



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1011

Case No. 1117: IDDI

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Ms. Marsha A. Echols; Ms. Brigitte Stern;

Whereas, on 16 December 1998 and 30 March 1999 and in August 1999, Mariam Iddi, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 1 December 1999, the Applicant, after making the necessary corrections, again filed an application containing pleas which read as follows:

"SECTION 2: PLEAS

I Pray that the ... Tribunal be pleased to review the decision of the Administrator ... dismissing me summarily ... and order the following:

- (a) That the dismissal was unjustified as I have been serving faithfully with UNDP for 14 years and therefore I be reinstated to my former position.

(b) Alternatively and without prejudice to (a) above, the Tribunal be pleased to order termination of contract of employment with full benefits instead of summary dismissal which entails loss of terminal benefits."

Whereas the Respondent filed his answer on 15 September 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP, Dar es Salaam, Tanzania, in December 1983 as a Telephone Operator/Receptionist, at the G-3 level. The Applicant held a permanent appointment. She was summarily discharged effective 10 March 1998 for serious misconduct.

On 3 September 1997, the Applicant submitted for reimbursement of medical expenses a signed medical insurance programme (MIP) Claims Form with receipts attached from two local clinics, the Muhimbili Medical Centre and the Karikoo Dispensary in an amount of 250,00 Tanzanian shillings (TSh) (approximately 411 U.S. dollars).

Since the Cash Sale slip from the Karikoo Dispensary (No. 50990 dated 15 August 1997) was unsupported by a doctor's prescription, did not describe the medical services provided or the medicines prescribed, and the Clinical Notes Form from the Muhimbili Medical Centre was missing a cash receipt, an investigator was sent to the clinics to verify the Applicant's claims.

The Investigator's Report dated 4 September 1997, indicated that no records existed of the Applicant's attendance at the Muhimbili Medical Centre on either of the dates listed on the Applicant's Claims Form, the Physician's Code Number was missing, the signature of the Attending Physician on the form was unknown to the Sister-in-Charge, and other discrepancies. With respect to the Karikoo Dispensary, the sales slip numbered 50990 evidenced major discrepancies in the amounts and the names of the party to whom it was issued. The Doctor in charge indicated that the difference in amounts was too large to be credible as Dispensary services are limited in scope.

On 7 October 1997, the Resident Representative in a letter to the Applicant informed her of the Investigator's findings were later confirmed by the Directors General of both institutions and reminded the Applicant that she had previously submitted an MIP Form without proper documentation, and had been warned verbally by the Finance Officer for submitting unauthenticated claims. She was asked to respond in writing by 10 October.

The Applicant denied any intention to cheat and claimed that she was treated by a physician, but there may have been a "mess up" in names on the record, at the Muhimbili Centre, and she had been requested to pay in cash at the Karikoo Dispensary by the doctor there, who offered to obtain the cash receipt himself. The Applicant also denied having been warned previously by the Finance Officer and recalled a tally problem in receipts presented on that occasion.

On 3 December 1997, the Applicant was charged with serious misconduct and was asked to provide a written explanation within seven days as to why disciplinary action should not be taken against her.

The Applicant responded on 8 December 1997, admitting to a mistake or offence and requesting forgiveness since it was her first offence and because of her family situation and her age.

On 29 December 1997, the Resident Representative recommended to the Director of Human Resources that the Applicant's contract be terminated.

The Administrator's decision to dismiss the Applicant, dated 12 February 1998 and sent to the Applicant on 6 March, was made effective 10 March. The Applicant was advised of her right to request a review of the decision by the Joint Disciplinary Committee (JDC), UNDP/United Nations Population Fund/United Nations Office for Project Services (UNDP/UNFPA/UNOPS).

The Applicant requested a review of the Administrator's decision by letter dated 14 April 1998 on the grounds that the penalty was too harsh, that she had a good previous record and that she had to support her three children.

On 8 May 1998, the Legal Section, Office of Human Resources, UNDP, invited the Applicant to submit further documentation or pleading, reminded her of her right to counsel and to a list of available counsel from the Coordinator of the Panel of Counsel at Headquarters.

