



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

BLAIS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR, UN Secretariat
Miryong An, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Telecommunications Officer at the P-4 level at the United Nations Logistics Base (“UNLB”), United Nations Global Service Centre (“UNGSC”), Brindisi, contests the disciplinary sanction imposed on him of separation from service with compensation in lieu of notice, and without termination indemnity.

2. For the reasons set forth below, the Tribunal rejects the application.

Facts and Procedural History

3. While serving as an Information and Communications Technology (“ICT”) Security Officer at the United Nations Office for Project Services (“UNOPS”), the Applicant was charged with misconduct for submitting false information in a reimbursement claim for a medical treatment of his spouse under his medical insurance plan. As a result, his appointment was terminated, and he was separated from service effective 9 June 2015.

4. The Applicant unsuccessfully contested this decision before the Dispute Tribunal (see Judgment *Blais* UNDT/2016/198).

5. On 18 December 2017, the Applicant applied for the position of Telecommunications Officer, UNLB, UNGSC, in Brindisi, advertised under Job Opening No. 89038 (“JO89038”). In support of his application, the Applicant submitted a Personal History Profile (“PHP”) in which relevant information regarding the termination of his employment with UNOPS was missing.

6. On 6 December 2018, the Applicant commenced his duty at UNGSC.

7. On 28 March 2020, the Investigations Division of the Office of Internal Oversight Services (“OIOS”) received an anonymous report of possible misconduct implicating, *inter alia*, the irregular recruitment of the Applicant at UNGSC.

8. On 21 April 2020, OIOS referred the matter to the Under-Secretary-General for the Department of Operational Support (“USG/DOS”) for attention and appropriate action.

9. On 14 May 2020, the DOS Conduct and Discipline Focal Point for UNGSC made a preliminary assessment of the matter and advised USG/DOS that there was *prima facie* evidence that the Applicant had made misrepresentations in his PHP, which, if substantiated, would constitute unsatisfactory conduct warranting an investigation by OIOS pursuant to ST/AI/2017/1.

10. On 22 June 2020, the USG/DOS agreed with the preliminary assessment and decided to initiate an investigation into the matter. He signed a Convening Order and established a fact-finding investigation panel (“the Panel”) to investigate the allegations of unsatisfactory conduct against the Applicant.

11. On 6 April 2021, the Panel issued its report in which it found evidence that the Applicant had made misrepresentations in his PHP and made a material omission by not correctly responding to the question “reason for leaving his previous job [with UNOPS]” and by responding “no” to a screening question inquiring if he was ever “subject to workplace investigation”. The Panel found that the explanations provided by the Applicant for these misrepresentations were illogical, ingenuous and not credible.

12. On 19 August 2021, the Applicant was charged with serious misconduct for submitting false information in his job application with respect to the disciplinary process and investigation to which he was subject while serving at UNOPS.

13. On 25 October 2021, the Applicant submitted his comments on the allegations of misconduct.

14. By letter of 1 April 2022, the Assistant Secretary-General for Human Resources (“ASG/HR”) informed the Applicant of the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity.

15. On 14 June 2022, the Applicant filed the instant application against the contested decision.

16. On 15 July 2022, the Respondent filed his reply.

17. On 4 August 2023, the parties attended a case management discussion (“CMD”), held virtually via Microsoft Teams. During the CMD, both parties agreed that a hearing on the merits was not needed and that there was no further evidence to produce.

18. By Order No. 94 (GVA/2023) of 7 August 2023, the Tribunal instructed the parties to file their closing submission, which they did on 22 August 2023.

Consideration

Scope and standard of judicial review in disciplinary matters

19. The case at hand relates to a disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity.

20. In disciplinary cases, the Tribunal’s role is of judicial review, which requires it to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration (see, e.g., *Applicant* 2013-UNAT-302, para. 29). The role of the Dispute Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence (*Molari* 2011-UNAT-164, para. 1).

21. Having examined the evidence on record, the Tribunal identifies the following issues to be determined:

- a. Whether the facts have been established by clear and convincing evidence;
- b. Whether the established facts legally amount to misconduct;

- c. Whether the disciplinary measure is proportionate to the offence; and
- d. Whether the Applicant's due process rights were respected.

