



**Administrative Tribunal**

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**LIMITED**

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**ADMINISTRATIVE TRIBUNAL**

Judgement No. 987

Case No. 1083: EDONGO

Against: The Secretary-General  
of the United Nations

**THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,**

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Hubert Menye Edongo, a former staff member of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), the President of the Tribunal, with the agreement of the Respondent, extended to 31 May 1999 the time-limit for the filing of an application with the Tribunal;

Whereas, on 14 May 1999, the Applicant filed an application containing pleas which read, in part, as follows:

**"II. Pleas**

...

15. The Applicant respectfully requests that the UNAT order the Secretary-General to provide further redress for [the] Applicant's treatment by [the] Respondent, as detailed below:
  - The quashing of the [Secretary-General]'s impugned decision [accepting the conclusions of the Joint Disciplinary Committee and upholding his decision to

summarily dismiss the Applicant];

- The quashing of the decision of the Respondent to summarily dismiss the Applicant, dated 24 April 1998;
- The setting aside of the notice of summary dismissal sent to [the] Applicant by the Respondent, of 25 November 1997, as well as [the] Applicant's summary dismissal, with complete restoration of all benefits, back pay, pensionable remuneration, emoluments, and all other allowances and entitlements (commensurate with [the] Applicant's former status, grade, and position) from 25 November 1997, the date of [the] Applicant's suspension, through the date of the implementation of the UNAT's decision hereunder, and the immediate reinstatement of [the] Applicant to his former position within the UNHCR, with full retroactive effect from the date of [the] Applicant's wrongful suspension, 25 November 1997;
- A recommendation that no further lesser disciplinary action, if any, be taken against the Applicant in recognition of the Respondent's violations of the law of the international civil service, due process, and its own rules and regulations;
- The award to the Applicant of fifteen thousand US dollars in respect of costs and expenses;
- The award to the Applicant of moral damages in an amount equal to at least two years of the Applicant's salary at the time of his impugned dismissal;
- Interest on any monetary damages awarded hereunder, calculated at the market rate from 25 November 1997 through the date any such decision of the UNAT hereunder is satisfied in full; and
- Such other relief as the UNAT deems necessary, just, and equitable."

Whereas the Respondent filed his answer on 22 December 1999;

Whereas the Applicant filed written observations on 30 May 2000;

Whereas the Applicant submitted further comments on 12 October 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNHCR on 6 November 1978, on a one-year, fixed-term appointment at the P-2 level as Associate Programme Officer. His fixed-term contract was

extended several times until 1 August 1982, when he was granted an indefinite appointment at the P-3 level.

Following reassignment and promotion, on 1 November 1985, he was assigned to Djibouti for two years as Branch Office Representative, where, on 1 July 1987, he was promoted to the P-5 level. On 1 August 1988, the Applicant was reassigned to Geneva and effective 16 April 1989, was assigned to the position of Head of Desk VI, Regional Bureau, Africa. Effective 1 July 1993, the Applicant was assigned to Kinshasa, Zaire, as Regional Representative with a Special Post Allowance to the D-1 level and on 1 July 1995, he was promoted to the D-1 level. Effective 1 July 1997, the Applicant was posted to Geneva as Head of Sub-Region, Bureau of Central, East and West Africa Operations.

From 10 to 15 August 1997, the Inspection and Evaluation Service, UNHCR, conducted an internal audit of the Regional Office in Kinshasa which resulted in a Mission Report (the Johannsson Report). Following a "special review" of the Regional Office in Kinshasa conducted by the Chief of the Audit Section, UNHCR, in October 1997, on 12 November 1997, the Deputy High Commissioner, UNHCR, submitted a report (the Galter Report) to the Director, Division of Human Resources Management (DHRM), UNHCR. This report contained allegations of mismanagement and misappropriation of funds on the part of the Applicant and others. With respect to the Applicant, it recommended that he provide a formal explanation for his failure to pay for his personal telephone calls and an unauthorized shipment of his personal effects from Johannesburg, South Africa, to Kinshasa. In an accompanying memorandum, the Deputy High Commissioner, UNHCR, recommended that the Applicant be suspended from duty.

