
NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/52

Judgm

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

M'BRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Edwin Nhliziyo

Counsel for respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

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.

Introduction

1.

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and information. All the staff members implicated in the allegations of misconduct, including the

d. Regulation 1.2 (g), by using the office or his know

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Respondent's Submissions

32.

37. In addition, there is reliable evidence against the Applicant as provided by CW-4 and that the handwritten notes on the index card listing the dates and amounts paid to the Applicant and others in MONUC Procurement Section were authentic. CW-4's testimony was against interest. The statement by this witness was not favourable to TFCE and was further corroborated by the circumstances. Finally, the Applicant socialised quite extensively with MONUC vendors when he should have refrained from doing so.

38. The Respondent also avers that CW-4 was interviewed twice and provided the same statement on both occasions. He argues that this witness was an "inherently reliable witness" and that "on the balance of probability", the evidence available on the record indicated that the Applicant had engaged in serious misconduct. The Respondent stresses that CW-4's statement was corroborated by "surrounding circumstances." According to the Respondent, the Applicant was responsible both individually and in his capacity as a supervisor for the contracts during and around the period when the new procurement assistant and the procurement officer identified inflated prices.

39. Finally, the Respondent argues that the Applicant was treated fairly in line with ST/SGB/273 and the OIOS Manual and was afforded due process. He was confronted with the evidence and allegations against him during the investigation process and was given the opportunity to respond.

Considerations

40. This is one of the five MONUC disciplinary cases⁴ in which the Secretary-General decided to summarily dismiss the concerned staff members for serious misconduct following an investigation by the PTF.

Applicable Law

41. Staff regulation⁵ 1.2 (b) provides that:

⁴ Applicants *Sanwidi* (Case No. UNDT/NBI/2009/36); *Cohen* (Case No. UNDT/NBI/2009/49); *Masri* (Case No. UN UNDT/NBI/2009/51); *Parkes* (Case No. UNDT/NBI/2009/50 and *M'bra* (Case No. UNDT/NBI/2009/52).

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.

42. Staff regulation 1.2 (e) states that:

The following general principles shall be given due consideration when exercising the procurement functions of the United Nations:

- i. Best value for money;
- ii. Fairness, integrity and transparency;
- iii. Effective international competition;
- iv. The interest of the United Nations.

Considerations

The Probative Value of the Evidence of CW-4

47. The PTF recorded in their report that CW-4 claimed to have paid sums of money to the Applicant. Specifically, he stated to the investigators that “US \$3,500 was paid to [the Applicant] for a holiday trip; another US \$2,500 was paid to [the Applicant] for a car rental in 2003[...]”. In the PTF Report, the investigators wrote that “CW[-]4 stated that he had paid in total US \$7,500 to [the Applicant]”. Like the JDC Panel, the Tribunal takes note of a gross arithmetical error as the total amounts to USD 6000, not USD 7,500 as stated in the PTF Report. Curiously, neither the investigators nor the Respondent sought to clarify this error. This is the more strange as the Respondent states that CW-4 gave the same statement on two occasions.

48. Secondly, the PTF investigators considered as evidence an index card provided by the witness on which, it was alleged, the initials of the Applicant appear. The Tribunal observes that when one of the PTF investigators was asked by the JDC if she believed that the index card produced by CW-4 had any probative value, she stated that the card did not look like something that someone had just written that day as it was tattered and discolored. The investigators appear to have accepted the document that CW-4 produced at its face value without attempting to verify the details in it. The index card was not dated and the fact that the investigator’s assessment was limited to an impression that the ink was not fresh on that card does not help to strengthen that evidence.

49. CW-4 also told the investigators that the Applicant owned a boat registered with a UN number plate. The Tribunal notes that the PTF itself found that this allegation could not be substantiated. This conclusion in itself casts a fatal blow to the credibility of witness CW-4.

50. In the light of the above observations the Tribunal concludes that CW-4's statement is so

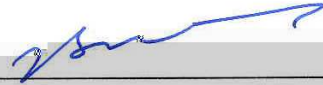
56.

the Tribunal that the evidence was credible and capable of leading to the only and irresistible inference that the charges against the Applicant had been proved?

62.

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Judge Vinod Goolell

Dated this 18th day of July 2010