22. The Tribunal will address these issues below in turn.

Whether the facts have been established by clear and convincing evidence

23. According to the sanction letter, the Applicant lied in his PHP when applying to JO89038 at UNGSC. The alleged lies were with respect to the following undisputed facts:

- a. The Applicant was previously subject to an investigation and disciplinary process while serving at UNOPS; and
- b. His employment with UNOPS was terminated as a result of said investigation and disciplinary process.

24. The Organization determined that the Applicant's conduct in relation to the aforementioned omission and misrepresentation in his PHP constituted serious misconduct warranting the termination of his appointment.

25. The Applicant, however, contends that he never intended to lie or mislead the Organization in his PHP. He rather misunderstood the questions therein and made a mistake in his response. The Applicant further advances that his conduct does not constitute serious misconduct, and that the improper use of said term resulted in an unfair disciplinary process and disproportionate sanction.

26. The established jurisprudence of the United Nations Appeals Tribunal ("UNAT", or the "Appeals Tribunal") determines that when termination is a possible outcome, misconduct must be established by clear and convincing evidence, which requires more than a preponderance of evidence but less than proof beyond a reasonable doubt. It means that the truth of the facts asserted is highly probable (*Molari*, para. 2).

27. It is also settled law that, in imposing a disciplinary sanction, decision-makers enjoy a wide discretionary area of judgment, and that due deference should be shown to their discretion (*Cheikh Thiare* 2021-UNAT-1167, para. 33). In *Cheikh Thiare*, the Appeals Tribunal further added:

[T]he Administration is the best suited actor to select an adequate sanction able to fulfil the following general requirements, which include *inter alia* that the sanction imposed is within the limits stated by the respective norms, and second, the sanction must be sufficient to prevent repetitive wrongdoing, punish the wrongdoer, satisfy victims and restore the administrative balance. That is why the tribunals will only interfere and rescind or modify a sanction imposed by the Administration where the sanction imposed is blatantly illegal, arbitrary, adopted beyond the limits stated by the respective norms, excessive, abusive, discriminatory or absurd in its severity.

28. It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

29. As put forth by the Respondent and stated above, there is no dispute with respect to the material facts of this case.

30. Indeed, the Applicant was subject to an investigation and disciplinary process while employed at UNOPS, had his appointment terminated for misconduct, and did not disclose this information in his PHP.

31. The evidence on record shows that when the Applicant applied to JO89038 at UNGSC, he submitted a PHP in support of his application in which he:

- a. Answered “no” to the question “Have you been the subject of a workplace disciplinary process or other similar process or a workplace investigation or similar process of which you are aware? If the answer is ‘yes’, please provide the details and provide information about any sanction or measure taken”; and

b. Declared that he left his employment with UNOPS due to “end of contract”, instead of “termination of appointment”.

32. The dispute, therefore, is not whether the aforementioned facts indeed occurred. Rather, it is whether the Applicant knowingly and/or intentionally lied and/or mislead the Organization by not disclosing said facts.

33. While it is not possible for the Tribunal to assert the true intentions behind the Applicant’s misrepresentation in his PHP, it is clear that his attempts to justify his actions are both not credible and illogical.

34. While the Applicant claims that he misunderstood the PHP question because of his English skill level, he affirmed in that same PHP being fluent in all indicators for English. In fact, said fluency is attested by this Tribunal based on the Applicant’s good command of English in his written submissions as a self-represented applicant.

35. Moreover, the Applicant claims that since the disciplinary process at UNOPS concerned an issue with a medical reimbursement claim, he thought that it was not relevant to the question if he had ever been subject to a workplace disciplinary process or investigation.

36. It is not credible that a well-educated staff member and experienced professional with a good command of English would think that a “workplace investigation or disciplinary process” could only apply to actions that occurred physically in the workplace. The Applicant’s explanation for answering “no” to the question at stake is simply illogical.

37. Concerning the other misrepresentation in his PHP, by answering that his reason for leaving UNOPS was “end of contract” instead of “termination of appointment”, it is clear that the Applicant was attempting to, at the very least, conceal relevant information.

38. Again, as a previously employed staff member, it is not logical to equate “termination of appointment” with “end of contract”. The former requires action by the employer, whereas the latter does not.

39. In fact, if the Tribunal were to accept that the Applicant indeed believed that “end of contract” and “termination” are synonymous terms, then it cannot help to wonder why “end of contract” was not given as a reason in his PHP for every other employment that ended. Instead, the Applicant’s PHP shows complete phrases and explanations for the end of each previous employment, except for the one at UNOPS, for which the Applicant provided a dubious answer.

