
ADMINISTRATIVE TRIBUNAL

Judgement No. 510

Case No. 547: CAMARA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Ahmed Osman, Vice-President; Mr. Luis de Posadas Montero;

Whereas, at the request of Athanase Camara, a former staff member of the United Nations Development Programme, hereinafter referred to as UNDP, the President of the Tribunal, with the agreement of the Respondent, successively extended to 23 August and 23 November 1989, 23 February and 23 April 1990, the time-limit for the filing of an application to the Tribunal;

Whereas, on 20 April 1990, the Applicant filed an application, containing the following pleas:

"II. PLEAS

10. With regard to its competence and to procedure, the Applicant respectfully requests the Tribunal:

- (a) To find that it is competent to hear and pass judgement upon the present application under article 2 of its Statute;
- (b) To find that the present application is receivable under article 7 of its Statute;
- (c) To decide to hold oral proceedings of the Tribunal on the present application in accordance with article 8 of its Statute and Chapter IV of its Rules;

11. On the merits, the Applicant requests the Tribunal:

- (a) To find that Applicant's dismissal for misconduct, with effect from 1 January 1987, was wrongful and without just cause;

- (b) To find that the Administration of the United Nations Development Programme did not apply any part of the procedures set out in Chapter IX/20902 of the UNDP Personnel Manual for Locally Recruited Staff and therefore;
- (c) To find that the Applicant was denied equal treatment;
- (d) To order the Respondent to rescind his decision to dismiss the Applicant for misconduct;
- (e) To order the Respondent to reinstate Applicant into the employ of the United Nations Development Programme, Conakry, Republic of Guinea with the effective date of 1 January 1987;
- (f) To order the Respondent to pay the Applicant full salary and allowances as of 1 January 1987;
- (g) To order the Respondent to reimburse Applicant all monies which were wrongfully and without just cause, deducted from his salary for a crime of which he was innocent and was proven to have been committed by another staff member for whose actions he cannot be held responsible;
- (h) To order the Respondent to reimburse Applicant all monies which were, wrongfully and without just cause, deducted from his salary by reason of the alleged forgery of which he was innocent."

Whereas the Respondent filed his answer on 2 October 1990;

Whereas the Applicant filed written observations on 14 January 1991;

Whereas, on 1 February 1991, the President of the Tribunal ruled that no oral proceedings would be held in the case;

Whereas, on 21 February 1991, the Tribunal put questions to the Respondent and on 22 February 1991, he provided answers thereto;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP on 19 June 1975, as a locally recruited Librarian/Accounts Clerk at the Conakry Office.

He served on a succession of short, fixed-term appointments until 1 January 1977, when he was offered a one-year fixed-term appointment that was successively extended for further one-year fixed-term periods until 31 December 1983.

In a memorandum dated 13 December 1983, the Applicant's supervisor informed the Applicant, through the Resident Representative, that, as he was dissatisfied with his work, he would

extend his appointment for six months only, on a trial basis, leaving it to be decided later whether or not to extend him further.

The Applicant's appointment was subsequently extended for further fixed-term periods, ranging from six months to two months. He separated from the service of UNDP on 31 March 1986, when he was dismissed for misconduct.

During the first half of 1985, the Resident Representative determined that several cheques had been stolen from the office on account of the Applicant's carelessness. A decision was taken at the time to deduct from the Applicant's salary the amount corresponding to two cheques which had been cashed by the perpetrator of the theft.

Also, during the first half of 1985, Rodolfo Scalla, a Food and Agricultural Organization (FAO) expert who had worked on a UNDP project in Conakry during 1984, asked FAO to intercede on his behalf with UNDP in order to obtain payment of certain sums, corresponding to the portion of his salary payable in local currency, that he had been unable to receive during his stay in Conakry. The Resident Representative in Conakry informed the FAO authorities that no payments were pending since Mr. Scalla had been paid the portion of his salary payable in local currency on 30 and 31 October 1984, by cheque. The Resident Representative submitted cancelled cheques drawn on the Central Bank of Guinea to the order of Mr. Scalla as proof thereof. On the reverse side of the cheques were Mr. Scalla's endorsement, his request that they be cashed by the Applicant, as well as the Bank's statement to the effect that payment had been made to the Applicant. Upon reviewing the cheques, Mr. Scalla stated in a letter dated 16 September 1985, to the Chief of Payments Authorization Branch, FAO, that the endorsements on the cheques were forged. In support of his contention, he submitted specimens of his signature.

