



JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. This is a disciplinary case concerning the summary dismissal of Abdul Karim Masri (Masri), a staff member in the Procurement Section of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC). The Judgment rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) ordered the rescission of Masri's summary dismissal, reinstatement of Masri with a demotion of four steps within his job level, and fixed alternative compensation should the Secretary-General elect not to reinstate Masri.
2. The evidence established that Masri met vendors at his home outside working hours and discussed MONUC contracts, he received the benefit of interest-free loans from two vendors, and he gave assistance to a vendor in connection with its technical proposal for a catering contract with MONUC. This conduct violated a number of the Financial and Staff

payable at eight per cent per annum as from 90 days from the date of distribution of the Judgment until payment is effected.

8. The Secretary-General filed an appeal against the Judgment on 24 May 2010. Masri filed an answer to the appeal on 7 July 2010, together with a “Motion to dismiss appeal of Judgement UNDT/2010/056”.

9. On 24 September 2010, five staff members of the Office of Staff Legal Assistance filed a “Joint application to file a friend-of-court brief” under Article 17 of the Rules of Procedure of the Appeals Tribunal (Rules). By Order No. 13 (2010), the President of the Appeals Tribunal rejected the joint application.

10. On 6 October 2010, the MONUSCO Field Staff Union ¹ filed an “Application for leave to file a friend-of-court brief” under Article 17 of the Rules. On 6 October 2010, Masri filed observations stating that he did not object to the application. On 11 October 2010, the Secretary-General filed observations in which he opposed the application and, should the

Tribunal adopted an erroneous approach as it reviewed the Secretary-General's determinations without any deference to his decision.

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violated Staff Regulation 1.2(g) and Masri's false, mislea

21. Masri contends that the compensation awarded by the Dispute Tribunal was reasonable in the circumstances of the case and the award of interest was in accordance with jurisprudence of the former Administrative Tribunal. Masri argues that the appeal is designed to delay the implementation of the Judgment and it is malicious and unconscionable. Masri also contends that the failure of the internal justice system to prioritize summary dismissal cases needs to be reviewed as staff members who are dismissed lose their source of income.

22. In his motion to dismiss the appeal, Masri repeats most of the arguments in his answer to the appeal. Masri also contends that the appeal is not receivable as it was filed after the 45-day statutory period set out in Article 7(1)(a) of the Rules.

Considerations

23. After receiving the Dispute Tribunal's Judgment on 7 April 2010, the Secretary-General filed his appeal on 24 May 2010, the date of expiry of the time limit to file an appeal under Article 7 (1)(a) of the Rules. Accordingly, the appeal is receivable.

24. This Tribunal decides to reject the application to file a friend-of-the-court brief submitted by the MONUSCO Field Staff Union under Article 17 of the Rules.

25. While the MONUSCO Field Staff Union may be regarded as a staff association under Article 17 of the Rules and therefore may qualify as a friend-of-the-court, the application will only be granted if the proposed brief would assist the Appeals Tribunal in its deliberations.

26. The purpose of a friend-of-the-court brief will generally be to address matters other than the law. The Appeals Tribunal is composed of experienced, professional Judges who are able to ensure that proper deliberations are held concerning the general principles of law that are applicable in the case with the benefit of the parties' submissions, the UNDT Judgment and the judicial work of the Tribunal itself, without the need for additional contributions from friends-of-the-court.

27. If the issues in a case raise very specific or particular questions of law which are not generally within the expertise of counsel or the Judges, an application to file a friend-of-the-court brief may be granted. But in this case, the issues can be addressed based on the

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32. This Tribunal considers that the Administration quite properly decided that certain conduct of Masri constituted serious misconduct and was not excusable due to poor management, unprofessionalism or mere lapses in judgement, as concluded by the UNDT in the Judgment at first instance.

33. Although not all the allegations of misconduct against Masri were proved, some of the allegations were sufficiently supported by the evidence. Masri himself admitted that vendors of MONUC attended social gatherings at his home, and he discussed MONUC contracts with vendors during these gatherings. He also accepted that he obtained interest-free loans from two MONUC vendors, UAC and Panache.

34. Masri also had a number of dealings with the owner of Matina in connection with Matina's technical proposal for a catering contract with MONUC. In its investigation report, the PTF found that Masri received an e-mail from the owner of Matina on 12 September 2006, which attached a rough draft of Matina's technical proposal. On 13 September 2006, a file was created on Masri's computer which contained an edited version of Matina's technical proposal. On 14 September 2006, another file was created on Masri's computer containing a letter from Matina to the chairperson of the Tenders Opening Committee of MONUC concerning Matina's technical proposal for the catering contract. Masri admitted that the owner of Matina was his friend and gave an explanation of the circumstances in which he assisted the owner by printing out Matina's technical proposal. Masri denied having drafted the technical proposal. The UNDT accepted Masri's explanation of events and found that his assistance to Matina by printing the technical proposal did not amount to misconduct. Even if Masri's explanation of events is accepted, this Tribunal disagrees with the UNDT's finding that Masri's actions did not amount to misconduct.

35. The conduct described above violates several regulations and rules concerning the obligations of staff members with respect to procurement activities. For instance, Financial Regulation 5.12 provides as follows: "The following general principles shall be given due consideration when exercising the procurement functions of the United Nations: ... (b) Fairness, integrity and transparency; ... (d) The interest of the United Nations". Under Financial Rule 101.2, a staff member who does not comply with the Financial Regulations and Rules may be held personally accountable for his or her actions.

36. Significantly for this case, Staff Regulation 1.2(b) states that “[s]taff 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”. Staff Regulation 1.2(g) provides that “[s]taff members shall not use their office or knowledge gained from their official functions for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour. Nor shall staff members use their office for personal reasons to prejudice the positions of those they do not favour”.

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40. Thus, misconduct was established and in Masri's case, it must be considered serious. The nature and pattern of the conduct at fault, namely the personal benefits obtained from vendors, the assistance given to a vendor and the resulting overall impression of corruption arising from the procurement staff member's activities, amount to serious misconduct.

41. This Tribunal finds that the disciplinary measure of summary dismissal adopted in this case was proportionate to the misconduct, which was serious.

42. In conclusion, the challenged administrative decision imposing the disciplinary measure of summary dismissal must be affirmed and the UNDT's Judgment reversed. There are no grounds to modify the disciplinary measure adopted or to award any compensation to Masri.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2010-UNAT-098