

Judgement No. 222*(Original: English)***Case No. 213:
Archibald****Against: The Secretary-General
of the United Nations**

Summary dismissal for serious misconduct of a staff member holding a permanent appointment.

The facts are not in dispute.—Staff Regulation 10.2.—Undoubted seriousness of the misconduct in this case.—In the absence of any contention of improper motivation, the Secretary-General's exercise of his discretion is not reviewable.—Staff Rule 110.3 (a).—Prior judgements of the Tribunal concerning summary dismissal.—Conduct of the Applicant was incompatible with continued membership of the staff.—Discretion of the Secretary-General to determine whether the interest of the service requires immediate and final separation.—The Tribunal cannot substitute its judgement for that of the Secretary-General in this connexion, provided that the decision is not arbitrary or based on a mistake or improperly motivated.—The Tribunal holds that its authority does not extend to a review of the contested decision.—Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. R. Venkataraman, President; Mr. Francis T. P. Plimpton, Vice-President; Mr. Endre Ustor; Mr. Francisco A. Forteza, alternate member;

Whereas at the request of Herman G. Archibald, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended successively to 25 November 1976, 16 December 1976 and 6 January 1977 the time-limit for the filing of an application to the Tribunal;

Whereas, on 6 January 1977, the Applicant filed an application the pleas of which read as follows:

“Applicant is contesting his summary dismissal by Respondent effective 9 October, 1974, and the conclusion and recommendation of the United Nations Joint Appeals Board contained in its report to the Secretary-General of 4 June, 1976, Report No. 280, Case No. 75-5, and the subsequent acceptance thereof by the Secretary-General, and respectfully requests the rescissions thereof.”

Whereas the Respondent filed his answer on 14 January 1977;

Whereas the facts in the case are as follows:

The Applicant was recruited by the United Nations on 25 October 1965 as a Messenger at the G-1 level in the Mail Operations Section, Communications, Archives and Records Service, Office of General Services, under a short-term appointment for the duration of the session of the General Assembly. On 5 April 1966 he re-entered the service of the United Nations in the same capacity under a fixed-term appointment for three months which was renewed on 5 July 1966. On 5 October 1966 he received a probationary appointment which was converted into a permanent appointment on 1 April 1968. On 1 May 1969 the Applicant was promoted to the G-2 level as Mail Clerk and on 1 February 1973 he was further promoted to the G-3 level. In all his periodic reports the Applicant was rated as an efficient staff member giving complete satisfaction. In the course of 1974 a number of complaints were received from customers of the United Nations Postal Administration (UNPA) regarding the loss of cash remittances enclosed in letters sent by them for the purchase of United Nations stamps. An

investigation was conducted by the United Nations into the matter and on 9 October 1974 Lieutenant Goldstein of the Security and Safety Section submitted to his Chief the following report:

"On 19 September 1974, Chief H. A. Trimble (Security and Safety Section) requested the writer to attend a meeting with him in the office of Mr. Virgil De Angelis (Chief, CMC [Commercial Management Service], Room 1861-A). Others present at the meeting were Mr. Yoshio Tagaya (Director, OGS [Office of General Services]), Mr. Hsien-tah Sie (Chief, CARS [Communications, Archives and Records Service]), Mr. Abraham Sterman (Deputy Chief, CMS), Mr. William Alexander (Chief, Oper. Section, CMS), Mr. Ole Hamann (Chief, UNPA), Mr. Jack Burns (Chief, Admin. Section, UNPA) and Mr. Walter Schwartz (Special Assistant, UNPA).

"The reason for the meeting was the discovery of the pilfering of money from envelopes which were addressed to the United Nations Postal Administration for the purchase of stamps and the implementation of an investigation of the matter.

"At the suggestion of Chief Trimble, it was decided that the writer and Mr. Schwartz jointly conduct an investigation and submit their findings to the concerned officials.

"On 1 October 1974, the writer and Mr. Schwartz prepared eight (8) test envelopes which contained marked money and order blanks for stamps from the United Nations Postal Administration of which four (4) envelopes were posted at the New York Grand Central Station of the United States Post Office for eventual delivery to the United Nations on 3 October 1974.

"The contents of the test envelopes were treated with detection powder, which is invisible to an individual, except by the use of an ultra-violet light which exposes the fluorescence in the powder.