40. It is simply not credible that the Applicant did not know the difference between leaving an employing entity because his contract ended and because his contract was terminated for disciplinary reasons. At the very least, he could have provided an explanation for the alleged end of his contract.

41. Therefore, there is clear and convincing evidence that the Applicant misled the Organization by not disclosing relevant information in his PHP regarding the termination of his employment with UNOPS and lied about not having been subject to an investigation and disciplinary process. This conduct supports the assertion that the Applicant attempted to conceal the true reason for leaving UNOPS.

Whether the established facts legally amount to misconduct

42. Regarding whether the established facts legally amount to misconduct, the Tribunal recalls that staff regulation 1.2(b) provides that:

Staff 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;

43. Whereas Staff Rule 1.5(a) says:

Staff members shall be responsible for supplying the Secretary-General with relevant information, as required, both during the application process and on subsequent employment, for the purpose of determining their status under the Staff Regulations

and Rules as well as for the purpose of completing administrative arrangements in connection with their employment. Staff members shall be held personally accountable for the accuracy and completeness of the information they provide.

44. Staff rule 10.1(a) defines misconduct as the “failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant”.

45. The Appeals Tribunal has established jurisprudence qualifying as serious misconduct false claims and misrepresentations of qualifications on PHPs. In *Ainte* 2013-UNAT-388, for example, it decided:

27. [...] in certifying his PHP, Mr. Ainte took responsibility for the veracity of its content and certified that it was true and correct, and that he was aware any misrepresentation or material omission could result in disciplinary action. As such, he cannot now argue that he was unaware of the gravity with which the United Nations treats false applications.

28. With respect to the content of the form, Mr. Ainte could – and, indeed, should – have completed the form himself or, at the very least, checked it carefully. It was his responsibility to ensure that his candidacy was premised upon accurate qualifications and experience. The Organization is under no obligation to prove *mens rea*, as he alleges, and his submissions concerning the misunderstanding between himself and his assistant regarding the British and Pakistani degree courses, either never completed or even commenced, stretches the credulity of the Appeals Tribunal.

46. Based on the above, it is clear that the Applicant’s actions legally amount to serious misconduct, in violation of staff regulation 1.2(b) and staff rule 1.5(a).

Whether the disciplinary measure is proportionate to the offence

47. The Applicant tries to argue that the decision to terminate his appointment and separate him from service was disproportionate to the alleged wrongdoing and did not consider relevant mitigating factors, such as his previous positive performance reviews, impeccable professional conduct, and the fact that his mistakes filling the PHP were not intentional acts.

48. The Tribunal is cognizant of the Appeals Tribunal jurisprudence in *Samandarov* 2018-UNAT-859, which provides:

23. [...] The purpose of proportionality is to avoid an imbalance between the adverse and beneficial effects of an administrative decision and to encourage the administrator to consider both the need for the action and the possible use of less drastic or oppressive means to accomplish the desired end. The essential elements of proportionality are balance, necessity, and suitability.

49. It is also cognizant of the jurisprudence in *Szvetko* 2023-UNAT-1311 that:

47- [...] In assessing whether the Administration has imposed a proportionate sanction, the UNDT is obliged to determine if the responsible functionary applied his or her mind to the relevant considerations of proportionality and excluded irrelevant factors. If a functionality tasked with a duty to act proportionately were to relegate a factor of obvious and paramount importance to one of insignificance, and give another factor a weight far in excess of its true value, this would amount to a failure to apply the mind to the objective factual substratum upon which a proportional decision should rest. The assessment of proportionality by its very nature is a factual inquiry requiring the UNDT to review and balance all the competing considerations to determine whether less drastic and more suitable means might better have accomplished the necessary disciplinary objective.

50. As UNAT decided in *Ainte*,

29. [...] The Secretary-General has the discretion to determine the appropriate level of sanction to be imposed and we do not find termination of a senior official for the very serious misconduct of submitting a false document to be absurd, unlawful or otherwise disproportionate. As such, we will not interfere with the legal exercise of that discretion.

