



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 898

Case No. 958: UGGLA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Chittharanjan
Felix Amerasinghe; Mr. Kevin Haugh;

Whereas, on 12 September 1996, Fawaz Ugula, a former staff member of the
United Nations, filed an application that did not fulfil all the formal requirements of
article 7 of the Rules of the Tribunal;

Whereas, on 24 December 1996, the Applicant, after making the necessary
corrections, again filed an application requesting the Tribunal, inter alia:

“[To reconsider whether the punishment meted out to me for my
alleged transgression should be reduced;

And to order the Respondent to:]

- Reinstat[e] me in my post or ... transfer... me, permanently or
temporarily, to any UN mission...

- Pay... me all my salaries during my work suspension.”

Whereas the Respondent filed his answer on 2 June 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Disengagement

Observer Force (UNDOF) in Damascus, on 21 January 1988, on a one-month fixed-term appointment as an Electrician, at the G-4 level. His appointment was successively extended until 1 April 1990, when he was promoted as Special Equipment Supervisor/Senior Electrician, at the G-5 level. From 5 September 1991 to 13 January 1992, the Applicant was temporarily assigned to MINURSO, Western Sahara. From 12 May 1992 to 26 November 1993, he was temporarily assigned to UNTAC, Cambodia. He was then detailed to UNAMIR, Kigali until 10 September 1994. He was separated from service on 27 September 1996.

During the period from May 1992 to September 1994, the Applicant was detailed from his home country and was thus eligible for international benefits, including education grant. On 29 May 1995, the Applicant signed and submitted a “Request for Payment of Education Grant” form (P.45), requesting payment for two of his children, for the school year 1993-1994, in the amount of SP [Syrian pounds] 6,500 per child. He also submitted two “Certificate of Attendance and Costs and Receipt for Payments” forms (P.41 forms). On each P.41 form, the Applicant had indicated that the school had charged as follows: “Admission and Registration: SP 1500”; “Tuition: SP 3500”; “Examination/Diploma: SP 1500”. Each form also indicated that “payments were made by the staff member to the institution” as follows: “SP 1500, Sep 1993”, “SP 3500, Dec 1993”, and “SP 1000 [sic], May 1994.”

Each form had been stamped with the school seal and signed by the school’s Director (also referred to herein as “Principal”). On 31 May 1995, an officer signed the P.45 form on behalf of the Assistant Secretary-General, Office of Human Resources Management (OHRM), with a cover memorandum indicating that the Applicant was “entitled to receive payment of education grant”.

On 1 June 1995, the Director of the children's school signed a statement in which she informed the Administration as follows:

“[The form for the two children] was signed by me and stamped by the official school's stamp before recording any amount for that [form] ... The mother of the two students requested me to sign ... [The school] did not receive any education or examination fees because this institution is supported by the government.”

On 6 July 1995, the Chief Administrative Officer (CAO), UNDOF, wrote to the Controller, to the Assistant-Secretary-General, OHRM, to the Director, Office of Internal Oversight Services, and to the Director and the Chief, Field Administration and Logistics Division “in accordance with the procedures in reporting cases of fraud or presumptive fraud ... and also in accordance with ST/AI/371 ...”, notifying them of the facts related to the Applicant's claim for the payment of an education grant and stating that UNDOF would conduct a formal investigation “unless advised to the contrary”.

On 11 July 1995, the CAO informed the Applicant that when the Administration was processing his claim, “it was noted that two different typewriters were used in completing the two P.41 forms” and that “[t]o ascertain the correctness of the entries in those forms, an appointment was made by UNDOF with the Principal of the School who signed the forms.” He further informed the Applicant that the Principal had stated that the amounts claimed by the Applicant were not entered on the form by her and that such amounts “were not charged by, and were not paid by [the Applicant] to the school since it provided free education to students.” The CAO further informed the Applicant, “Since it now appears that you had attempted or possibly intended to defraud the United Nations by the filing of fraudulent Education Grant Claims ... you have the right to respond and to produce countervailing evidence in writing ... not later than 18 July 1995.” The Applicant was also informed of his right to the assistance of another staff member or retired staff member in preparing his responses.

