



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/043/
JDC/2008/086
Judgment No.: UNDT/2009/006
Date: 13 August 2009
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

MANOKHIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Self-represented

Counsel for respondent:

Susan Maddox, ALU

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal.

Judgment

The Judgment of the United Nations Dispute Tribunal is that the claim made by the applicant is struck out in its entirety.

Reasons

1. On 25 March 2008, the applicant was summarily dismissed from his position as a translator in the Russian translation service. The reason for dismissal was “serious misconduct”.

2. On 3 July 2008, the applicant requested a review by the Joint Disciplinary Committee in accordance with Staff Rule 110.4. This review had not been completed and the applicant was advised, on 11 June 2009, that his case would be considered in accordance with arrangements within the new system of justice. Accordingly the matter had been referred to the United Nations Dispute Tribunal (UNDT).

3. The letter of dismissal, dated 25th of March 2008, informed the applicant that the Secretary-General had decided that he be “summarily dismissed for serious misconduct, in accordance with the second paragraph of United Nations Staff Regulation 10.2”. The dismissal was with immediate effect.

4. The decision of the Secretary-General was based on findings, following an internal investigation, that the applicant had engaged in a visa fraud scheme and in unauthorized outside activities in contravention of staff regulations 1.2 (b), (e), (g), (o) and (q) and staff rule 101.2 (c). In arriving at his decision the Secretary-General took into account all the evidence obtained in the course of internal UN investigations and representations by and on behalf of the applicant and the comments made by the applicant in a letter dated 11 January 2008. The letter of dismissal explained that the applicant’s conduct was inconsistent with the standards of conduct expected of an international civil servant and incompatible with further service. It further stated that the gravity of his conduct warranted an immediate separation from service. The

applicant was not given any compensation in lieu of notice nor was he given any termination indemnity.

Background

5. The brief background facts are that, in August 2005, the applicant was alleged to have taken part in a fraudulent scheme involving the provision of documentation to sponsor citizens of Uzbekistan and other countries to obtain visas to enter the United States ostensibly for the purpose of attending conferences of the United Nations. These requests were routed through UNDP country offices.

6. In the course of a search of the applicant's office at the United Nations, the United States authorities, who were investigating the criminal matters, discovered documents suggesting that the applicant was involved as a commodity trading advisor and operator. The Investigation Division of the Office of Internal Oversight Services (OIOS) concluded after its own investigations, as distinct from the criminal investigation, that he had operated the company from his office at the UN and that he had used his status as a member of staff of the United Nations as a supplementary guarantor in relation to outside activities.

7. The applicant was indicted in the United States District Court Southern District of New York of conspiring with other named and unnamed individuals for unlawfully, willfully and knowingly conspiring with each other to violate the laws of the United States namely section 1546 (a) of Title 18 United States Code.

8. On 10 March 2008, the applicant and his co-accused pleaded guilty to one count of conspiring to obtain entry visas by means of false statements. The applicant was sentenced to serve one year in prison for participating in an immigration fraud scheme to fraudulently procure United States entry visas for non U.S. citizens whilst he was a UN employee. In passing sentence, the Judge said that the applicant was "part of a web of deception that could not have been wrought without (his) help".

9. At all times, it was the applicant's defense to the disciplinary charges that he was not in any way involved in the visa fraud scheme. The perpetrator was his co-defendant who abused his trust. He further alleged that he was the victim of entrapment by OIOS whose investigations were unprofessional. Briefly, he was adamant that he was totally innocent. Furthermore, he stated that the charges relating to outside activities were unsubstantiated.

10. The applicant was informed that he would remain on suspension without pay until internal disciplinary proceedings had been concluded. In the course of the internal investigation, the applicant was provided with sufficient opportunity to make representations and to comment on or to challenge the evidence and allegations against him.

11. The above constitutes a brief overview of the relevant background in relation to the matter now before the UNDT.

UNDT Proceedings

12. By an Order dated 7 July 2009 the applicant was informed that his case had been referred to the UNDT which would consider the matter in accordance with arrangements under the new system of internal justice.

13. The documents considered by the Judge were identified in the Order and they included the comments he had made in the course of the investigation and to the Joint Disciplinary Committee. They also included a reference to documents in relation to the criminal proceedings.

14. It appeared to the Judge responsible for the conduct of this case that the applicant will be in difficulty in persuading the UNDT that he had an arguable case. In the circumstances he was provided with an opportunity to show cause why his appeal should not be struck out on the ground that it has no reasonable prospect of success. He was further invited to present any representations or arguments including documents. The Order concluded by informing him that failure to comply with the

Order may result in his application for a review of the administrative decision being struck out without further order.

15. The time limit for compliance with this Order was the 3 August 2009. To date there has been no response from the applicant.

Assessment

16. The first matter to consider is whether the Order dated 7 July 2009 was properly served on the applicant. There are on file copies of correspondence addressed to the applicant, at his e-mail address, and responses to those communications. The same e-mail address was used to send him a copy of the Order requiring him to show cause why his claim should not be struck out. I conclude that the Order was properly served on the applicant.

17. The next question is whether it would be a proper exercise of my discretion to proceed to strike out this application in the absence of any response from him.

18. I have reviewed all the documents identified in the 7th July Order. I addressed the question whether the UN authorities carried out their own investigations as distinct from those of the US authorities in connection with the criminal proceedings. I conclude that they did. The outcome of the UN's investigation raises issues of particular seriousness regarding the applicant's conduct as an employee. It was incumbent upon him to respond to the Order requiring him to show cause why his claim should not be struck out. He has failed to do so.

19. Although, I have considered the criminal charges and the outcome of the criminal proceedings. My primary concern was the thoroughness and integrity of internal UN investigatory procedures. Did they provide a full and fair opportunity for the applicant to defend himself and was the evidence obtained sufficient to sustain the disciplinary findings.

20. I have concluded that, given the seriousness of the disciplinary charges and the detailed investigations carried out by the OIOS, there was more than sufficient evidence and information for the Secretary-General to decide that a case of serious misconduct had been made out. I find that there was full and proper consideration of all the facts and arguments and that there were no procedural irregularities. Furthermore there is no evidence that any person acting on behalf the Secretary-General acted from an improper motive or an abuse of power or was in any way acting unfairly. I conclude that the seriousness of the misconduct justified immediate separation from service and that summary dismissal was appropriate.

Conclusion

21. The applicant was given the opportunity of providing arguments and submissions which may tend to show that he had an arguable case. He has failed to do so. There was ample evidence before the Secretary-General to support a finding of serious misconduct. The internal disciplinary investigations complied with the principles of natural justice. There were no procedural irregularities in the investigation and the sanction of summarily dismissal was proportionate to the misconduct. The application is struck out in its entirety.

(Signed)

Judge Goolam Meeran

Dated this 13th day of August 2009

Entered in the Register on this 13th day of August 2009

(Signed)

Hafida Lahiouel, Registrar, New York