51. And in *Specker* 2022-UNAT-1298, the Appeals Tribunal stated:

29. [...] Dishonesty of this order, and the use of her position and knowledge to improperly advance the interests of an intimate partner, fatally compromised the necessary relationship of trust between the employer and employee. Ms. Specker's conduct on two separate occasions undermined the integrity of two recruitment processes. The deliberate, intentional and repeated nature of the misconduct by a senior staff member for such a venal purpose

revealed a level of unreliability that contaminated the trust relationship to a degree that rendered the continuation of the employment relationship intolerable. Separation from service was the most suitable and necessary means by which the legitimate aim of integrity and probity could be assured within the Organisation in accordance with the requirements of Staff Regulation 1.2(b) in the circumstances of this case.

52. In the instant case, it is clear to this Tribunal that the Applicant's conduct was not an accidental mistake, but indeed a well-thought attempt at concealing relevant information, which undermined the integrity of the Organization's recruitment process and could have potentially caused reputational damage.

53. The assessment made to determine the appropriateness of the sanction was well substantiated and within the discretionary authority of the decision-maker.

54. The Applicant's admission to the facts regarding his employment at UNOPS is not relevant to the finding of misconduct. He expressed remorse for "having misunderstood the question" in the PHP, but actually never admitted to any wrongdoing.

55. It is recognized that the Secretary-General has the discretion to impose an adequate disciplinary measure having regard to the nature of the misconduct, the objective of punishment and deterrence, and other relevant considerations.

56. It is determined that the sanction in this case is justifiably imposed in keeping with the rules of the Organization. The misconduct in which the Applicant was involved is very serious. By virtue of the misrepresentation of substantial information in the application process, with no possible way of correcting the wrongdoing afterwards, it was not unreasonable for the Administration to consider that the employment relationship based on mutual trust with the Applicant was seriously damaged beyond repair.

57. Importantly, the disciplinary measure is in line with the Administration's past practice as noted by the established jurisprudence. The Appeals Tribunal has recognized that serious cases of overall dishonesty, including in PHPs, warrant termination of appointment (*Yagout* UNDT/2023/034, para. 47 ; *Rajan* 2017-UNAT-781, paras. 42-49 ; *Amani* 2022-UNAT-1301, paras. 62-64 ; *Ainte*, para. 29 ; *S. Nourain and A. Nourain* 2013-UNAT-362, para. 25).

58. Based on the above, the termination of the Applicant's appointment and his subsequent separation from service without termination indemnity was both suitable and proportionate to the misconduct.

Whether the Applicant's due process rights were respected

59. The Applicant argues that framing his misconduct as "serious" was improper and unwarranted, and that the use of this term created bias against him and impacted the fairness of the disciplinary process. He further claims that the contested decision was wrongfully influenced by his previous misconduct with UNOPS.

60. The Respondent submits, however, that the Applicant was accorded due process throughout the investigation and disciplinary process, and that no irregularities occurred.

61. In the Tribunal's view, the Applicant's contentions that the disciplinary process was biased, or that his due process rights were not respected, are meritless.

62. Firstly, the framing of the Applicant's misconduct as "serious" was a lawful exercise of discretionary authority in keeping with the aforementioned rules of the Organization. Secondly, as established above, the chosen sanction is in line with the Organization's past practice as per established jurisprudence. Thirdly, the decision to separate him from service was based on the undisputed fact that the Applicant concealed relevant information in his PHP, thus engaging in serious misconduct.

63. Furthermore, the fact that the Applicant's prior disciplinary sanction constituted an aggravating factor does not support the assertion that the contested decision was wrongfully influenced by other facts. It was not unreasonable to consider established dishonest conduct as an aggravating factor.

64. Finally, there is no evidence of any bias or irregularity that could have vitiated the Applicant's procedural fairness rights. The Applicant was interviewed by the fact-finding panel and asked about all the material aspects of the case. He was fully informed of the allegations of misconduct against him, had access to the supporting documentation, was informed of his right to seek the assistance of counsel, and had the opportunity to comment on the allegations and present his defence. The Applicant's statements and comments were duly considered, as shown in the sanction letter, including any relevant mitigating factors.

65. Therefore, the Tribunal finds that the Applicant's due process rights were respected throughout the investigation and disciplinary process.

Conclusion

66. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Sun Xiangzhuang

Dated this 20th day of November 2023

Entered in the Register on this 20th day of November 2023

(Signed)

René M. Vargas M., Registrar, Geneva