



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

Judgment No. 2013-UNAT-362

**S. Nourain & A. Nourain
(Appellants)**
v.
**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Mary Faherty
Judge Sophia Adinyira

Case Nos.: 2012-406 & 2012-407

Date: 17 October 2013

Registrar: Weicheng Lin

Counsel for Appellants: Self-represented

Counsel for Respondent: John Stompor

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals: one filed by Ms. Salma Adam Nourain against Judgment No. UNDT/2012/142, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 26 September 2012 in the case of *Nourain v. Secretary-General of the United Nations*, and the other filed by Ms. Awatif Adam Nourain against the same UNDT Judgment. Ms. S. Nourain and Ms. A. Nourain appealed on 18 November 2012 and the Secretary-General answered the two appeals on 4 February 2013.

Facts and Procedure

2. Ms. S. Nourain joined the African Union-United Nations Hybrid Operation in Darfur (UNAMID) in Sudan on 1 June 2008 as a Language Assistant on an Appointment of Limited Duration. On 30 May 2011, she was dismissed from service for a misrepresentation that she had made on her Personal History Profile (PHP).

3. Prior to her engagement with UNAMID, Ms. S. Nourain submitted a signed PHP dated 8 April 2008 in which she answered in the negative the question as to whether any of her relatives were employed by a public international organization. On 2 June 2009, Ms. S. Nourain submitted an updated PHP, in which she again answered the same question in the negative.

4. Following investigations into complaints about a large number of related staff members working for the mission, UNAMID found that, contrary to her statements on her PHP, Ms. S. Nourain did in fact have a sister working within UNAMID, Ms. A. Nourain.

5. A memorandum dated 8 November 2009 to Ms. A. Nourain from the Chief, National Staff Unit-Human Resources Section, UNAMID, went unanswered. In that memorandum, Ms. A. Nourain was advised that both she and her sister, Ms. S. Nourain, were employed by UNAMID in violation of former Staff Rule 4.7 and that they had 14 days within which to decide which one of them would resign. Another memorandum dated 26 November 2009 addressed to Ms. A. Nourain went equally unanswered. Ms. S. Nourain did not engage with the subsequent investigation conducted by UNAMID's Special Investigations Unit (SIU). On the other hand, Ms. A. Nourain gave a statement to the SIU investigators in which she admitted that Ms. S. Nourain was her sister.

6. Ms. S. Nourain was subsequently charged with making a material omission in her PHP by failing to disclose that she had a sister working for UNAMID and failing to respond to SIU's requests for information. Ms. S. Nourain did not respond to the allegations of misconduct. On 27 April 2011, both Ms. S. Nourain and Ms. A. Nourain were informed of the decisions to separate them from service. Ms. S. Nourain was dismissed from service without compensation, whereas her sister, Ms. A. Nourain, was separated from service with compensation in lieu of notice but without termination indemnity.

7. Both Ms. S. Nourain and Ms. A. Nourain sought review of the decisions to separate them from service. However, only Ms. S. Nourain filed an application with the Dispute Tribunal. In Judgment No. UNDT/2012/142, the UNDT rejected Ms. S. Nourain's application in its entirety. The UNDT was of the view that, by failing to disclose that she had a sister working for UNAMID, Ms. S. Nourain breached the core value of integrity expected of all United Nations staff members, and that the sanction of dismissal was proportionate to the offence.

Submissions

Ms. S. Nourain's and Ms. A. Nourain's Appeals

8. Ms. S. Nourain appeals the UNDT Judgment and requests that the administrative decision to dismiss her from service be annulled, and that she be reinstated at UNAMID and compensated for lost salaries from 27 April 2011 onward.

9. Ms. S. Nourain submits that the UNDT erred on a question of law and that "the decision was unreasonable and unfair, legally and procedurally incorrect or disproportionate".

10. Ms. A. Nourain's appeal brief is identical to that submitted by Ms. S. Nourain.

The Secretary-General's Answers

11. The Secretary-General maintains that Ms. S. Nourain has failed to establish that the Dispute Tribunal has made any errors, warranting reversal of the Judgment.

12. The Secretary-General submits that the UNDT correctly upheld his decision to dismiss Ms. S. Nourain from service. The UNDT had ample basis to conclude that the facts on which the disciplinary measure rested were established. The evidence on record established that Ms. S. Nourain and Ms. A. Nourain were sisters. Although Ms. S. Nourain claims that

Ms. A. Nourain is not her biological sister, she has not provided any proof in support of this assertion.

13. The Secretary-General also submits that the UNDT had sufficient basis to conclude that the disciplinary measure was proportionate to the offence and that Ms. S. Nourain's right to due process was respected.

14. The Secretary-General therefore requests that the Appeals Tribunal dismiss Ms. S. Nourain's appeal in its entirety.

15. Regarding Ms. A. Nourain's appeal, the Secretary-General contends that her appeal is not receivable as she was not a party to the UNDT Judgment. The Secretary-General requests that the Appeals Tribunal dismiss her appeal in its entirety.

Considerations

16. The Appeals Tribunal decided to consolidate the two appeals filed by Ms. S. Nourain and Ms. A. Nourain, as they are identical and both arise from Judgment No. UNDT/2012/142.

17. The Appeals Tribunal readily dismisses Ms. A. Nourain's appeal. Ms. A. Nourain is not a party to the proceedings and has no standing to appeal under Article 2(2) of the Statute of the Appeals Tribunal. Her case requires no further consideration.

18. Ms. S. Nourain was dismissed for failing to disclose that she had a sister working for the Organization. The UNDT decided that she breached the core value of integrity expected of all United Nations staff members, and that the sanction of dismissal was proportionate to the offence.

19. Ms. S. Nourain contends that the decision to dismiss her was unfair and disproportionate. She requests that the administrative decision to dismiss her from service be annulled, and that she be reinstated at UNAMID and compensated for lost salaries from 27 April 2011 onward.

20. It is the jurisprudence of this Tribunal that

In reviewing disciplinary cases this Court has to examine the following:

- i. Whether the facts on which the disciplinary measure was based have been established;

- ii. Whether the established facts legally amount to misconduct under the Regulations and Rules; and
- iii. Whether the disciplinary measure applied is proportionate to the offence.¹

21. In the instant case, former Staff Regulation 1.2(b) applies. It states that “[s]taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.”

22. Ms. S. Nourain in 2008 and 2009 did not respond truthfully when asked if she had any relative employed by a public international organization. She certified that the statements she made were true, complete and correct to the best of her knowledge. The PHP form itself specified that any material omission would render the staff member liable to termination or dismissal.

23. When the Organization realized that both sisters were employed by UNAMID, it advised them on 8 November 2009 to decide which sister would leave the Mission. Ms. S. Nourain was availed of adequate opportunities to be heard but did not cooperate. She was eventually dismissed.

24. The facts are not disputed. The misconduct has been established and so has its seriousness.

25. The Appeals Tribunal has consistently held that it will not substitute its own judgment for that of the competent decision maker. Under the circumstances, we agree with the UNDT that the conduct was established and that it was serious. Although perhaps the Secretary-General, in his discretion, could have come to a different conclusion, we cannot say that the sanction of dismissal was unfair or disproportionate to the seriousness of the offences.²

Judgment

26. The appeal of Ms. A. Nourain is dismissed as not receivable and the appeal of Ms. S. Nourain is dismissed on the merits.

¹ *Mahdi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-018, para. 27.

² See *Cabrera v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-089, para. 27.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Faherty

(Signed)

Judge Adinyira

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar