

Translated from French

ADMINISTRATIVE TRIBUNAL

Judgement No. 797

Case No. 884: Bouras

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry, Vice-President;
Mr. Mikuin Leliel Balanda;

Whereas, on 12 June 1995, Mohammed Chérif Bouras, a former staff member of the United Nations, filed an application which did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 26 September 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested the Tribunal, inter alia,

"Principally:

"To overturn and quash the decision [terminating his employment], rendered on 9 March 1995 by the Under-Secretary-General for Administration and Management....

"To order [his] reinstatement in the service of the United Nations.

"To pay [him] a fair indemnity equivalent to [his] base salary for the period in which [he was] suspended....

"To review the documentary evidence and statements presented in the context of the proceedings opened by the Joint Disciplinary Committee of the United Nations Office [at Geneva].

"To hand down a written censure by the Secretary-General, reminding staff members of their obligations towards the United Nations.

"To declare a suspension without pay for a period of one year."

Whereas the Respondent filed his answer on 20 June 1996;

Whereas, on 30 October 1996, the President of the Tribunal decided that there would be no oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Office at Geneva on 7 July 1980 as a distribution clerk at the G-1 level, on the basis of successive fixed-term contracts, until 1 January 1992, when he was awarded a permanent contract. In the meantime, he had been transferred to the United Nations Postal Administration as a clerk. On 1 August 1991 his functional title was changed to administrative agent.

In his answer dated 19 May 1996, the Respondent testified that "the Administration of the United Nations Office at Geneva rebuked the Applicant for his absenteeism and non-observance of working hours, his disrespectful attitude towards his superiors and a lack of responsibility in the performance of the tasks assigned to him". The Applicant was accused of fraud and breach of trust and of having exercised the functions of a financial adviser without the prior approval of the Secretary-General.

The Applicant was informed on 14 March 1994 by the Director of the Division of Administration of the United Nations Office at Geneva that "in view of the gravity of the allegations made against [him], the Secretary-General has decided, in the interest of the Organization, to suspend [him] from [his] duties without pay for the duration of the investigation without prejudice to [his] rights, in accordance with staff rule 110.2. The duration of this suspension will probably be three months."

In a registered letter dated 30 March 1994, the Applicant explained that "...towards the end of 1989, [he] made the acquaintance of [a Swiss national]...after several meetings, [they] became lovers...[she] gave him the sums to which she refers, sums [which they] spent, for the most part, together." He added that "under no circumstances was [he] her financial adviser".

In a letter dated 12 May 1994, the Director of Personnel informed the Applicant of the referral of the case to the Joint Disciplinary Committee and of the nature of the allegations, in accordance with paragraph 6 (a) of administrative instruction ST/AI/371.

The grievances cited by the Administration against the Applicant, as set out in the aforesaid letter of 12 May 1994, are as follows:

"a. [The Applicant allegedly] obtain[ed] substantial sums from a Swiss national, on the basis of his representations that he would invest the funds for her and make efforts to obtain a high return on her investment.

Despite repeated requests from [the Swiss national] and her attorney, [the Applicant allegedly] has neither returned the funds nor accounted for them. [He] never was authorized to carry out outside activities as a financial adviser....

"b. insubordination and deliberate disregard of his obligations as a staff

member in that he executed in an irresponsible manner the tasks assigned to him by the Postal Administration in Geneva, he repeatedly absented himself without authorization, and he demonstrated a lack of respect for his superiors and colleagues, whom he threatened on several occasions. Such conduct would constitute a serious violation of the obligations under his Oath of Office and staff regulation 1.1 to regulate his conduct with the interests of the United Nations only in view, as well as a violation of staff regulations 1.2 and 1.4."

In a letter dated 16 August 1994, the Applicant noted that "no proceedings are before the Genevan courts in this matter concerning a person with whom I was romantically involved."

In a letter dated 27 August 1993, the Applicant explained that he was subject to "hostility from [his supervisor]". He further asserted that: "When [he had] made presentations alone in 1992, [he had] received offers of bargains and commissions from certain merchants. They told [him] in confidence that such commissions had been paid in the past, particularly to [this supervisor]....As to [his] hours and alleged absences, [he] request[s] verification. [My supervisor] rebukes me for absences when he is absent himself...."