The JDC adopted its report on 15 June 1998. Its findings, conclusion and recommendation read as follows:

"V. *FINDINGS*

16. In executive session, the Panel agreed that the facts were not in dispute and that the staff member had been afforded due process. They also agreed that the jurisprudence was consistent. One Panel member commented that Counsel for [the Applicant], by asking for clemency, had made a better appeal than she had. She had initially denied the allegations

and fabricated a story, sending everyone on a wild goose chase.

17. The Panel noted that the MIP Guidelines were very clear on what was required in presenting claims for reimbursement. The file indicated that there had been an earlier discrepancy and [the Applicant] had been verbally warned before. She should have been on notice.

VI. CONCLUSION AND RECOMMENDATION

18. *The Panel unanimously concluded that the Administrator's decision in this case was justified and should be upheld."*

On 15 March 1999, the Administrator, UNDP, transmitted to the Applicant a copy of the JDC report and informed her that he had decided to maintain the decision of 12 February 1998.

On 1 December 1999, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's due process rights were violated since the Finance Officer failed to provide her with warning of the matter in question, and the Administrator failed to provide reasons for the decision to dismiss the Applicant.
2. There was no proof that any alleged forgery of MIP claims was committed by the Applicant.
3. The Applicant was not aware of the alleged forgery due to the fact that she was ill.
4. The Applicant was not afforded sufficient time for her to properly prepare her defense.
5. Summary dismissal was too harsh a penalty given the Applicant's long record of unblemished service to UNDP.

Whereas the Respondent's principal contentions are:

1. The Secretary-General and the UNDP Administrator have broad discretion with regard to disciplinary matters, and this includes determination of what constitutes serious misconduct warranting summary dismissal. The Administrator's decision to summarily dismiss the Applicant

was a valid exercise of that discretionary authority, and was not vitiated by substantive irregularity, procedural irregularity, improper motive, abuse of discretion or any other extraneous factors.

2. The Applicant failed to meet the standards of conduct required of staff members and international civil servants.

3. The Applicant's due process rights were fully respected.

4. There is no evidence of substantive irregularity in the Applicant's case. The Applicant's conduct constituted serious misconduct and summary dismissal is an appropriate disciplinary measure.

5. There is no evidence that the summary dismissal of the Applicant was improperly motivated or constitutes an abuse of discretion.

The Tribunal, having deliberated from 3 to 27 July 2001, now pronounces the following judgement:

I. With regard to the receivability of the Application, the Respondent requests the Tribunal to find the Application not receivable because it is time-barred. The Tribunal notes that the decision of the UNDP/UNFPA/UNOPS Joint Disciplinary Committee (JDC) was adopted on 15 June 1998. It was notified to Ms. Iddi at the same time as her final dismissal on 15 March 1999. There was thus a year's delay between the decision of the JDC and its notification. The Tribunal wishes to state that such a long delay does not in its view appear justified. The Tribunal recalls that it has previously expressed its disapproval of unjustified delays in proceedings before the joint appeals boards, stating that such delays were particularly regrettable in cases involving dismissal (see Judgement No. 456, *Kioko* (1989), para. XIII). The Tribunal wishes to state, however, that the same applies where there is an unexplained delay between the decision of the Joint Appeals Board and its transmittal to the individual concerned.

The Applicant's final Application was sent to the Tribunal on 1 December 1999, so that it might appear to be time-barred. As a matter of fact, the Applicant had, on 16 December 1998, sent a previous Application contesting the decision to summarily dismiss her, even before the decision of

the JDC had been formally notified to her.

The Tribunal regards this first Application, even if imperfect, as having been submitted within prescribed time limits and therefore considers the Application receivable.

II. Pursuant to Article 101, paragraph 1, of the Charter of the United Nations, the responsibility for appointment of staff is vested in the Secretary-General and the Secretary-General has, in regard to matters relating to UNDP, delegated this responsibility to the Administrator of UNDP.

Article 101, paragraph 3, of the Charter directs the Secretary-General to give consideration to employing staff of "the highest standards of efficiency, competence and integrity".

The authority to impose disciplinary measures is vested in the Secretary-General, pursuant to staff regulation 10.2, which distinguishes between unsatisfactory conduct and serious misconduct:

"The Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory.

The Secretary-General may summarily dismiss a member of the staff for serious misconduct."