On 18 July 1995, the Applicant wrote to the CAO stating that he had “come to realize [his] mistake” after receiving the CAO’s memorandum. The Applicant explained:

“... I had no intention of defrauding the UN, I have received no money to date, I have genuine documented education expenses of [SP] 12,245 [for books and private tutoring sessions], I have never before filled in an education expenses form, I have never been advised of the proper way to claim the expenses, and I included the expenses in the P.41 form for simplicity and out of ignorance.”

On 26 July 1995, the CAO sent a report on the investigation conducted by UNDOF to the Controller and to the Assistant Secretary-General, OHRM. According to the CAO, on that same day, the CAO interviewed the Applicant in the presence of the Chief Civilian Personnel and Travel Officer and a locally recruited staff member chosen by the Applicant. The CAO describes the interview, in part, as follows:

“When asked why he had to use two typewriters, he stated that initially he completed the upper and lower portions of the form P.41 and later, after consulting and receiving advice from a colleague, he indicated the amounts in question by the use of his typewriter at home. ... [The Applicant stated] that he indicated the amounts [on the P.41 form] prior to the signature, dating and sealing of the form by the Principal and that he explained the reasons to the Principal.”

The CAO noted in the report that the Principal had denied seeing any amounts filled in on the form. The CAO further noted that the Applicant had submitted four receipts (in Arabic with unofficial English translations). One of the receipts, from the “Syrian Arab Republic General Establishment for school printed books, Damascus Branch”, dated “20/5/1993”, indicated an amount of SP 245. The other receipts, from an alleged tutor, were undated but indicated a total amount of SP 12,000 for lessons given to the Applicant’s two children during the 1993-1994 school year.

On 28 July 1995, the Deputy to the Assistant Secretary-General, OHRM, sent to the Applicant a memorandum entitled “Allegations of Misconduct”, charging him

with

“false certification, fraud, and misrepresentation.” The Applicant was asked to provide a written statement or explanation within two weeks. He was further advised of his right to the assistance of any staff member or retired staff member in preparing his written statement. On 1 September 1995, the Director, Specialist Services Division, OHRM, sent the Applicant a copy of the CAO’s investigation report dated 26 July 1995 with its attachments, and asked for his written comments on the additional documentation within two weeks. He was again advised of his right to the assistance of a staff member or retired staff member.

On 27 August 1995, the Applicant submitted his comments on the allegations to the Deputy to the Assistant Secretary-General, OHRM. The Applicant stated that “the sums mentioned in application P.41 were only for private lessons, and not for the school itself”. He also stated that, before completing the application, he had asked the Personnel Section “about the necessity of presenting the invoices relating to the cost of private lessons” and was told that “there was no necessity”.

On 26 September 1995, the Applicant submitted a further comment in response to the additional documentation provided to him by the Director, Specialist Services Division, OHRM. The Applicant denied any intention of misrepresenting data and stated that “all data mentioned in my said letter [of 27 August 1995] is very true to my best knowledge”. He further asserted that “my mistake is that I did not know how to fill in the P.41 form and I never received the proper advice from any other staff” and that he had “never come across any instructions relating to such matters” either in English or in Arabic.

On 18 January 1996, the Director, Specialist Services Division, OHRM, informed the Applicant that the Secretary-General had “decided to refer [his] case for advice to an ad hoc Joint Disciplinary Committee [JDC] to be constituted in Damascus under paragraph 14 of ST/AI/371.” He was further informed that he was being charged with “fail[ure] to meet

the standards of integrity expected of international civil servants, based on the evidence presented in the dossier” concerning “false certification of the P.45 and P.41 forms” and “fraud and misrepresentation with respect to the actual payment of school fees”.

On 26 June 1996, the ad hoc JDC issued its report. Its evaluation of the evidence, findings and recommendations read, in part, as follows:

“ ...

