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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/022

Judgment No.: UNDT/2022/035

Date: 6 April 2022

Original:



6. On 6 February 2018, the Investigations Division of the Office of Internal Oversight Services (“ID/OIOS”) received, via hotline, a report of possible misconduct, implicating UN Women’s personnel at the United Nations Headquarters in New York.<sup>2</sup>

7. It was specifically reported that the Applicant had utilized, without authorization, UN Women’s official United Parcel Service (“UPS”) account for personal purposes on at least two separate occasions in December 2017.<sup>3</sup>

8. OIOS opened an investigation and issued an Investigation Report on 6 November 2018. The Investigation Report concluded that the Applicant: a) used UN Women’s official UPS account to ship personal packages internationally to Italy and Austria by taking discontinued UPS shipping labels from a copy room; and b) expressly elected to bill the charges for those personal packages to UN Women’s corporate UPS account instead of paying directly by personal credit card at the time of shipment.<sup>4</sup>

9. On 13 December 2018, UNPFA’s Chief, Legal Unit (“LU”), received an email and referral from UN Women’s Chief, Legal, referring the Investigation Report from OIOS regarding the Applicant as subject of the investigation as Applicant had joined UNFPA on 1 November 2018.<sup>5</sup>

10.

(“DHR”).<sup>7</sup>

12. By a memorandum dated 5 September 2019, the Director, DHR transmitted the Investigation Report and all exhibits to the Applicant and her Counsel and provided her with an opportunity to submit comments on the factual findings.<sup>8</sup>

13. The Applicant submitted her comments on the Investigation Report on 24 October 2019.<sup>9</sup>

14. Based on the findings of the Investigation Report and the Applicant’s comments, the Director, DHR, issued a notification of charges dated 24 September 2019 notifying the Applicant that there was sufficient evidence to charge her with two counts of misconduct based on her unauthorized use of UN Women’s UPS account on two occasions<sup>10</sup>

15. The notification of charges letter informed the Applicant that she could respond to the charges and produce exculpatory evidence within 10 days of receiving the notification. The Applicant requested and received two extensions of time to reply. She provided her response to the charges on 24 October 2019.<sup>11</sup>

16. On 13 December 2019, having considered the Investigation Report, the Applicant’s comments to the Investigation Report, the notification of charges and the Applicant’s response to the notification of charges, as well as mitigating and aggravating factors, UNFPA’s Executive Director imposed the contested decision.<sup>12</sup>

17. On 18 March 2020, the Applicant filed an application before the Dispute Tribunal challenging the contested decision.

18. The Respondent filed a reply on 20 May 2020 having been granted an

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<sup>7</sup> Application, annex E.

<sup>8</sup> Application, annex F.

<sup>9</sup> Paragraph 10 of the Applicant’s submissions pursuant to the Tribunal’s Order No. 13 (NBI/2021).

<sup>10</sup> Application, annex N.

<sup>11</sup> Application, annex P.

<sup>12</sup> Application, annex Z.

extension of time to do so.<sup>13</sup>

19. The Applicant filed a rejoinder to the reply on 13 January 2021.

**submissions**

*The Applicant*

20. Only relevant parts of the Applicant's case are summarized in the following paragraphs.

21. The Applicant submits that she was truthful and honest in her actions and throughout the OIOS investigation. All evidence gathered by the OIOS clearly indicates that she never tried to deceive UN Women by using UPS labels and envelopes for personal use. On the contrary, the Applicant never displayed a lack of honesty and truthfulness in her actions. Her conduct towards the Administration was honest at all times and throughout the OIOS investigation. The Applicant's account of events has been consistent and corroborated by other evidence.

22. Ms. Witchy Domond's (Administrative Assistant) evidence corroborates the Applicant's – the exact amount due to Facilities and Administrative Services ("FAS") was unclear and confusing.

a. Ms. Domond explained to the OIOS investigators that she was seeking clarification from the FAS and from Ms. Marianna Belsky, Administrative and Facilities Specialist, in particular regarding the exact amount that the FAS was seeking from the Applicant for the reimbursement of her shipping. She expressed confusion in her understanding of the exact amount because Ms. Nyasia Sanchez, Distribution Unit Focal Point/Mailroom Supervisor, had sent two emails with different amounts.

