



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

NOURAIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-Represented

Counsel for the Respondent:

Melissa Bullen, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former staff member of the African Union-United Nations Hybrid Operation in Darfur (“UNAMID”) in El Fasher, Sudan where she worked as a Language Assistant from 1 June 2008 until 30 May 2011 when she was dismissed from service for a misrepresentation on her Personal History Profile (PHP) form.

Facts

2. The Applicant joined UNAMID on 1 June 2008 as a Language Assistant on an Appointment of Limited Duration (ALD). She submitted a signed PHP dated 8 April 2008 in which in response to question 18 which asked; “Are any of your relatives employed by a Public International Organization?” the Applicant answered “No”. Also as part of her application documents to UNAMID, she submitted a birth certificate.

3. The General Assembly through Resolution 63/250¹ decided to discontinue the use of ALD contracts. Consequently, by Information Circular No: 2009/0017 of 24 March 2009² all UNAMID national staff were informed of the requirements for converting their ALD contracts to fixed-term contracts and among the required documents was an updated PHP form.

4. As per the requirements for the conversion of her contract, the Applicant submitted her updated PHP on 2 June 2009 and again in response to question 18, she answered “No”. As at this time, she had filled out two PHP forms which had been submitted to the organization.

5. In October 2009, UNAMID received complaints from both local authorities and staff members that a large number of related staff members were employed by the Mission. Following these complaints, inquiries were made by the Human

¹ A/RES/63/250 (Human Resources Management) Adopted on 10 February 2009.

² On the “Requirements for conversion of National Staff from 300 series Contract to New Fixed Term Contract Effective 1 July 2009”.

Resources Services Section (HRSS), which conducted an audit of PHP forms. This audit revealed that some national staff members had made misrepresentations and material omissions in their answers to question 18 of the PHP forms which they submitted to UNAMID during the recruitment process.

6. Personnel records of 34 suspected staff members were reviewed and 28 of them found to have made misrepresentations on either their PHP forms or other recruitment documentation. The Applicant and one other staff member (hereinafter referred to as “A.A.N.”) who was later identi

investigators stating that the Applicant was her sister and that she was working with UNAMID at El-Fasher Zam Zam police post.

10. The matter of the Applicant and A.A.N. was referred to the Under-Secretary-General for Field Support on 7 March 2010 and accordingly the case referred to the Office for Human Resources Management (OHRM) on 18 May 2010. By this time,

informing her that her separation from se

Respondent's case

18. The Respondent case is that:

- a. The Applicant's explanation that A.A.N. is not her biological sister is irrelevant;
- b. The Applicant was availed adequate opportunity to be heard but she did not cooperate with the investigation process;
- c. The Applicant ought to have known the rules after having worked for over a year with the Organization; and
- d. By providing false information in response to Question 18 of the PHP, the Applicant demonstrated lack of integrity which is contrary to United Nations' values and the standard of conduct expected of staff members.

Issues

19. The legal issues arising for consideration in this case are:

- a. Whether the Applicant deliberately made a material misrepresentation when she filled out her PHP forms;
- b. Whether the Applicant's due process rights were breached during the investigation process; and
- c. What the exact meaning of "Public International Organization" as used in question 18 of the PHP is.

Considerations

Did the Applicant deliberately make a misrepresentation while filling out her PHP forms?

20. At the time the Applicant joined UNAMID on 1 June 2008, A.A.N. had already been working for UNAMID for five months beginning 1 January 2008. As at June 2008, therefore, when the Applicant filled out her PHP forms she ought to have disclosed the fact that her sister was working with UNAMID. Even after she had worked with UNAMID for one year, the Applicant submitted a second PHP in which she still failed to disclose the fact that she had a sister working within UNAMID.

21. During the two occasions; 2008 and 2009 when the Applicant filled out her PHP forms for the Organization, she knew and believed that A.A.N. was her sister. Therefore, she deliberately misrepresented this fact in her PHP. Simply put, her claim that in 2009 after the investigations into their family relationship had commenced she found out that A.A.N. was not her biological sister is irrelevant.

22. Question 18 of the PHP which the Applicant was charged with giving a false answer to is as follows, “are any of your relatives employed by a Public International Organization?” Additionally, staff rule 4.7⁴, lists “father, mother, son, daughter, brother or sister” of a staff member as persons sharing a family relationship.

23. In view of staff rule 4.7, it is clear that by giving a negative response to question 18 of the PHP form, the Applicant failed to disclose that her sister was employed by the United Nations. In so doing, she failed to disclose a material fact.⁵

24. The Applicant certified that the statements she made in answering the questions asked in her PHP were “true, complete and correct to the best of her knowledge and belief.” Furthermore the PHP form itself did specify that any material

⁴ Supranote 3.

⁵ Section 2(c) of ST/A m0 TNa

omission would render a staff member liable to termination or dismissal. It is clear therefore that the Applicant, contrary to her undertaking, made statements in her PHP that were neither true nor correct to the best of her knowledge and belief and in doing so, she knew what the consequences would be.

25. The law regarding the expected conduct of international civil servants in so far as integrity is concerned when submitting documents and filling out PHPs is well settled.

26. In *Coulibaly* UNDT/2009/091, the UNDT, while upholding the summary dismissal of an Applicant for having submitted false documents about his educational qualifications, held that making false statements is a violation of the provisions of the Charter of the United Nations and the Staff Regulations. The court emphasized that staff members must uphold the highest standards of integrity which is a core value of the United Nations.

27. Similarly, the Administrative Tribunal of the International Labour Organization (“ILOAT”) in Judgment No. 2351 (2004), a case which also involved summary dismissal for falsification of documents, the court upheld the summary dismissal of the Applicant stating that at the time of recruitment, the Applicant did not act with the integrity and the sincerity expected of an international civil servant. The same Tribunal in Judgment No. 2602 (2007), in determining a case in which the Applicant had made false representations in his PHP stated that “misrepresentation and falsification of documents are serious matters that do not reflect the standard of integrity that is expected of staff members of international organizations.” The Tribunal further held that common decency,

ii. Shall not participate in the process of reaching or reviewing an administrative decision affecting the status or entitlements of the staff member to whom he or she is related.

31. As it is therefore, provided that the above two conditions are met, staff members who bear family relations can lawfully work together in the Organization. In the case of the Applicant, the Tribunal finds it necessary to clarify that her transgression was not that she had a sister working for the United Nations but rather, the lack of disclosure of this material fact. Disclosure is crucial for the organization to ensure that the conditions stipulated by the law are adhered to. Failure to disclose demonstrates lack of integrity and points towards dishonesty.

Is the exact definition of “Public International Organization” as used in question 18 clear enough for the Applicant to have understood what was expected of her?

32. In this case it is imperative to determine whether the Applicant knew or ought to have known, at the time of filling out her PHP, that reference to “Public International Organization” in question 18 included the United Nations as an Inter-Governmental Organization and more specifically UNAMID as a mission of the United Nations.

33. During the hearing, Counsel for the Respondent was required to address the Tribunal on the meaning of the phrase “Public International Organization” as used in PHP forms. To this, the Respondent submitted that, the term Public International Organization is intended to mean the United Nations Common System. This includes the United Nations and the specialized agencies that have entered into a relationship with it.⁹ The Respondent further argued that the United Nations is an example “