"Of the four (4) posted test envelopes, only one was received by the Postal Administration with its money and order blank missing; however, the cachet envelopes were intact. The remaining three (3) test envelopes were missing.

"On 5 October 1974 at 1000 hours, the writer and Mr. Schwartz inspected the Incoming Mail Unit's work area, located in Room 1094, where first class mail is sorted by Mr. Herman Archibald (Mail Clerk, A+M [Administration and Management]/GS/CARS).

"With the use of the ultra-violet light, traces of the detection powder as well as some smudged fingerprints were discovered in the small compartments of the cabinet which is used for sorting first class mail. Also discovered with traces of detection powder were folded pieces of note paper and the ceramic cover of a pot in a compartment marked "Archie".

"The writer requested Lieutenant King ("B" Squad, Tour Platoon Duty Officer) and Mr. Peter Predun (Suprv., Mail Unit, A+M/GS/CARS), to report to Room 1094 in order to witness the aforementioned.

"The writer telephoned Chief Trimble at his residence and advised him of the detection and requested that permission be obtained from higher authority to interview Mr. Herman Archibald on 7 October 1974.

"On 7 October 1974 at a meeting between Chief Trimble and Mr. S. Salameh (Chief, Division of Personnel Admin.), Mr. Salameh requested that the investigation continue and that additional test envelopes be mailed in order to possibly secure additional evidence against Mr. Herman Archibald or other individuals who might be involved in this matter.

"On 8 October Mr. Schwartz arranged to have the remaining four (4) test

envelopes (of the original eight (8) envelopes) mailed from the United States Post Office Grand Central Station and placed in a locked U.S. Mail bag by a U.S. Postal Inspector for delivery to the United Nations on 8 October 1974 at 0730 hours.

"The locked bag was received and delivered to Mr. Archibald on that date. It was not until 1645 hours on 8 October that the envelopes in question were delivered to the UNPA office. It was then discovered by Mr. Schwartz that the money from three (3) envelopes was missing. The fourth envelope which was accidentally damaged and sealed (scotch tape) at the U.S. Post Office station and which was reported to Mr. Schwartz, was recovered with its contents intact.

"Chief Trimble apprised Mr. Salameh of the aforementioned developments and permission was given for the writer and Mr. Schwartz to interview Mr. Archibald in the presence of a Personnel Officer and a Staff Representative on 9 October 1974.

"On 9 October 1974 at 0930 hours, Chief Trimble held a briefing in his office regarding the interviewing of Mr. H. Archibald. In attendance were Mr. S. Y. Huang (Senior Personnel Officer), Assistant Chief C. T. J. Redman (Security), Mr. R. Chittenden (1st Vice Chairman, Staff Comm./Staff Council), Mr. W. Schwartz (UNPA), and the writer.

"On 9 October between 1000 and 1200 hours, Mr. Archibald (who was escorted from Room 1094 by the writer) was interviewed in the office of Assistant Chief Redman (Room C-110A). Present were the above-mentioned except Chief Trimble.

"During the interview and only after Mr. Archibald was confronted with the physical evidence which was gathered during the investigation, in particular, the items which were identified by the detection powder/ultra-violet light, did he admit to the assembled group that he did remove approximately three hundred dollars (\$300.00) from the envelopes which contained stamp orders to the UNPA (an approximate two (2) month period, end of August 1974 to the present). He further admitted that he had used the money for college tuition in September 1974 and that he had sent his mother some money, who resides in Jamaica, W.I.

"Mr. Archibald repeatedly claimed that he could not remember the exact dates when he had removed the money from the envelope, or the individual amounts that he had taken over a period of time.

"Mr. Archibald stated that he usually removed the money and the order blanks between 0730 and 0900 hours while in Room 1094 and prior to the arrival of other staff members who shared the room.

"He further stated that he would destroy the UNPA order blanks or other order instructions by tearing them into small pieces and then disposing of the paper in hampers which were temporarily stored on the 3rd basement loading platform.

"Inspection of Mr. Archibald's personal attache case revealed traces of detection powder on the inside compartments of the case as well as on the inside cover of his personal cheque book and on a five dollar (\$5.00) bill which he had removed from his cheque book. (Mr. Archibald does not carry a wallet.) The above was witnessed by the assembled group as previously stated and Mr. Schwartz exchanged the marked bill for another, which was agreeable with Mr. Archibald.

