



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/062/
JDC/2009/009
Judgment No.: UNDT/2009/009
Date: 18 August 2009
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

KOUKA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Bart Willemsen, OSLA

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

Dismissal

1. By a letter dated 6 November 2008 signed by the Assistant Secretary-General for Human Resources Management, on behalf of the Secretary-General, the applicant was informed that the Secretary-General had decided to dismiss him for serious misconduct in accordance with the second paragraph of United Nations Staff Regulations 10.2. His dismissal was with immediate effect.

Applicable Regulations and Rules: Investigation

2. The decision of the Secretary-General was based on a review of the applicant's record in relation to a disciplinary charge, including the investigation report prepared by the Special Investigations Unit of the United Nations Stabilisation Mission in Haiti. Statements made by the applicant, and his comments in relation to particular disciplinary charges were considered. The Secretary-General concluded that between April 2007 and July 2007, he diverted for his own personal use between 3,700 and 5,000 litres of diesel fuel, belonging to the Organisation. Furthermore, he had falsified official records in relation to the supply of fuel in an attempt to conceal his misconduct. Additionally, he had abused his authority by directing staff members under his direct supervision to falsify official records with the intent of defrauding the Organisation of a large amount of fuel. The letter explained that the conduct alleged constituted a violation of Staff Regulations 1.2 (b), (f), (g) and Staff Rule 101.2 (g).

3. The Secretary-General concluded that the applicant's conduct constituted serious misconduct in that he failed to comply with his obligations as a United Nations staff member, and that his conduct was inconsistent with the standards expected of an international civil servant and incompatible with further service in the

UN. Given the seriousness of his conduct, the sanction imposed by the Secretary-General was immediate separation from service without compensation in lieu of notice or any termination indemnity.

4. A report produced by the Special Investigation Unit concluded that the applicant had diverted thousands of litres of fuel for his personal use, having employed different methods to conceal the fact of his misappropriation. The applicant had admitted taking the fuel for his personal use asserting that it was not for monetary gain, but because of the scarcity of fuel and his need to maintain an appropriate flow of electricity in his flat. Apart from his admission, he offered to reimburse the Organisation for the value of the fuel that had been misappropriated.

5. Staff Regulation 1.2 deals with conduct matters and makes it clear that all UN staff members are to conduct themselves with the highest standards of efficiency, competence and integrity at all times. They are required to act in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with a proper discharge of their duties with the United Nations. Subparagraph (g) makes it clear that staff members should not use their office for private gain.

6. Staff Rule 101.2(g) provides that staff members shall not intentionally alter, destroy, misplace or render useless any official document record or file entrusted to them by virtue of their functions, which document, record or file is intended to be kept as part of the records of the Organisation. In relation to this matter, the applicant was charged with having abused his authority by directing two staff members under his direct supervision to falsify fuel coupons and notations on the totaliser, both of which constitute official records of the Organisation.

Order to Show Cause

7. The foregoing is a brief account of the background to the Order that was issued to the applicant on 8 July 2009. He was informed that he should send detailed comments and representations showing cause why his appeal against dismissal should

not be struck out on the ground that it has no reasonable prospect of success. He was invited to send comments, representations or arguments, together with relevant documents on or before 12 August 2009. It was made clear to him that if he failed to comply with the requirements of the Order, it may result in his application for a review of the decision to dismiss him being struck out without further Order. To date, the applicant has not responded.

8. Given the possibility that the applicant may have difficulties with the language, he was given sufficient time to respond and to seek the services of the Office of Staff Legal Assistance (OSLA). He has not responded to the Order.

Assessment

9. Staff Regulation 10.2 provides that the Secretary-General may summarily dismiss a member of staff for serious misconduct. Paragraph 9(c) of ST/AI/371 provides as follows:

“Should the evidence clearly indicate that misconduct has occurred and that the seriousness of the misconduct warrants immediate separation from service [the Assistant Secretary-General for Human Resources Management shall] recommend to the Secretary-General that the staff member be summarily dismissed. The decision will be taken by or on behalf of the Secretary-General.”

I conclude that the Assistant Secretary-General acted in accordance with the appropriate Staff Regulations.

10. The leading authority relevant to this case is the Judgment of the United Nations Administrative Tribunal in case number 941 (Kiwanuka) (1999). In that case, the tribunal set out certain standards, which comply broadly speaking with the principles of natural justice and internationally recognised standards for reviewing administrative actions in relation to disciplinary matters in an employment context. These principles are as follows:

- 10.1 whether the facts resulting in summary dismissal had been established (that is whether the findings made are reasonably justifiable and are supported by the evidence),
- 10.2 whether the established facts legally amount to misconduct or serious misconduct,
- 10.3 whether there has been a failure to consider significant facts or whether relevant facts have been considered,
- 10.4 whether there has been any significant procedural irregularity,
- 10.5 whether there has been any improper motive or abuse of process,
- 10.6 whether the disciplinary measure is legal,
- 10.7 whether the disciplinary measure is proportionate to the misconduct, and
- 10.8 whether the administration has acted in an arbitrary manner.

Conclusion

11. In my assessment, the investigation by the SIU produced clear evidence establishing the facts supporting a charge of serious misconduct. The findings were amply justified on the evidence including the applicant's admissions. The misconduct in question was serious. I find that there has been no procedural irregularity, no improper motive or abuse of process and the sanction of immediate separation from service without any pay in lieu of notice or termination indemnity was fully justified in the particular circumstances. Furthermore, if the applicant was really serious about pursuing his appeal against dismissal, it was incumbent upon him to respond to the Order made on 8 July 2009. He has not done so. I am satisfied that the notice was properly served and further satisfied that there does not appear on the evidence to be an arguable case against the finding of serious misconduct. The decision that he be separated from service with immediate effect was fair and a proportionate response to

the misconduct which he had admitted amply supported by the evidence. For all these reasons, I consider that the application made by the applicant be struck out in its entirety.

(Signed)

Judge Goolam Meeran

Dated this 18th day of August 2009

Entered in the Register on this 18th day of August 2009

(Signed)

Hafida Lahiouel, Registrar, New York