On 25 November 1997, the Director, DHRM, UNHCR, transmitted a copy of the Galter Report to the Applicant for his comments and advised him that, in accordance with staff rule 110.2 and the recommendations of the Deputy High Commissioner, he was being suspended from duty for an initial period of three months. The Applicant replied to the allegations and comments contained in the report in a memorandum dated 16 December 1997. He denied any deliberate intention to misappropriate funds or defraud the Organization and claimed that his request for separate airway bills at the time of shipping indicated his intention to reimburse the cost of shipment of his personal effects. He indicated his willingness to pay the shipping costs as well as amounts owed for personal

telephone calls as soon as the telephone bills were made available. He requested that documents examined during the course of the investigation which had resulted in his suspension be made available to him and that his suspension be lifted. The Director, DHRM, UNHCR, replied on 13 January 1998 advising him that he had been provided with all relevant documentation (the Galter report and its annexes) and that, due to the serious nature of the charges, the suspension would remain in force pending the outcome of the investigation.

In a memorandum to the Deputy Director, DHRM, UNHCR, dated 3 February 1998, the Applicant requested that either the charges of misconduct against him be dismissed or that a Joint Disciplinary Committee be convened.

On 23 February 1998, the Deputy Director, DHRM, UNHCR, sent the Applicant memoranda advising him that, as the investigation had not been completed, his three month suspension was being extended for one month, and requesting reimbursement of the cost of the Applicant's personal telephone calls (US\$16,891) and the shipment of his personal effects (US\$3,934). On 11 March 1998, the Applicant sent the Deputy Director, DHRM, UNHCR, proof of payment of US\$20,825 made the preceding day to UNHCR. On 25 March 1998, the Deputy Director, DHRM, UNHCR, advised the Applicant that, as the investigation had not been completed, his suspension was being extended for an additional month.

On 9 April 1998, the Director, DHRM, UNHCR, sent a memorandum to the Secretary-General recommending that the Applicant be summarily dismissed for serious misconduct pursuant to Article 10.2 of the Staff Regulations. This recommendation was approved on behalf of the Secretary-General by the Under-Secretary-General for Management on 23 April 1998, and was conveyed to the Applicant the following day by the Director, DHRM, UNHCR.

On 5 May 1998 and 7 May 1998, the Applicant wrote to the Secretary-General and the Secretary of the Joint Disciplinary Committee (JDC), Geneva, respectively, requesting review of the Secretary-General's decision. On 18 May 1998, the Secretary of the JDC, Geneva, advised the Applicant that, pursuant to ST/AI/371, his request should be submitted to the JDC, New York. On 20 May 1998, the Applicant wrote to the Secretary of the JDC, New York, requesting that the Secretary-General's decision be reviewed by a committee established in Geneva. On 1 July 1998, the Secretary of the JDC, New York, advised the Applicant that a JDC panel would be constituted to hear

his case in New York. The JDC Panel convened an evidentiary hearing on 8 October 1998 and met to decide the merits of the case on 15 October 1998.

The JDC submitted its report on 19 November 1998. Its considerations, conclusions and recommendations read as follows:

***“Considerations ...***

...

63. The Panel agreed with the Administration that [the Applicant]’s continued employment could have led to evidence being destroyed or concealed. It did not agree with [the Applicant]’s argument that since he was transferred [to] Headquarters in Geneva at the time of the suspension, he did not have access to the evidence of his case, the alleged misconduct having occurred in Kinshasa, Zaire. The Panel noted that [the Applicant] was the Head of the Central and West Africa Management Team (in Geneva) which had some control over the RO [Regional Office] Kinshasa. It therefore concluded that the Administration acted properly and within the Staff Rules when it placed [the Applicant] on suspension.

64. The Panel then turned to [the Applicant]’s argument that his five-month suspension exceeded the normal period foreseen by the Staff Rules. The Panel took note of staff rule 110.2 (a) which provides, in relevant part, that ‘if a charge of misconduct is made against a staff member ... [he] may be suspended ... for a period which should normally not exceed three months.’ The Panel was of the view that although staff rule 110.2 (a) speaks in terms of suspensions ‘normally’ not exceeding three months, it is plain that a suspension may be for a longer period if the nature of the investigation so requires.

...

66. The Panel noted [the Applicant]’s argument that once he denied the Administration’s charges, the burden of proof shifted to the Administration which must prove the allegations beyond a reasonable doubt. The Panel was of the opinion that once there is a *prima facie* case of wrongdoing, it is for the staff member to provide satisfactory evidence to justify his conduct. In its view, [the Applicant] has not adduced a satisfactory justification as to why he failed to pay for the cost of his private telephone calls and the shipment of his personal effects. The Panel concluded that the Secretary-General’s decision was not based on materially inaccurate facts and was not vitiated by a mistake of law.