"After Mr. Archibald's admission to the theft of money and his personal explanation of how he accomplished it, which was witnessed by the assembled group, at the conclusion of the interview, he was asked by the writer to submit a written statement.

"Mr. Archibald requested that he be given some time to think and stated that he preferred to write the statement in a location other than the Security Office.

"Mr. Huang suggested that his request be granted, and Mr. Chittenden offered his staff committee office located in Room 546, where Mr. Archibald wrote the attached statement.

"The following staff members were present at the interview with Mr. Archibald which took place on 9 October 1974 between 1000 and 1200 hours in Room C-110 and agree with the summary of the interview outlined above."

"(Signature)"

"Mr. Cecil T. J. REDMAN
"Assistant Chief, Special Services Unit

"Mr. Walter SCHWARTZ
"Special Assistant, UNPA

"(Signature)"

"Mr. S. Y. HUANG
"Senior Personnel Officer

"(Signature)"

"Mr. Robert CHITTENDEN

"First Vice Chairman, Staff Comm./Staff Council"

Mr. Schwartz did not sign Lt. Goldstein's report but submitted on the same day his own report to the Chief of the Commercial Management Service. The Applicant's statement attached to Lt. Goldstein's report reads as follows:

"I accept all responsibilities for damages done to the postal administration mails due to the fact that I am the one that handles them.

"I am willing to refund any losses incurred by the Organization and I am willing to pay back the three hundred dollars.

"I realize that I have done wrong in my obligation to the United Nations and am asking for forgiveness and promise that it will never happen again.

"My whole life is built on the principles of the United Nations and I beg your forgiveness.

"I further promise to dedicate my life to the principles and well-being of the U.N. if I am given the chance."

The Applicant was immediately suspended from duty without pay. On 21 October 1974 the Assistant Secretary-General for Personnel Services advised him that the Secretary-General had decided after reviewing his case in the light of the investigation reports as well as his oral and written statements that he be summarily dismissed for serious misconduct under Staff Regulation 10.2 effective c.o.b. 9 October 1974 and had authorized that the amount of 309.78 dollars found missing from UNPA's mail be deducted from his separation payments in accordance with Staff Rule 103.18 (b). On 18 November 1974 the Applicant requested the Secretary-General to reconsider the decision of summary dismissal. His request was denied on 16 December 1974 and on 31 March 1975 he lodged an appeal with the Joint Appeals Board, which submitted its report on 4 June 1976. The Board's conclusions and recommendations read as follows:

"Conclusions and recommendations"

"56. The Board is of the opinion that Staff Regulation 10.2 and Staff Rule 110.3 (b) . . . invest the Secretary-General with the authority to determine whether 'serious misconduct' has occurred and to impose summary dismissal accordingly. In the present case he has invoked that authority. The Board finds that neither the authority nor the motivation for its exercise has been effectively challenged. The Board further finds that the actions of the appellant constituted misconduct both patent and serious, and required his immediate and final separation from the United Nations. For these reasons the Board decides to make no recommendation in support of the appeal."

On 20 July 1976 the Officer-in-Charge of Personnel Services informed the Applicant that the Secretary-General had decided to maintain the decision of summary dismissal

imposed on him and on 6 January 1977 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was, during the entire period of his employment with the United Nations, a loyal, devoted and efficient employee.

2. Since his dismissal the Applicant has been struggling at great financial and other expense to himself, to secure his reinstatement. In so doing, he has consistently re-affirmed his innocence of the charges against him and his great desire to resume his employment at the United Nations. A man would hardly devote so much time and effort and make such financial sacrifices unless he were both innocent of the charges against him and devoted to the United Nations.

3. The Applicant considers that his dismissal has virtually ruined his life. This strong reaction not only is some evidence of his innocence, but emphasizes the nature of his feelings for the United Nations. Substantial significance should be afforded to the attitude displayed by the Applicant in his so-called "confession", particularly from an organization which was established in order to protect and defend the essential humanity of all people everywhere.

4. The Applicant's presumption of innocence has never been adequately rebutted. In view of the circumstances presented by him to the Joint Appeals Board, the fact that the amount of the alleged pilferage has been paid by him to the United Nations, his extremely low annual salary, his near-perfect work record and his demonstrable loyalty and devotion to the United Nations, he should be afforded any and all benefit of the doubt and be reinstated.

