threats to harm some staff members.

30. The statements of the three witnesses who were present during the meeting on 14 February 2010 ("R") and Mr. Siddiqi's ("S") statements are not clear and convincing evidence that Mr. Siddiqi did not threaten to harm identified staff members. From the beginning of the disciplinary investigation and before the UN, T the witnesses' statements were continuous and consistent. The UN, T identified specific staff members and mentioned names when uttering threats to harm. All three witnesses agreed that the statements mentioned Mr. Siddiqi's First Reporting Officer and Mr. Siddiqi's Head of UN:CAE and the Kone office. Their testimonies differed as to whether ("and four staff members named) were also targeted. The UN, T's conclusion that due to this contradiction the evidence is insufficient is unreasonable. There is no reason to believe that the UN, T did not find that the witnesses colluded and no single compelling statement. As all three of them heard the exact same statements, an error can also be excluded. In the contrary, the remaining discrepancies seen in their testimonies can be explained given the fact that all three witnesses indicated that Mr. Siddiqi was very upset/emotionally and spoke freely. Also, all three witnesses testified that Mr. Siddiqi directly addressed Mr. Siddiqi and spoke only to him while Mr. Siddiqi and Mr. Siddiqi were sitting at their desks. Therefore, Mr. Siddiqi should not be understood to mean ("I said it out loud).

31. It is also unreasonable that the UN, T questioned the credibility of the witness statements. As Mr. Siddiqi testified that Mr. Siddiqi intended to scare those who were conducting the spot check exercise and Mr. Siddiqi's in charge of the spot check should not be mentioned in conducting this exercise.¹⁰ In his appeal, the 'secretary' generally correctly points out that the UN, T's assumption is not correct and that Mr. Siddiqi and Mr. Siddiqi were connected to the spot check. Not only did Mr. Siddiqi testify to this

¹⁰ :mpugned Judgment paragraph 40.

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33. The UN, in its conclusion from its assumption that the respondent's statements were general and unspecified, did not refer to any identified staff members. Moreover, this is a factual and legal error. Section 6 of the Rules is clear and convincing evidence that the respondent's statements were made to any identified staff members.

34. Under the circumstances it is sufficient and reasonable presumption of the respondent's intent to consider the respondent's statements serious. Three witnesses testified that the respondent uttered statements to any identified staff members. The respondent admitted that the respondent's relationship with the respondent was poor for a long time.

30. The UN, in its reasoning that the witnesses confirmed that the respondent did not take the statements seriously and did not report it to the relevant authorities, is without merit.¹³ The UN, in itself, found that the respondent informed the respondent's relationship with the respondent about the incident soon after the respondent himself filed a complaint against the respondent. Furthermore,

members. Therefore, the Administration is best suited to select an adequate sanction to fulfil the general requirements of these -inds of measures! sanction in the limits stated. The respective norms sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative discipline etc.

Only if the sanction imposed appears to be an illegal administrative act exceeding the limits stated. The respective norms excessive, discriminatory, or absurd in its severity. That the Tribunal should conclude in its unfavourable case the consequence is, e.g., imposing different ones. This rationale is followed in the jurisprudence of this Tribunal. Therefore, it is not the case that the Tribunal should not interfere with administrative discretion.

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