...

67. The Panel examined [the Applicant]'s argument that the Administration had violated his right to equal protection, by imposing disciplinary measures to them, while other staff members in the same predicament were given a more lenient treatment. It examined the cases adduced by [the Applicant] in order to show that the Administration had violated his procedural right to equal protection. However, the Panel was of the view that the concept of 'equal protection' does not protect a wrongdoer. One cannot be absolved from a wrongful act just because others have committed the same act without any consequences. For this reason, the Panel rejected this argument.

...

***Conclusions and Recommendations:***

69. The Panel *unanimously concluded* the following:

1. The decision to summarily dismiss [the Applicant] for misconduct was justified on the basis of the conclusive evidence.
2. [The Applicant]'s rights to due process had been duly observed.
3. [The Applicant] has not adduced any evidence to support his claim that the decision to summarily dismiss him had been vitiated by prejudice, bias, or other improper motives.

70. In light of the foregoing facts, the Panel *unanimously agreed* to make no recommendation in support of [the Applicant]'s contentions and requests."

On 17 December 1998, the Under-Secretary-General for Management transmitted a copy of the JDC report to the Applicant and informed him as follows:

"...

The Secretary-General has examined your case in the light of the Committee's report. He has taken note of the Committee's findings and conclusions, in particular those regarding due process. The Secretary-General is in agreement with the Committee that the due process requirements had been duly observed by the Administration in your case.

The Secretary-General has carefully considered the evidence in your case, including the explanations and comments submitted by you and your counsel. The Secretary-General has taken note of the Committee's finding that you had not provided a satisfactory justification as to why you failed to pay for the cost of your private telephone

calls and the shipment of your personal effects. The Secretary-General has also taken note of the Committee's conclusion that the decision of the United Nations High Commissioner for Refugees to summarily dismiss you for serious misconduct was justified on the basis of the conclusive evidence and that you have not provided any proof in support of your claim that the decision to summarily dismiss you was vitiated by prejudice, bias or other improper motives.

The Secretary-General has decided to accept the Committee's conclusions and to uphold his earlier decision to summarily dismiss you for serious misconduct in accordance with staff regulation 10.2.

..."

On 14 May 1999, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The JDC and the Secretary-General failed to accept that the alleged behaviour of the Applicant was consistent with established UNHCR procedure.
2. The Respondent failed to prove that the Applicant's actions rose to the level of fraud or constituted misconduct which justified imposition of disciplinary measures.
3. The punishment exacted is disproportionate to the Applicant's conduct even if actionable.
4. The Respondent has violated the Applicant's substantive and due process rights to examine and confront the evidence against him.

Whereas the Respondent's principal contentions are:

1. No due process violations occurred as the Applicant received a full and fair hearing of the charges levelled against him and was provided with all necessary evidence and relevant documents necessary to conduct his defense.
2. The Respondent established a prima facie case against the Applicant which clearly established the existence of irregularities of so serious a nature as to warrant dismissal, which the Applicant failed to satisfactorily rebut.

3. The Applicant's argument that the imposed punishment is disproportionate to the alleged misconduct is entirely without basis in law or fact.

4. No procedural irregularities occurred which would justify a reversal of the action taken against the Applicant.

The Tribunal, having deliberated from 25 October to 22 November 2000, now pronounces the following judgement:

I. The Applicant appeals the decision of 17 December 1998, in which the Secretary-General accepted the JDC's recommendation to dismiss the Applicant summarily. The Applicant claims that the Respondent failed to prove that the Applicant's alleged conduct was fraudulent and warranted the imposition of severe disciplinary measures. Furthermore, the Applicant claims that even if this Tribunal finds against the Applicant, the punishment was not proportionate to the conduct alleged. The substantive issue in this case is whether the Applicant's dismissal was proper or whether it was tainted by any procedural flaws, or motivated by prejudice, bias or other improper motives.

II. The Applicant was dismissed for misappropriating funds, his failure promptly to pay the Administration for personal telephone calls and the transport of personal purchases from South Africa to Kinshasa.