On 11 March 1986, the Resident Representative asked the Applicant to provide his explanation of the facts. In a reply dated 12 March 1986, the Applicant asserted that he had cashed the cheques at Mr. Scalla's request and had given him the money. On 11 April

1986, the Resident Representative informed Headquarters of the Applicant's explanation. He stated that since he was unable to verify the authenticity of the signatures, he was not in a position "to apportion blame". He sought Headquarters' advice and recommended that FAO should make no payments to Mr. Scalla, pending the finalization of the investigation.

In a cable dated 7 May 1986, the Director, FAO Financial Services Division, advised UNDP Headquarters and the Resident Representative in Conakry, that Mr. Scalla had "reconfirmed" that he had never authorized the Applicant to cash cheques on his behalf, nor had he ever endorsed the cheques or received any money from the Applicant. In addition, he had received a sworn affidavit, containing a calligraphy report, attesting "without doubt" that Mr. Scalla's signature had been forged. He was therefore unable to withhold payment to Mr. Scalla any further.

On 11 June 1986, the Director of Finance, UNDP, requested the Resident Representative to conduct an investigation of possible forgery based on the calligraphy report provided by the FAO. In a cable dated 16 June 1986, the Resident Representative informed the Personnel Officer, as well as the Director of Finance, that he had decided to suspend the Applicant with pay due to serious misconduct and misappropriation of official funds, pending further investigation. In a letter dated 15 July 1986, he set forth the grounds for his decision. He referred to the calligraphy report in Mr. Scalla's case, as well as to "cases in the past where the [Applicant's] honesty and integrity were questioned". He specifically mentioned the prior case of stolen cheques which had prompted him to accuse the Applicant of "gross negligence". He confirmed his decision to "suspend [the Applicant] immediately with pay pending Headquarters approval for separation from service".

In a letter dated 23 July 1986, the Resident Representative ad interim informed the Personnel Officer at Headquarters that he had discovered further evidence of the Applicant's dishonesty in connection with the payment of salaries to two other FAO experts, Mr. Westinga, and Mr. P. Grenereau, to whom cheques had not been

delivered, even though the relevant payroll disbursement vouchers bore their signatures. He attached "self-explanatory" letters from both the experts. Mr. Westinga asserted that the signature on the payroll voucher was not his own, and that when he had inquired of the Applicant the whereabouts of his cheque, the Applicant had produced it from a drawer. As regards Mr. Grenereau, he asserted that he had never signed a payroll voucher. The Applicant, without any authority, had ordered a stop payment on the cheque, action which indicated to the Resident Representative that "he must have stolen the cheque".

On 8 August 1986, the Chief, Field Office Accounts Unit, Division of Finance (DOF), UNDP, and the Roving Finance Officer, DOF, UNDP, submitted a joint report on a mission they had undertaken to Conakry, in July 1986, to investigate a series of cases of stolen cheques at the Conakry Office. In addition, they investigated the alleged forging of the endorsement on Mr. Scalla's cheques, as well as the question of cheques not received by the experts Westinga and Grenereau. In their report on the Scalla, Westinga and Grenereau cases, they concluded that:

"... it would appear that Mr. Camara was involved in these cases of misappropriation and unauthorized withholdings of funds. We therefore believe that the matters discussed above should be considered in determining whether disciplinary action should be initiated against him. Original documentation with Mr. Camara's handwriting as well as those of Messrs. Westinga and Grenereau have been submitted to the Internal Audit Section for their consideration."

Later in August, the UNDP Internal Audit Section, Division for Audit and Management Review (DAMR), consulted an expert in handwriting analysis (the "Manhattan Handwriting Consultant" firm).

The reports from this firm concluded that the Applicant had in fact endorsed the two cheques which he claimed were endorsed by Mr. Scalla, and that he had also forged Mr. Westinga's name on a payroll form to obtain Mr. Westinga's cheque. However, the report concluded that it was unlikely that the Applicant had forged Mr. Grenereau's signature on the payroll voucher.

In a memorandum dated 4 December 1986, the Director, Division of Personnel, recommended to the UNDP Administrator that the Applicant be dismissed for misconduct. In support of his recommendation, he explained the circumstances of the Scalla case, as well as the case of the experts Grenereau and Westinga. In addition, he noted that the Administration had "carefully reviewed [the] matter including the staff member's previous service record and found that [the Applicant had] a history of questionable performance". He also recommended that no termination indemnity be paid to the Applicant under Annex III(c) to the Staff Regulations and Rules. On 10 December 1986, the Administrator approved the recommendations.

On 11 December 1986, the Senior Policy Officer advised the Resident Representative that the Administrator had decided to dismiss the Applicant for misconduct arising from his misappropriation of two official cheques payable to Mr. Scalla. He instructed him to withhold payment of any final entitlements due to the Applicant and to apply them against the Applicant's indebtedness to UNDP. This decision was communicated to the Applicant on 19 January 1987.

On 6 July 1987, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board submitted its report on 10 October 1988. The Board's conclusions and recommendation read as follows:

"Conclusions and Recommendation

26. The Panel concludes that there is no reason to reconsider the Administration's decision to dismiss the appellant for misconduct since there is substantial evidence that he committed acts which did not benefit his status as an international civil servant.
27. The Panel also concludes that the administrative decision of 11 December 1986 by which the UNDP Administrator dismissed the appellant for misconduct was justifiable on the basis of the evidence of the case.
28. The Panel further concludes that although the Administration did not strictly adhere to the requirements of due process set forth in the UNDP Personnel Manual, that failure did not

result in a substantive miscarriage of justice or injury to the appellant to warrant a recommendation for compensation.

29. Accordingly, the Panel makes no recommendation in support of the appeal."

On 13 October 1988, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided to maintain the contested decision and to take no further action in his case.

On 20 April 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decisions in 1985, to deduct from the Applicant's salary the amount that a colleague had misappropriated and in 1987, to dismiss the Applicant for alleged misconduct violate the Applicant's rights in that they were based on mere accusations and opinions not supported by sufficient evidence.

2. The above-mentioned decisions were not in accordance with due process of law.

3. The Respondent has failed to comply with the relevant procedures laid down in Chapter IX of the UNDP Personnel Manual.

Whereas the Respondent's principal contentions are:

1. The UN Charter and the Staff Regulations oblige the Secretary-General to select and retain staff of the highest standards of integrity and, therefore, he has the responsibility of determining definitively whether a staff member meets those standards.

2. The dismissal of the Applicant was preceded by ample opportunity for the Applicant to state his case, and the decision to dismiss him was not improperly motivated.

The Tribunal, having deliberated from 12 February to 28 February 1991, now pronounces the following judgement:

I. In his first substantive plea, the Applicant seeks the rescission of the Respondent's decision to dismiss him for misconduct with effect from 1 January 1987, under staff rule 110.3(b). The impugned decision results from specific charges levelled against the Applicant for alleged forgery and misappropriation of two official cheques payable to an FAO expert, Mr. Rodolfo Scalla. The Respondent considered the evidence against the Applicant conclusive and determined that the act of the Applicant constituted misconduct warranting dismissal.

II. Since this is a disciplinary case, it is pertinent to recall first the established jurisprudence of the Tribunal relevant to this case.

1. The Tribunal has consistently held that the Secretary-General has broad discretionary powers with regard to disciplinary matters and this includes determination of what constitutes misconduct, as well as the appropriate discipline.

2. However, the Tribunal has established its own competence to review such decisions. For example:

(a) In cases of failure to accord due process to the affected staff member before reaching a decision; or

(b) In cases where such a decision is based on a mistake of fact, or is arbitrary or is motivated by prejudice or by other extraneous considerations. (Cf. Judgements No. 210, Reid (1976), para IV, and No. 394, Armijo (1987), para. XII).

III. The Applicant, in this case, vehemently denies the charges, insists on his innocence and contests the decision on the following grounds:

1. It was wrongful and without justification;

2. The Respondent did not apply any of the procedures set out in Chapter IX, Section 20902 of the UNDP Personnel Manual for locally recruited staff and therefore,

3. The Applicant was denied equal treatment.

Those arguments, if valid, would amount to a claim of mistake of fact and lack of due process, rendering the decision reviewable by the Tribunal.

IV. In examining the case, the Tribunal notes that there is one fact beyond dispute. The Applicant acknowledges having cashed Mr. Scalla's two cheques. Apart from that, the Applicant and Mr. Scalla advance two completely opposing versions of the truth.

V. The Applicant claims that:

- (a) Mr. Scalla had signed the relevant disbursement voucher;
- (b) He did indeed cash the two cheques, but on the authority of Mr. Scalla, who had endorsed both cheques with an order to pay the sums to the Applicant.

VI. The Tribunal notes that on the back of the two cheques there is Mr. Scalla's endorsement, together with an order to pay the sum to the Applicant, as well as a statement by the bank to the effect that payments were made to the Applicant.

The endorsement and the cashing of the first cheque was on 3 November 1984 and of the second cheque on 8 December 1984. Therefore, it is a fact that on 3 November and 8 December 1984, the Applicant had in his possession the amount of the two cheques which he was supposed to remit to Mr. Scalla. The Applicant claims in this regard that Mr. Scalla received these amounts from his hands in both instances. In addition, the Tribunal notes that the Applicant fully identified himself at the bank when cashing the two cheques.

VII. The FAO expert, Mr. Scalla, on his part, insists that:

- (a) He never endorsed the two cheques in question;
- (b) He never gave authority to the Applicant; or

(c) Received money in exchange for the two cheques.

To confirm his affirmations, Mr. Scalla sent to UNDP, Conakry, nine specimens of his signature. He further submitted a report from a handwriting expert confirming that his endorsements were forged.

VIII. Confronted with a situation where it was the word of Mr. Scalla against the Applicant's, the Administration, in August 1986, submitted the matter to "Manhattan Handwriting Consultant", a New York firm, to perform handwriting analysis in order to determine whether the Applicant forged the signature of the FAO expert in question. The report from "Manhattan Handwriting Consultant" dated 1 September 1986, concluded that the Applicant had endorsed the two cheques which he claimed were endorsed by Mr. Scalla. The Tribunal notes that the experts were not asked specifically to verify the handwriting of the order to pay the sums on both cheques to the Applicant.

IX. On the strength of that report, the Respondent concluded that the culpability of the Applicant had been established, thus justifying the decision to dismiss him.

For such a decision to be considered valid, it must be shown that the staff member in question had been accorded full due process of law during the proceedings. The Tribunal will therefore examine if that was the case.

X. The Tribunal notes first that there is a procedure established by the Administration for dealing specifically with cases of misconduct for locally recruited staff members which is incorporated in Chapter IX, Section 20902 of the UNDP Personnel Manual.

The procedure laid down in the UNDP Personnel Manual contains safeguards for the staff member, intended to protect his or her rights, to secure an objective examination of the case and to contribute to the formulation of equitable decisions.

XI. The Respondent states that the Applicant was invited in a letter dated 11 March 1986, to explain why he had cashed the two cheques purportedly endorsed by Mr. Scalla. The Applicant sent a letter the following day, on 12 March 1986, stating that he had cashed the two cheques under the authority of Mr. Scalla who, according to the Applicant, had endorsed the cheques with an order for payment to the Applicant.

The Respondent took the view that the Applicant thus understood the charges against him and that he offered an explanation. Therefore, the Applicant was accorded due process.

XII. The Tribunal cannot consider the Respondent's view as sufficient to absolve the Administration from abiding by all the rules and procedures set out in the UNDP Personnel Manual. The fact that the Applicant was questioned and gave an explanation at the very early stage of the case is one thing, and the orderly and systematic application of the various steps enumerated in the UNDP Personnel Manual is a totally different thing.

XIII. This early questioning of the Applicant was not followed by the formulation of written charges of misconduct against him or by a request to give his version of the matter, or to suggest other persons of whom inquiry might be made and to call witnesses on his behalf, as paragraph 2 of Section 20902 of the UNDP Personnel Manual stipulates. None of these procedures were followed. On the contrary, when the Applicant proposed to call witnesses in his favour, they were not convoked.

XIV. According to paragraph 3 of Section 20902 of the UNDP Personnel Manual, the Applicant was entitled to obtain the advice of another staff member of his choice for the preparation of his defence. There is no indication that the Applicant was enabled to benefit from this guarantee.

XV. Paragraph 4 of Section 20902 of the UNDP Personnel Manual, refers to a very important and essential document required in cases of misconduct. It is the report to be prepared by the Resident Representative on the case. Paragraph 4 takes care to regulate the contents of the report, the modalities of its communication to the staff member and to the Director of Personnel and the Administrator of UNDP. The rules concerning the report contain a number of guarantees for the rights of staff members to defend themselves.

The Tribunal notes that this report, as provided for in paragraphs 4, 5 and 6, was never prepared, thus, infringing on the rights of the Applicant to full and equal protection under the procedure established by the Administration.

XVI. The Tribunal notes that this lack of due process shown during the course of the proceedings was repeated during the final disposal of the case by the Administrator.

In the confidential memorandum of 4 December 1986, setting the stage for the Applicant's dismissal for misconduct in connection with Mr. Scalla's cheques, the Tribunal finds that:

Firstly: Previous cases of negligence and deficient performance were linked to the case of misconduct, though they had no relevance to the case.

Secondly: In the same memorandum, the allegations made against the Applicant, concerning two other experts, Mr. Westinga and Mr. Grenereau, were presented to the Administrator as established facts, without subjecting them to the procedures provided for in the UNDP Personnel Manual. Thus, the isolated act of alleged misconduct concerning the two cheques of Mr. Scalla, was extended to include other allegations of misconduct and was enlarged to encompass unrelated cases of poor performance; all this while the Applicant was unaware of this adverse development and without an opportunity to defend himself. In these circumstances, the Tribunal considers that other matters were improperly added to the specific allegation of misconduct related to Mr. Scalla's cheques, thus unduly and unjustly aggravating the Applicant's situation.

XVII. Moreover, the Tribunal believes that the injection into the Scalla case of these matters may have acted as an aggravating circumstance, preventing him from receiving clemency from the Secretary-General, who refrained from exercising his discretionary power to grant the Applicant the indemnity provided for in Annex III(c) to the Staff Regulations. This is all the more serious if the Tribunal takes into consideration that the Scalla case is the first such case in the eleven years of service of the Applicant.

XVIII. For all the foregoing reasons, the Tribunal finds that the failure of the Administration to comply fully and without proper cause with the procedures set out in Chapter IX, Section 20902 of the UNDP Personnel Manual amounts to a denial of due process with regard to the decision of dismissal, and constitutes maladministration entitling the Applicant to compensation.

XIX. The Tribunal accordingly orders the Respondent to pay to the Applicant six months net base salary at the rate in effect on the date of this Judgement, as compensation for the maladministration and the injury from which he has suffered. To this, should be added, as restitution, an amount of US\$3,327.18, together with interest, if that amount was deducted from the Applicant's salary in connection with the cheques made out to Mr. Scalla.

XX. With regard to his plea 11(g), requesting the reimbursement of the money deducted from his salaries for his alleged negligence in an earlier case of stolen cheques, the Tribunal declares this plea irreceivable since it does not satisfy the conditions laid down in staff rule 111.2(a).

XXI. All other pleas are rejected.

(Signatures)

Roger PINTO

President

Ahmed OSMAN
Vice-President

Luis de POSADAS MONTERO
Member

New York, 28 February 1991

R. Maria VICIEN-MILBURN
Executive Secretary