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<sup>13</sup> Vide Order No. 065 (NBI/2020) issued on 7 April 2020.

b. Contrary to the Respondent's assertion, the exact amount of the shipping fees could not be clearly discerned in the 16

maternity leave as she was in her last term of her pregnancy.

f. On 25 May 2018, Ms. Belsky finally replied to the Applicant's request for the clarification on the amount of two UPS shipments and provided the breakdown for the very first time: USD75.48 to Austria and USD224.58 to Italy. The Applicant paid the total amount of USD300.07 immediately thereafter. This evidence refutes any finding that the Applicant only decided to pay the total shipping costs of USD300.07 after being informed that she was subject to OIOS investigation for the alleged misuse of UN Women's UPS account.

g. At all times material to this case, the Applicant was truthful and honest. She made a genuine assumption that she could use the UPS account for personal use, she was truthful to the FAS when inquired about her use of UN Women's UPS account and confirmed that she had used it to ship her Christmas gifts to her family and friend. She consistently told the truth to the OIOS throughout the investigation process. She immediately confirmed to Ms. Sanchez that the shipments were indeed sent by her for personal use when asked on 30 January 2018. She attempted to contact and physically went to see Ms. Belsky, who admitted having deliberately avoided her, to settle this matter. She asked Ms. Domond to follow up on with FAS on 30 January 2018, as soon as she was notified.

confirms that the Applicant had been truthful to the OIOS investigators - that she had previously used DHL to send a personal parcel.

b. Ms. Belsky



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parcel to Fashion Nova online clothing store. Therefore, if FAS's own employees, who are best positioned to know the policy of using UN Women's corporate accounts, were using the office account to send personal items, then the Administration cannot reasonably allege that the Applicant violated such policy for using the account to send her Christmas gifts and undertake to pay for them.

d. In using the UPS labels and envelopes that were readily available for staff member's use on her floor, the Applicant exercised reasonable care. As she was not responsible for sending mail out through the FAS, she could not have known that the UPS labels that were lying around on her floor were discontinued. The Applicant cannot be blamed for the FAS' negligence.

Applicant with another staff member as of 9 September 2019. On 23 September 2019, the Applicant received a letter dated 20 September 2019 from HR informing her of the decision to place her on ALWP pending investigation and the disciplinary process against her. However, the letter did not provide any specific reason or explanation for placing her on ALWP in violation of staff rule 14.2. Contrary to this letter on ALWP, Ms. Barbara Sow, Country Office Representative, testified that she was not consulted in placing the Applicant on ALWP.

c. On 11 December 2020, the Respondent argued before the Tribunal that the Applicant was not fit to return to work and questioned the validity of the findings of the United Nations Medical Services Division to clear her to return to work, in violation of the Appeals Tribunal's jurisprudence. The decision relating to the fitness of a staff member's return to



c. At the hearing, the Applicant stated that she did not elect to pay with her credit card because she was trying not to “create confusion” given that she was using the official account. The Applicant then dropped off her packages with th

she had thought that a part of the shipments was official. Ms. Domond further stated that the Applicant never expressed any confusion about the amount she owed and never asked Ms. Domond to contact FAS to clarify the said amount. Ms. Domond noted that the two amounts were explicitly reflected in FAS's messages with invoices to the Applicant.

g. On 24 May 2018, the Applicant received a notice of investigation from OIOS. Only then, i.e.,

However, she did not

f. The Applicant's assertion before the Tribunal that the invoices contained "all these numbers" or that "she was not conversant with this [sic]" is mind-boggling coming from a professional with adult responsibilities and 10 years of professional experience at the UN. Furthermore, the Applicant's attempt to argue that Ms. Domond was also "confused" is misleading. Before the Tribunal, Ms. Domond stated that the amounts expressed in the invoices were precise. Her confusion related only to whether one parcel was for UN Women to pay, given that she was unaware that the Applicant had used UN Women's UPS account for two personal packages.

g. Furthermore, the Applicant took no action to clarify any alleged "confusion" until she received OIOS' notice of investigation. At the time of the contested facts, the Applicant never disclosed to anyone her alleged confusion about the amounts. The Applicant's purported visit to Ms. Belsky at noon on 30 January 2018 followed Ms. Belsky's message to the Applicant requesting more information from the Applicant, not the other way around.

h. Before the Tribunal, the Applicant could not specify any concrete action she took to clarify any confusion and reimburse UN Women before 24 May 2018. It is irrelevant that the UN Women Legal Adviser instructed Ms. Belsky "not to discuss the matter further" with the Applicant as she had never even tried to contact FAS to solve the issue. She was unaware of the Legal Adviser's instructions to Ms. Belsky and was not prevented from seeking clarification. The Applicant took no action after noon on 30 January 2018.

i. The Applicant's allegation that she had tasked Ms. Domond to clarify the amount the Applicant owed is not corroborated by any evidence. Ms. Domond denied receiving any such instruction. Furthermore, as a UN Women staff member supporting the Civil Society Section, Ms. Domond was not responsible for following up on how much the Applicant owed for the Applicant's personal shipments. The Applicant's contention is another example of her skewed view of official assets and personnel, showing





31. The sanction was proportionate to the offense.

a. The

other communication means than her official cell phone for the personal call that she was placing. She acknowledged that she failed to pay the bill promptly and asked for a waiver. Even when she was not granted such a waiver, the Applicant took two additional months to pay and only did so after receiving a reminder from Ms. Belsky. The foregoing demonstrates the Applicant's tendency to use official assets for personal purposes and then attempt to avoid paying. Thus, it was reasonable for the Administration to consider this incident an aggravating factor.

e. As of 24 May 2018, the Applicant knew that she was under investigation. Nevertheless, she continued to negotiate her terms of employment with UNFPA, her new employer, without disclosing that she was under investigation. As per the applicable rules, a good faith employee is expected to promptly provide such information to the new employer, given the seriousness of the facts investigated. The Applicant failed in this regard.

f. The Applicant claims that she did not disclose to UNFPA that she was under investigation because the investigation was confidential. This argument is disingenuous. The Applicant breached confidentiality when it suited her. For example, just seven minutes after she received the OIOS notification on 24 May 2018, the Applicant shared it with Ms. Domond and Ms. Belsky to try to blame them for her delay in reimbursing UN Women. OIOS' notification attached a pre-interview information sheet which included the need for confidentiality.

g. The Administration also considered several relevant mitigating factors.

As a result, the UNFPA Executive Director reasonably determined that



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*(i) Whether the facts on which the disciplinary measure is based have been established*

38. The Applicant admitted the facts during the investigations and during hearing before this Tribunal. She did not at any point deny using official UPS labels to ship her personal packages. This is what the Applicant said at trial:

I was pregnant and having a bit of complicated pregnancy, and Christmas was approaching and it was the first time that I wouldn't travel home. And, in Austria, I had a very very close friend, she [was] very ill from cancer and I wanted to ensure that my nephews, the sons of my sister, would receive something from me, since I couldn't go. And so I bought, you know

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standards of integrity which includes acting with honesty. In her submissions, she argued that she acted truthfully and with honesty. She gave reasons why she thought she could use Organization’s assets for personal benefit. In her oral testimony she informed the Tribunal that she had “completed 10 years of service at the P-4 level before the separation”.<sup>20</sup> The Tribunal has found in this Judgment that the Applicant’s justifications are not supported by any rule or regulation. She acted dishonestly in breach of integrity standards by using the Organization’s UPS facility for personal benefit without any lawful justification. The Respondent has established that the Respondent’s established in Count 1 constitute misconduct.

b. *Count 2 - By us business account with UPS, with neither prior authorization nor subsequent notice, to ship her personal packages; by taking discontinued UPS labels (prepopulated with UN Women account information) from ses; by billing the charges for those personal packages r the shipment with her personal credit card, she failed to use the property and assets of the Organization solely for o*

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During trial, the Applicant was not able to single out any particular person or authority who had a grudge against her neither for what reason. She did not adduce any evidence of bias or ill motive. The Tribunal finds that the A

to avoid paying. Thus, it was reasonable for the Administration to consider this incident an aggravating factor”<sup>27</sup>.

59. The Applicant claimed that this incident was not investigated and could not be used as an aggravating factor. The Tribunal agrees, contrary to the Respondent’s argument that there is no legal requirement that an aggravating factor must be investigated and established as misconduct, due process rights are inherent in the terms and conditions of employment. No action that has

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