III. The facts of the case are essentially as follows: In July 1993, the Applicant was appointed as UNHCR Regional Representative for Central Africa, based in Kinshasa. Effective 1 July 1997, the Applicant was promoted to the post of Deputy Director of the UNHCR Regional Bureau for Africa, based in Geneva. Headquarters audited the operational activities of the regional office in Kinshasa in August 1997, which culminated in the Johansson Report. In October 1997, UNHCR conducted a special review of the Kinshasa regional office that formed the basis of the Galter Report which contained findings of misappropriation of UNHCR's funds by the Applicant. Thereafter, the



Applicant was placed on suspension with full pay from 27 November 1997 to 27 April 1998 and subsequently, was summarily dismissed for serious misconduct.

IV. The Tribunal repeatedly has held that the Secretary-General is vested with discretionary authority to make disciplinary decisions, including the determination of what constitutes serious misconduct as well as the appropriate disciplinary measures. The Tribunal confirms that the Applicant's conduct in this case, specifically the Applicant's charging to the United Nations the expenses for the shipment of certain personal purchases, amounted to serious misconduct and is within the Secretary-General's discretion to discipline.

V. The issue to be determined by the Tribunal is whether the Secretary-General abused his discretionary right to dismiss the Applicant summarily. The Tribunal has developed a body of opinions that address this issue. In Judgements No. 898, *Uggla* (1998) and No. 941, *Kiwanuka* (1999), paragraph II, the Tribunal traced the development of its jurisprudence in regard to the review of disciplinary measures, starting with Judgement No. 29, *Gordon* (1953), and concluded that:

"III. The jurisprudence thus has been developing and definitions have been refined. In reviewing this kind of quasi-judicial decision and in keeping with the relevant general principles of law, in disciplinary cases the Tribunal generally examines (i) whether the facts on which the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); (iv) whether there has been any procedural irregularity; (v) whether there was an improper motive or abuse of purpose; (vi) whether the sanction is legal; (vii) whether the sanction imposed was disproportionate to the offence; (viii) and, as in the case of discretionary powers in general, whether there has been arbitrariness. This listing is not intended to be exhaustive. Most recently in Judgement No. 898, *Uggla*, paragraph II (1998), the Tribunal made a similar general statement.

IV. Clearly the Tribunal takes the view that the imposition of disciplinary sanctions involves the exercise of a discretionary power by the Administration. It further recognizes that, unlike other discretionary powers, such as transferring and terminating services, it is also a special exercise of quasi-judicial power. For these reasons the process of review exercised by the Tribunal is of a particular nature. The Administration's interest in

maintaining high standards of conduct and thus protecting itself must be reconciled with the interest of staff in being assured that they are not penalized unfairly or arbitrarily.”

The Applicant argues that there was insufficient evidence on the record for the Respondent to conclude that the Applicant fraudulently misappropriated funds. The Applicant also argues that the Secretary-General did not meet his burden to prove beyond a reasonable doubt that the Applicant, by his actions or omissions, had intended to defraud the Organization. The Tribunal has held with regard to the required standard of proof that:

“... the Respondent is not required to establish beyond a reasonable doubt a patent intent to commit the alleged irregularities, or that the Applicant was solely responsible for them.” (Judgement No. 479, *Caine* (1990), paragraph III).

Recently, in Judgement No 897, *Jhuthi* (1998), paragraph IV, the Tribunal explained its position on the burden of proof as follows:

“... In disciplinary cases, when the Administration produces evidence that raises a reasonable inference that the Applicant is guilty of the alleged misconduct, generally termed a *prima facie* case of misconduct, that conclusion will stand. The exception is if the Tribunal chooses not to accept the evidence, or the Applicant provides a credible explanation or other evidence, that makes such a conclusion improbable. This is what was meant when the Tribunal stated in Judgement No. 484, *Omosola* (1990), paragraph II, that ‘once a *prima facie* case of misconduct is established, the staff member must provide satisfactory proof justifying the conduct in question.’”

VI. The Respondent asserts that the Organization’s *prima facie* evidence of misconduct is based on the Galter Report. The Report contained allegations of mismanagement and misappropriation of UNHCR’s funds by the Applicant. Specifically, the Report states that at the time of inquiry the Applicant had not paid for either his personal telephone calls that totaled US\$16,891 or for the cost of the shipment of personal purchases that totaled US\$3,934, which costs had been charged to UNHCR. The Tribunal distinguishes between the non-payment of the Applicant’s private telephone calls and the charges relating to the transportation of his personal effects at the expense of the Agency.