5. Summary dismissal can only be justified where the misconduct is patent *and* where the interest of the service requires immediate and final separation. In view of the Applicant's long and spotless service, the interest of the service did not require immediate and final separation.

6. It does not seem either equitable or reasonable that the drastic remedy of summary dismissal should have been utilized in view of the Applicant's record.

Whereas the Respondent's principal contentions are:

1. The Applicant's contention that summary dismissal was an overly harsh disciplinary measure for his alleged misconduct presents no issue within the Tribunal's competence to determine.

2. Unlike the Joint Appeals Board, whose functions under Staff Regulation 11.1 extend to disciplinary cases, the Tribunal is not vested by its Statute with competence to review the Secretary-General's exercise of discretion in taking disciplinary action; the Tribunal's competence in disciplinary cases is limited to determining whether the Staff Regulations and Rules, including procedural requirements, have been violated and whether the disciplinary action was improperly motivated, or arbitrary, or based on mistake. Allegations that circumstances warrant leniency may be considered incidentally to the exercise of discretion in disciplinary cases—by the Secretary-General and bodies advisory to him—but provide no basis for invoking the Tribunal's jurisdiction under article 2, paragraph 1 of its Statute.

3. The Joint Appeals Board, whose report alluded to the Applicant's service record, not only concluded that the Secretary-General had acted within his authority under Staff Regulation 10.2 and without improper motivation and in accordance with appropriate procedure, but also made no recommendation for a different finding of fact or for a less severe disciplinary measure.

The Tribunal, having deliberated from 12 to 25 April 1977, now pronounces the following judgement:

I. The facts, as recited above, are not in dispute. The guilt of the Applicant is clear and in effect admitted; indeed, it is not denied in the application. The only question is as to the decision of the Secretary-General to impose summary dismissal. Staff Regulation 10.2 provides that the Secretary-General "may summarily dismiss a member of the staff for serious misconduct." Here the misconduct, theft from the mails, was certainly serious; in the absence of any contention of improper motivation (and here there has been none) the Secretary-General's exercise of the discretion conferred upon him by the Regulation is not reviewable.

II. Summary dismissal, by definition, dispenses with recourse to disciplinary procedures. This is recognized in Staff Rule 110.3 (a), which reads:

"Except in cases of summary dismissal, no staff member serving at Headquarters . . . shall be subject to disciplinary measures until the matter has been referred for advice to the Joint Disciplinary Committee . . ." (emphasis added)

III. The Tribunal in prior judgements has stated that the summary dismissal procedure was intended to deal with "acts obviously incompatible with continued membership of the staff" and that the normal disciplinary procedures should be dispensed with only in cases "where the misconduct is patent and where the interest of the service requires immediate and final dismissal" (Judgement No. 104: *Gillead*).

IV. Applying those principles to the present case, the Tribunal observes that the pilferage from the mails was not an isolated incident but one of a series which, if unchecked, could have led to greater losses. The Applicant's plea that the amount in question was small and that it had been made good does not mitigate the gravity of the offence. The Secretary-General's decision which implied that such conduct on the part of the Applicant was incompatible with continued membership of the staff cannot be said to be arbitrary or unreasonable.

V. The Applicant argues that he had a long and spotless service with the United Nations and that the prerequisite enunciated by the Tribunal for summary dismissal, namely that the interest of the service should require immediate and final separation, has not been met in his case.

VI. The Tribunal recognizes that the decision on what is in the interest of the service is within the discretion of the Secretary-General and that the Tribunal cannot substitute its judgement for that of the Secretary-General provided that the decision is not arbitrary or based on a mistake or improperly motivated. The Tribunal notes that the decision of the Secretary-General has not been challenged on any of those grounds and that only circumstances in mitigation of the penalty imposed have been pleaded in this case. The Tribunal therefore holds that its authority does not extend to a review of the decision of summary dismissal imposed on the Applicant by the Secretary-General in the exercise of his discretionary power.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

R. VENKATARAMAN

President

Francis T. P. PLIMPTON

Vice-President

Endre USTOR

Member

Geneva, 25 April 1977

Francisco A. FORTEZA

Alternate member

Jean HARDY

Executive Secretary