The determination as to whether a United Nations staff member has met the required standards of conduct is left to the discretion of the Secretary-General (see Judgements No. 424, *Ying* (1988), para. XV; No. 425, *Bruzual* (1988), para. X; No. 479, *Caine* (1990), para. III; No. 515, *Khan* (1991), para. II; No. 542, *Pennacchi* (1991), para. IV).

In particular, the discretionary power to determine when conduct may be characterized as serious misconduct is vested in the Secretary-General (see Judgements No. 479, *Caine* (1990), para. III; No. 582, *Neuman* (1992); No. 815, *Calin* (1997); No. 941, *Kiwanuka* (1999).)

The choice of penalty is also left to the discretion of the Secretary-General (see Judgements No. 424, *Ying* (1988), para. XV; No. 425, *Bruzual* (1988), para. X; No. 429, *Beyele* (1988), paras. IX and XIII; No. 436, *Wiedl* (1988), paras. III and VI; No. 641, *Farid* (1994), para. II).

This broad power on the Administration's part, which has two aspects - determination of the facts liable to penalty, and determination of the extent of the penalty - is frequently mentioned. In the *Wiedl* case, for example, it is stated that "the Tribunal has always held that the Secretary-General has

broad discretion in disciplinary matters, which include determination of what constitutes serious misconduct as well as disciplinary measures" (Judgement No. 436 (1988).)

III. Discretionary power does not mean arbitrary power or abuse of power (see, in this connection, Judgement No. 707, *Belas-Gianou* (1995), para. XVI). The Tribunal is responsible for verifying that the facts are described correctly, as unsatisfactory conduct, misconduct or serious misconduct. In numerous cases (see Judgements No. 897, *Jhuthi* (1998), para. II; No. 898, *Uggla* (1998), para. II; No. 890, *Augustine* (1998), para. I), the Tribunal has clarified the extent of its review power with regard to disciplinary measures, noting that where the United Nations administrator or a disciplinary committee takes disciplinary measures, they are exercising their discretionary power, but are also exercising a quasi-judicial power, subject to the supervision of an administrative judge.

IV. In this case, the Tribunal considers that the facts were wrongly characterized as serious misconduct and that, accordingly, the summary dismissal, together with the loss of the benefits vested in the Applicant by 14 years of service with UNDP, is a disproportionate penalty.

V. It is significant that the Tribunal has established a number of criteria that must be met in order for a disciplinary measure not to be arbitrary, but to be regarded as in conformity with law (see, in particular, Judgement No. 941, *Kiwanuka* (1999), para. III), and that the Secretary-General in his answer demonstrates the existence of only some of these criteria. They are:

- veracity of the facts;
- appropriate legal description of the facts;
- absence of substantive irregularity;
- absence of procedural irregularity;
- absence of abuse of discretion;
- legality of the penalty;
- proportionality of the penalty.

If a single one of these criteria is not met, the penalty is unjustified and should be remedied by the Tribunal.

The Respondent addressed only a few of these aspects in the different paragraphs of his answer, as follows:

- "The Applicant's due process rights were fully respected", where the absence of procedural irregularity is demonstrated;
- "No evidence of substantive irregularity", where the absence of substantive irregularity is demonstrated;
- "No evidence of improper motive or abuse of discretion", where the absence of abuse of discretion is demonstrated.

The Tribunal considers that the *absence of procedural irregularity*, in other words, respect for due process rights, like the *absence of substantive irregularity* and the *absence of abuse of discretion*, is not really in dispute.

With regard to the *veracity of the facts*, the facts are not in dispute either, since after initially denying having submitted falsified documents, the applicant admitted her "error". The Applicant and the Respondent do not differ, therefore, on the description of the facts.

Likewise, with regard to the *legality of the penalty*, it is not one of the penalties automatically excluded from those that may be imposed for misconduct by a United Nations staff member.

What the Tribunal will now address is the legal description of the facts and the proportionality of the penalty imposed on the Applicant.

VI. The Applicant certainly attempted fraud by trying to obtain reimbursement for hospital bills which she did not pay.

Misconduct certainly occurred, but the Tribunal is not convinced that the facts of the case allow it to be described as serious misconduct.

Apart from the fact that the sum in question is relatively modest, 1997 was the first year in 14 years of good and faithful service in which such an incident occurred.