With respect to the charges for the Applicant's personal telephone calls, the Tribunal recognizes and accepts that due to the turmoil and instability which prevailed in the area it is clear that the collection from or payment by staff members of sums due for their personal telephone calls had been relegated to a very low priority. Evidently, only a very small percentage of the sums due for such calls had been reimbursed to the Organization. The Applicant's position regarding non-payment of his calls appears to have been no different than that of the vast majority of staff. The Tribunal considers that to have singled out the Applicant and to have characterized his behaviour as fraudulent was arbitrary and unwarranted.

VII. With regard to charging the Organization for the costs for transportation of the Applicant's personal purchases from Johannesburg to Kinshasa the matter is quite different. This was not a case of transportation of the Applicant's possessions or goods from one duty station to another on re-location. In effect the Applicant had traveled abroad (to South Africa) on a shopping trip and had charged to the Organization the costs of shipping his purchases back to his duty station. The Tribunal is satisfied not only that this action was quite irregular, impermissible and unauthorized but also that it was justifiable for the JDC to conclude that it was undertaken with the intention of defrauding the Agency. It could be inferred that two airway bills were obtained by the Applicant in order to provide a ready explanation to rely on should his actions be detected and should repayment be required. Certainly this is not conclusive evidence that the Applicant had an intention of reimbursing the Organization as argued by the Applicant. The Tribunal is satisfied that there was ample evidence to support the JDC's finding that the transaction was fraudulent. The Applicant never sought permission from the Organization to ship his purchases. He never advised the Organization that he had done so. He never informed the Organization that these costs were attributable to him until his actions were detected and payment was demanded.

VIII. Based on the findings of the Galter Report, the Applicant was suspended from his duties with pay for a period of three months. On 25 November 1997, the Applicant was invited to make comments and formally explain why he failed to pay for the cost of his private telephone calls and the shipment of his personal effects. By a memorandum dated 16 December 1997, the Applicant gave

detailed explanations and observations on the findings of the Galter Report. The Applicant further explained that “upon his return to Geneva, the Johansson mission was underway, and he thought it best to wait for the Administration to advise him of his liability, rather than to make a payment which could be misconstrued as being in response to the inquiry underway.”

On 12 March 1998, the Applicant sent a check for US\$20,825 to UNHCR as a reimbursement of the costs of his private telephone calls and the shipment of his personal effects. On 24 April 1998, UNHCR addressed a letter to the Applicant informing him of the Secretary-General’s decision summarily to dismiss him for serious misconduct.

IX. The Applicant further claims that Respondent’s decisions to suspend him and to twice extend the suspension period for a total of five months were procedurally irregular since the Respondent failed to establish the requisite grounds necessary to impose a suspension under staff rule 110.2 and ST/AI/371.

Staff rule 110.2 (a) and (b) provides in part that “if a charge of misconduct is made against a staff member and the Secretary-General so decides, the staff member may be suspended from duty during investigation and pending completion of disciplinary proceedings for a period which should normally not exceed three months. ... (b) ... and shall be given a written statement of the reason for the suspension and its probable duration.”

ST/AI/371, article II.4, provides: “If the conduct appears to be of such a nature and of such gravity that suspension may be warranted, the head of office or responsible official shall make a recommendation to that effect, giving reasons. As a general principle, suspension may be contemplated if the conduct in question might pose a danger to other staff members or to the Organization, or if there is a risk of evidence being destroyed or concealed and if redeployment is not feasible.”

The Tribunal has emphasized the significance of the Respondent’s providing a reason when extending the suspension for more than three months. (Cf. Judgement No. 4, *Howrani* (1951)).

The Respondent cites a memorandum dated 25 November 1997 informing the Applicant that he would be suspended with full pay for an initial period of three months. The suspension period was subsequently extended for two additional months. The Applicant claims that the Administration

failed to demonstrate or inform him of the reasons for the extended suspension. The record does indicate that the Applicant was informed that the reasons for the extended suspensions were not only based on the fear that if the Applicant was at the workplace there was a risk of evidence being destroyed or concealed but also that additional time was required to complete the investigation. The Tribunal concludes that the Respondent did not take excessive time in carrying out its investigation, which included seeking and obtaining the necessary responses from the appropriate parties and deliberating thereon. It is clear that the five-month suspension of the Applicant was not undue and irregular and was warranted in the circumstances.

X. For the foregoing reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Mayer GABAY  
Vice-President, presiding

Chittharanjan Felix AMERASINGHE  
Member

Kevin HAUGH  
Member

New York, 22 November 2000

Maritza STRUYVENBERG  
Executive Secretary