The Joint Disciplinary Committee adopted its report on 6 February 1995. Its conclusions and recommendations read, in part, as follows:

"272. If [any] new facts are deemed to be relevant or related to the allegations, the Panel can and should take them into consideration in accordance with the jurisprudence of the United Nations Administrative Tribunal (Judgement No. 356, Giscombe [1985])....

"274. In the case under consideration, the Panel has concluded that new evidence and facts brought to its attention are related to the original allegations, and that they therefore form part of this disciplinary file.

"275. In the light of the foregoing, the Panel notes that the allegations made against [the Applicant] are as follows:

(a) Carrying on an outside activity without the prior approval of the Secretary-General:

(i) Fraud, breach of trust and carrying on commercial activities without prior approval;

(ii) Exercising the functions of vice-chairman and chairman of the board of directors of a commercial and financial enterprise;

(iii) Operating a shoe store in Geneva.

(b) Conduct incompatible with the standards required of international

staff members in the Secretariat and in private life:

- (i) Insubordination and showing disrespect for his colleagues;
- (ii) Executing in an irresponsible manner the tasks assigned to him;
- (iii) Absenteeism and failure to observe working hours;
- (iv) Failure to pay his personal debts.

"276. The Panel believes, in the light of the photocopies of the cheques,...and [the Applicant's] inconsistent and incoherent statements, that there is strong presumptive evidence of fraud and breach of trust....[The Applicant] violated the standards of conduct required of all international staff members by placing the United Nations in an awkward situation.

"277. Moreover, the Panel notes that [the Applicant] has, since 12 July 1993, exercised the functions of chairman of the board of directors [of a corporation],...whose headquarters is located precisely at the staff member's personal address. The Panel notes that [the Applicant] never informed the Organization of such an activity....

"281. Lastly, the Panel notes that [the Applicant] is the manager and signer of the lease of a shoe store...in Geneva. The Panel must once again observe that the staff member never informed the Organization of such activities and never requested approval from the Secretary-General in order to carry on the aforesaid activities; it finds that [the Applicant], by his actions, violated staff rule 101.6 and the standards of conduct required of international staff members....

"282. The Panel notes that on several occasions in 1986, 1989 and 1993, [the Applicant] behaved in an insubordinate manner towards his superiors.

"283. He also behaved aggressively and on several occasions threatened and insulted his colleagues....

"284. With regard to the insults and threats, the Panel also wishes to stress that [the Applicant] demonstrated the same type of conduct before it,...The Panel strongly disapproves of the threats and false allegations which [the Applicant] made twice against the Representative of the Secretary-General....

"288. With regard to the flagrant absenteeism and failure to observe working hours, the Panel notes that, while such acts gave rise to numerous memorandums and were stressed by his superiors in several periodic reports, the staff member did not change his conduct....

"289. Lastly, the staff member evinced bad faith in his relations with his

creditors and paid his debts with unreasonable delay, thus creating an excess workload for some units of the Organization and tarnishing its public image....

"290. In the light of the foregoing, and after careful consideration of the facts, documentary evidence and statements, the Panel finds that [the Applicant] engaged in serious misconduct, that he acted in a manner contrary to the general obligations of staff members set out in article I of the Staff Regulations, that there is presumptive evidence of fraud, that he carried on outside activities without the prior approval of the Secretary-General, that he threatened other staff members on several occasions and, lastly, that by his conduct he tarnished the image of the Organization.

"291. Accordingly, the Panel recommends to the Secretary-General the measure which it deems appropriate in the light of the gravity and massive nature of the facts, namely, separation from service without notice."

The report of the Joint Disciplinary Committee contained a dissenting opinion, which read, in part, as follows:

"(A)...the cash loan which the plaintiff made [to the Applicant]....

"I cannot endorse such allegations without other evidence than various letters from an attorney or photocopies of cheques. I find it surprising that [the Joint Disciplinary Committee] should be expected to act as a court in settling a dispute between two parties over an extraneous issue.

The Committee has neither the methods nor the objectives of a criminal court....

"In the absence of strict evidence, both parties should be given the benefit of the doubt, and I cannot endorse the extremely grave allegations against [the Applicant]....

"(B) As these new allegations [the Applicant's other outside activities] were not contained in the letter of 12 May 1994 addressed [to the Applicant], they cannot be considered by this Panel, but by another one, whose goal should be to examine these new allegations and to make such recommendations concerning [the Applicant] as may be necessary....

"(D) [The Applicant's] professional conduct is mentioned in paragraph (b) of the letter of 12 May 1994 from the Director of Personnel, but the Panel has been requested to examine the totality of [the Applicant's] professional conduct since he entered the United Nations as a distribution clerk, which was not envisaged in the aforesaid letter....

"Nevertheless, it appears from the statements of witnesses that [the Applicant] was negligent in his observance of working hours and, in

particular, addressed his colleagues in insulting terms,...

"(E) Lastly, an examination of [the Applicant's] professional conduct while he was assigned to the United Nations Postal Administration is a complex task, since the successive reports brought to the attention of the Panel are inconsistent, to say the least. These inconsistencies can be found over the course of his career, in which poor evaluations and threats not to renew his contracts have been followed by a good periodic report, the obtaining of a permanent contract, allegations of absenteeism and negligence, and a succession of favourable and unfavourable statements by witnesses at various hearings of the Joint Disciplinary Committee. Under these circumstances, it is difficult to evaluate the truth of the various allegations, the desire to ascribe to [the Applicant] some of the difficulties existing in this unit and [the Applicant's] real responsibility for these difficulties....

"I should also like to recommend, under staff rule 110.3, two disciplinary measures: first, a written censure by the Secretary-General, reminding the staff member of his obligations towards the Organization (having psychological significance), and second, suspension without pay for a period of one year (having more concrete implications)."

On 9 March 1995, the Under-Secretary-General for Administration and Management informed the Applicant of the Secretary-General's decision in the following terms:

"Following his analysis, the Secretary-General concurred with the unanimous conclusion of the members of the Panel that your professional conduct is unsatisfactory and warrants a harsh disciplinary measure. Moreover, your repeated absenteeism, recurring acts of insubordination towards your superiors, aggressive behaviour towards your colleagues and outside activities without prior approval (managing a shoe store, directing an enterprise) constitute further aggravating circumstances. Several of these outside activities affected the Organization, which in recent years was continually held accountable for your unpaid debts to outside creditors. Lastly, your abusive language towards your colleagues and superiors cannot be tolerated in the Organization.

"In the light of the foregoing, and after careful consideration of the facts and documents submitted, the Secretary-General has concluded that you performed your duties in a negligent manner, failed to comply with the obligations and duties of your office in accordance with article I of the Staff Regulations, and demonstrated serious misconduct in the observance of the standards of conduct and integrity required of an international staff member.

"Before proceeding with the choice of a disciplinary measure, due note was taken of the numerous past warnings which you have already received and

which too often went unheeded. To retain you in the service of the Organization following a suspension would serve no useful purpose in the light of the previous recurrences. Accordingly, the Secretary-General, in exercise of his discretionary power, has decided to terminate your appointment under staff rule 110.3 (vii), with payment of one month's net salary as compensation in lieu of notice."

Whereas the Applicant's principal contentions are as follows:

1. The Joint Disciplinary Committee took into account new allegations which are not admissible as they were not mentioned in the letter of 12 May 1994. These facts have no relationship or connection to the other grievances considered by the Committee. The Committee's decision is therefore based on contested and legally irrelevant facts.

2. The decision of the Joint Disciplinary Committee concerning the allegation of the Swiss national should be reconsidered, as the mere fact of receiving money from a third person is not contrary to the United Nations Staff Regulations.

3. The grievances were given improper consideration and interpreted in a careless manner. The Tribunal should therefore review the decision reached on the basis of these arguments.

Whereas the Respondent's principal contentions are as follows:

1. The Applicant demonstrates, at the very least, a disrespectful and insubordinate attitude towards his supervisor which cannot be tolerated by the United Nations.

2. The Applicant's absenteeism without prior approval and the fact that he never replied to the memorandums from his supervisors concerning normal working hours show his total lack of respect for his superiors, which constitutes a violation of staff regulation 1.2.

3. The Applicant never requested approval from the Secretary-General in order to function as chairman of the board of directors of a commercial enterprise. Moreover, the Applicant does not deny having held shares in this corporation. This unauthorized activity therefore constitutes a violation of staff rule 101.6 (a).

4. The Applicant's defence of the interests of the Boutique Nectar before a national court is in violation of staff regulation 1.4 and staff rule 101.6.

5. The Applicant had an opportunity to acquaint himself with the documents relating to the new facts and to submit his own comments. The rights of the defendant were therefore duly respected by the Joint Disciplinary

Committee.

The Tribunal, having deliberated from 30 October to 21 November 1996, now pronounces the following judgement:

I. The Applicant had been employed by the United Nations Office at Geneva since 7 July 1980. He has been dismissed without notice because of conduct deemed incompatible with the obligations of an international staff member.

II. He had been brought before the Joint Disciplinary Committee on the grounds of: (1) obtaining large sums from a Swiss national, ostensibly for the purpose of investment, but had neither returned nor accounted for these funds; (2) insubordination and lack of respect for his superiors; (3) repeated absences without prior approval; (4) acts of violence and threats against his colleagues; (5) executing the tasks assigned to him in an irresponsible manner, and (6) carrying on outside activities without prior approval.

The Applicant was consequently suspended for three months without pay.

III. The Joint Disciplinary Committee recommended his summary dismissal, but the Secretary-General rescinded this measure, granting to the Applicant compensation equivalent to one month's net base salary. It is this decision which the Applicant is impugning before this Tribunal.

IV. The Applicant requests that this decision be overturned and that he be reinstated in the service of the Organization and given fair compensation equivalent to the loss of salary sustained during his suspension. He further complains that not all of his procedural rights before the Joint Disciplinary Committee were respected.

The Respondent requests that the application be rejected on the grounds that the disciplinary measure was imposed on the Applicant in accordance with staff rule 110.3 (vii).

V. The Tribunal observes that the entire record of the proceeding before the Joint Disciplinary Committee had been made available to the Applicant. The Tribunal further notes that the Applicant had also, in accordance with the Staff Rules, been advised of his right to choose an attorney, and that he had in fact exercised this right. The fact that he himself delayed in announcing his choice can in no way be imputed to the Respondent.

The Tribunal thus considers that, contrary to the claims made by the Applicant before the Joint Disciplinary Committee, his rights to due process were fully respected.

VI. As to the merits, the Tribunal notes that the testimony concerning

the allegation of cash sums remitted by a Swiss national is highly inconsistent.

The Swiss national and her attorney state that the Applicant received the alleged sums both as a loan and for the purpose of investment. In the absence of evidence on this subject, and in the light of the inconsistencies to be found in the record, the Tribunal concludes that the Applicant should at least be given the benefit of the doubt.

VII. As to the other allegations made against the Applicant, the Tribunal first of all endorses the opinion of the Joint Disciplinary Committee. In the Committee's view, what has occurred is largely attributable to the fact that the Administration did not take timely steps to redress the situation as rapidly as possible; through its passivity, the Administration allowed the situation to deteriorate and become critical. These lapses on the part of the Administration do not, however, relieve the Applicant of his obligation to regulate his conduct in accordance with the standards with which an international staff member must comply.

VIII. The Tribunal notes that the allegations against the Applicant are well founded. With regard to outside activities, the Applicant has admitted to being chairman of the board of directors of a corporation whose headquarters is at his home address, and to having been the manager or shareholder of a store which, furthermore, constituted a specialized branch of activity for this corporation. The record has also shown that the Applicant had financial interests in a shoe store of which he was also the manager.

The fact that, according to the Applicant, several United Nations staff members also had interests in commercial enterprises or corporations or were associated with their management cannot justify such conduct since, in this case, the activity in question had not duly received prior approval from the competent authority, as required by the Staff Rules.

IX. As stated above, the Applicant's absenteeism and failure to observe working hours are flagrant, as are his aggressive behaviour and lack of respect for his superiors.

All of the above constitutes failure on the part of the Applicant to comply with the standards of conduct required of an international staff member.

X. It was thus legitimate for the Secretary-General to penalize the Applicant in exercise of his discretionary power, which the Tribunal has repeatedly recognized (Judgement No. 510, Camara (1991)) and in which it may not interfere (Judgement No. 448, Large (1989), para. VI). It is barred from doing so except in cases where the Secretary-General has acted in a biased manner or from improper motives or where his decision has been vitiated by other external circumstances (Judgement No. 457, Anderson (1989), para. 2).

The Tribunal also wishes to point out that even the member of the Joint Disciplinary Committee who lodged a dissenting opinion in favour of the

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Applicant was of the view that the Applicant's general conduct should be penalized.

XI. The Applicant has not demonstrated in this case that the decision to impose the measure to which he has been subjected was influenced by external circumstances.

XII. For these reasons, the Tribunal rejects the application.

(Signatures)

Samar Sen
President

Hubert Thierry
Vice-President

Mikuin Leliel Balanda
Member

New York, 21 November 1996

R. Maria Vicien-Milburn
Executive Secretary

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