16. [The Applicant] admitted that when he included the amounts of money on the P.41 forms and presented them for signature, dating and sealing, he was aware that he did not receive any charges from the school and that he did not pay any money to the school. It was further concluded, that he did not have to know how to fill in the P.41 form, for [the] reason that it was to be completed by the school and not by him. His claim of lacking of familiarity with the forms and ignorance **is not supported by the Committee.**

The Committee further noted that since he admittedly did not pay the private tutor for Admission, Registration, Tuition, Examinations nor Diplomas, any misunderstandings on his part due to ignorance, would have resulted in him claiming all of the money as having been paid for tuition. Hence, he would have indicated an amount of money in the P.41 form only for tuition.

17. [The Applicant] did not complete Section III of the P.45 form - ‘Tuition in mother tongue’ nor ‘Other private tuition’. Although he claimed that the expenses he incurred were for private tuition in the mother tongue, he decided not to fill-in any of those areas in the form. The Committee therefore concluded, that under the circumstances, [the Applicant] knew that his so-called claim for private tuition would not have met the conditions established in ST/AI/181/Rev.10, and, decided to falsify his claim by including the money amounts in the P.41 forms that were signed, dated and sealed by the public school his children attended, free of any charges.

18. **The Committee is of the opinion**, that [the Applicant] decided to obtain money from the United Nations Organization at all cost, hence his reluctance to seek the proper advice from senior administrative staff as to the validity of his claims. The staff member is aware, that the Organization functions within

established rules and regulations and it is therefore necessary that one familiarize one's self with pertinent instructions before attempting to raise claims against the Organization.

19. The evidence relative to the use of two different typewriters in the completion of the P.41 forms, does not clearly indicate that [the Applicant] filled-in the amounts of money after the school principal had signed, dated and sealed the forms. **The Committee's view is**, that [the Applicant] should not have completed the form before nor after the signing, dating and sealing by the school's Principal.

Findings

20. [The Applicant], knowing that he did not pay any fees to the school for the Admission, Registration, Tuition nor Examination in connection with his children's education for the scholastic year 1993/94, engaged in the deliberate **false certification** of the amounts indicated on the P.41 and P.45 forms which he submitted to UNDOF for settlement.

21. In not completing Section III of the P.45 form, the staff member did not indicate that he engaged in the payment of private tuition fees for his two children. The deliberate falsification of the P.41 forms by including amounts of money in the forms that were to be endorsed, or were endorsed by the school's principal, and his decision to certify and submit the P.45 form together with the said P.41 forms for settlement of amounts of money he was **not** entitled to, is construed by the ad hoc JDC as **an attempt to defraud the United Nations Organization**. The Committee took note of the fact that the staff member did not notify the UNDOF Administration of any difficulties he encountered in filling the P.41 and P.45 forms.

22. **The Committee took note** of the staff member's expertise in his field of work and the contribution he has made to UNDOF. The staff member has been employed by the Organization since 1988 and is aware of the obligations on all staff members to conduct themselves in a manner befitting the standards of the Organization.

23. **The Committee nonetheless decided**, that since the staff member's integrity is in question, any recommendation for sanctions must take into consideration the highest standard of conduct and integrity expected by all members of the

Organization. The confirmation by the staff member, that he prepared and presented fraudulent documents (P.41 forms) to an institution of the host Government for endorsement, has been seen by the ad hoc Joint Disciplinary Committee as an act of misconduct.

24. **The ad hoc Joint Disciplinary Committee**, having taken all evidence of the case against [the Applicant] into consideration, and, having taken note of his past good record since becoming a member of the United Nations, decided that, notwithstanding the seriousness of the misconduct which may have warranted summary dismissal, by majority opinion of the members, **the non-renewal of his Fixed-Term Contract is recommended.**”

The JDC member nominated by UNDOF staff submitted the following separate opinion:

“25. I agree that there ha[ve] been mistakes committed, [the Applicant] has admitted that at every interview and memorandum that he has written. I believe that he paid to have his two sons in extra private tuition to improve their failing school grades. I know that Arabic is his mother tongue and his English is not good. He has the best skills and knowledge of all the locally employed staff members in his area of work in UNDOF and this has been recognized with his two tours of TDY. New replacements just do not have the same work attitude, skills and knowledge that is required and this has already been shown here. It is therefore in the best interests of the UN that he either have a reduction in grade or a written admonishment on his file and **not** be terminated from UN employment.”