To be sure, the Administration mentions a first incident in early 1997, but in the Tribunal's view, in the light of the documentary evidence, what was involved was an incorrect submission of a claim for reimbursement rather than an attempt to defraud; the respondent indicates in his answer that

the Applicant "had submitted [a claim form] without proper documentation". In fact, a letter of 7 October 1997 indicates that following the submission of medical insurance programme (MIP) claim forms, the Applicant was "requested to resubmit the claims with proper documentation and in the manner which conforms with the MIP guidelines". The Tribunal considers that it has not been proved that this first incident involved a material attempt to defraud, but that what was involved was rather a procedural problem concerning the submission of documents.

The Applicant thus stands accused of a single attempt at improper reimbursement of a sum of \$411 in 14 years of unblemished service. The Tribunal accepts as an extenuating circumstance the letter in which she acknowledges having made an error and asks the Organization to forgive her on grounds of her difficult personal situation.

The Tribunal considers that while this act unquestionably constitutes misconduct which should be condemned and punished without the slightest hesitation, to describe it as serious misconduct is excessive.

VII. Even in cases of serious misconduct, the Administration does not always proceed to summary dismissal of its guilty employee, together with the loss of terminal benefits. The Tribunal recalls here the principle of equality of treatment which should be applied to all United Nations employees in conformity with the Staff Regulations and Rules and with previous decisions of the United Nations Administrative Tribunal. The Tribunal wishes to refer here to certain cases in which the same principles were at stake as in this case, the first two of which involve UNDP employees, like the Applicant. In a case adjudicated in 1991 (Judgement No. 525, *Yougharé*, para. XIV), the Tribunal held that termination without compensation for the year-long misappropriation of an official vehicle for private use, misuse of a car battery and fraudulent use of petroleum vouchers was a disproportionate punishment under the circumstances of the case, and awarded the Applicant \$25,000 as compensation. In another case adjudicated in 1992 (Judgement No. 551, *Mohapi*, para. XI), the Tribunal likewise reviewed a decision to demote an employee exercising the functions of a finance clerk from grade 5 to grade 4 as a disciplinary measure, following the disappearance of small sums of money, for the simple reason that the employee had not been informed of her right to be assisted by counsel before the UNDP/UNFPA Disciplinary Committee. The Tribunal held that such a penalty

might be rescinded and the individual reinstated in her post, and that if she was not reinstated, she was entitled to 18 months' net salary. Lastly, the Tribunal refers to a case that was submitted to it in 1997 (Judgement No. 850, *Patel*), in which the Administration - taking into account, in the choice of penalty, "18 years of satisfactory service" - decided to "separate [the Applicant] from service with compensation in lieu of notice under staff regulation 10.2 and staff rule 110.3 (a) (vii)", for offences more serious than those at issue in the present case, as the matter involved a senior official with certifying authority and a fraud that would have gone on longer had it not been discovered. The Tribunal held that the decision was adequate. The Tribunal relies on these precedents in holding that, even in cases of attempted theft, there can be an evaluation of circumstances and a scale of penalties.

VIII. The Tribunal, having weighed all aspects of the case, believes that a summary dismissal, together with the loss of the benefits to which the Applicant was entitled by virtue of 14 years of service with UNDP, is a disproportionate penalty. As the facts were wrongly described as serious misconduct, and as the penalty of summary dismissal is disproportionate to the offences of which the Applicant is accused, the Tribunal believes that the Administration's action against her does not fall within the necessary margin of discretion afforded to the Administration in the exercise of its disciplinary power.

IX. As the Tribunal decided in a previous case, it "concludes that the grounds invoked by the Respondent to justify a more severe penalty ... are inappropriate grounds which have contributed to causing injury to the Applicant in the form of a premature separation, thereby entailing the responsibility of the Respondent and calling for compensation" (Judgement No. 525, *Yougharé*, para. XIV).

X. For the foregoing reasons, the Tribunal:

- Decides that the penalty of summary dismissal without any entitlement to benefits is a disproportionate penalty;

- Decides that, accordingly, the Administration should pay to the Applicant nine months of her net base salary.

(Signatures)

Mayer GABAY
President

Marsha A. ECHOLS
Member

Brigitte STERN
Member

Geneva, 27 July 2001

Maritza STRUYVENBERG
Executive Secretary