On 20 August 1996, the Under-Secretary-General for Administration and Management transmitted to the Applicant the report of the ad hoc JDC, and informed him as follows:

“The Secretary-General has examined your case in the light of the Committee’s report. He has taken note of the findings of the Committee that you engaged in the deliberate false certification of the amounts indicated on the P.41 and P.45 educational grant forms which you submitted to the United Nations Disengagement Observer Force (UNDOF) for settlement and that your actions

constituted an attempt to defraud the United Nations Organization. He has also noted that the Committee did not support your claim that your actions were caused by lack of familiarity with the United Nations forms.

The Secretary-General has taken note that the Committee gave consideration to your good record with the United Nations and that the Committee recognized your awareness of the obligations of all staff members to conduct themselves in a manner befitting the standards of the Organization.

The Secretary-General has taken note of the finding of misconduct made by the Committee. He has further noted the recommendation contained in the majority opinion of the Committee that your fixed-term contract not be renewed and that, in making this recommendation, the majority of the Committee recognized that the seriousness of your misconduct may have warranted summary dismissal. The Secretary-General has also taken note of the separate opinion that you not be terminated from employment with the United Nations.

The Secretary-General has decided to accept the findings of the Committee regarding your actions. He has concluded that your conduct constituted a serious violation of the UN standards of conduct and integrity expected of each staff member of the Organization and that this misconduct is incompatible with continued service with the Organization.

Although in agreement with the majority opinion that you should not remain with the Organization, the recommendation of the non-renewal of your contract contained in that opinion is not an appropriate disciplinary sanction under staff rule 110.3(a). Therefore, the Secretary-General, pursuant to his discretionary authority to impose an appropriate disciplinary measure for misconduct, has decided to separate you from service with compensation in lieu of notice under staff regulation 10.2, paragraph 1 and staff rule 110.3(a)(vii) with effect from the date you receive this letter. The Secretary-General has also decided that, given the nature of the offence, no indemnity will be paid under Annex III(c)."

On 24 December 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The Applicant did not intend to submit false forms but simply made a mistake. He did not know how to fill out the forms properly because his knowledge of English is limited. The expenses listed on the forms were for books and private tutoring sessions for his children.

Whereas the Respondent's principal contentions are:

1. The Secretary-General's decision to dismiss the Applicant was a valid exercise of his wide discretionary authority in disciplinary matters.
2. The Applicant was accorded full due process in all stages of the proceedings.
3. The Secretary-General could validly conclude that the Applicant's conduct was incompatible with his continued service with the UN.

The Tribunal, having deliberated from 30 October to 20 November 1998, now pronounces the following judgement:

- I. The case arises from dismissal for fraud in connection with a claim by the Applicant for education grant benefits. The case concerns the imposition of disciplinary measures.
- II. As the Tribunal held in Judgements No. 890, Augustine (1998) and No. 897, Jhuthi (1998), the taking of disciplinary measures involves the exercise of a discretion

by the Administration but it is also the exercise of a quasi-judicial power. In disciplinary cases the Tribunal examines (i) whether the facts on which the disciplinary measures were based

have been established, (ii) whether they legally amount to serious misconduct or misconduct, (iii) whether there has been any substantive irregularity, (iv) whether there has been any procedural irregularity, (v) whether there was an improper motive or abuse of discretion in the imposition of the sanction, (vi) whether the sanction is legal, and (vii) whether the sanction imposed was disproportionate to the offence.

III. In this case the issues are:

(i) Whether the facts alleged by the Administration and on which the finding of misconduct was based have been established; and

(ii) Whether the sanction of dismissal was disproportionate to that misconduct.

IV. There is no disagreement as to the facts which are as follows: While the Applicant was on mission, he became eligible for international benefits, including education grants, in respect of the school year 1993/94. The Applicant submitted a completed Certificate of Attendance and Costs form (P.41) for two of his children, indicating that the school had charged for each child SP 1,500 for registration, SP 3,500 for tuition, and SP 1,500 for examination/diploma. He further indicated that he had made payments to the institution in three installments in September 1993, December 1993, and May 1994. The forms bore the seal of the school and the signature of the Principal. The Applicant also submitted a Request for Payment of Education Grant form (P.45), claiming SP 6,500 per child. The school that the children attended was a Government school, where tuition was free. The UNDOF Finance Section, when reviewing and processing the claims, noticed that two different typewriters had been used in filling out the forms. They contacted the Principal of the school to verify the accuracy of the amounts. The Principal stated that the school did not charge for admission, for tuition or for examination/diploma, and that the sums claimed had not been paid to the school. The Principal confirmed this in a written statement dated 1 June 1995.

When an investigation by UNDOF was initiated, the Applicant stated that he had made a mistake in filling out the form and explained that he had employed a private tutor, to whom he had paid SP 12,000, to give special instruction to his children. He said that he had no intention of defrauding the United Nations, but since he had never before filled out a P.41 form he had relied on incorrect advice from another staff member, whom he did not name because he did not want to implicate a colleague. He claimed that he had included the tutor's expenses on his P.41 form "for simplicity and out of ignorance". He also later claimed that he was not proficient in English, though the records showed that he had 70 per cent proficiency in English.

In answering questions, the Applicant stated that he had filled in the amounts on the P.41 form before taking the form to the school Principal for signature and had explained to her the reasons. This the Principal denied. He produced receipts in Arabic, with unofficial English translations, from the alleged tutor, for a total of SP 12,000 for the period 1993/94. The receipts are in the form of a "To whom it may concern" statement, and not contemporaneous. Asked whether the alleged tutor was a qualified teacher, the Applicant stated that anyone with a "Baccalaureate" degree could undertake private tutoring. Later the Applicant produced a certificate by the alleged tutor, stating that he had a Baccalaureate certificate, he had been in the military from 1979 to 1993, and was now giving private lessons to students at the primary level.

The Applicant repeated his previous explanation that he had paid the sums to the alleged private tutor. He stated that he had asked the Personnel Section, before submitting the claim, whether he should attach invoices, and was told that that was not necessary. He denied any intention of misrepresenting data, and he blamed the Finance Section for not challenging the P.41 form when he submitted it, so that he could have corrected it on the spot. He said he had never seen any instructions on education grant matters, either in English or in Arabic.

V. The principal issue in dispute is whether the Applicant had the intention of defrauding the Organization by making false declarations. The ad hoc JDC found that he did. The use of a different typewriter in filling in the amounts on the P.41 form supports the statement by the school Principal that she had signed a blank form. The Applicant's explanation for using two typewriters, namely that he completed the forms partly at home and partly at work, is not plausible in the light of the other evidence. This, in turn, leads the Tribunal to conclude that the Applicant intended to claim for school expenses rather than for private instruction. The Applicant's explanation for not using the proper form is not acceptable, as he was quite proficient in English and should and could have consulted the proper authorities on the matter. Thus, the evidence shows that, as found by the ad hoc JDC, there was in fact a deliberate falsification of the P.41 form. The Applicant's submission, with a certification, of the P.45 form together with the P.41 form, for monies to which he was not entitled, was an attempt to defraud the Organization.

VI. On the basis of these facts, the Tribunal concludes that there was misconduct on the part of the Applicant for which disciplinary action was warranted.

VII. As for the claim that the sanction of dismissal was disproportionate to the offence, the Tribunal notes that both the majority on the JDC and the dissenting member recommended a more lenient sanction than dismissal. However, the Administration decided to terminate the Applicant's contract immediately with payment of one month's salary. This sanction is fully in keeping with and not out of proportion to the gravity of the misconduct which consisted of dishonesty in attempting to defraud the Organization. The Tribunal has held, in cases of fraudulent claims for education benefits (Beyele, No. 429 (1988), Liu, No. 490 (1990), Djimbaye, No. 593 (1992)) and for dependency allowance (Patel, No. 850 (1997)), that dismissal is not too heavy a sanction. The element of fraudulent intent warrants the imposition of the sanction of dismissal.

VIII. For the above reasons, the Tribunal rejects the application.

(Signatures)

Mayer GABAY
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary