



Administrative Tribunal

Distr.
LIMITED

AT/DEC/1019
20 November 2001

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1019

Case No. 1096: SANGOYO

Against: The Secretary-General
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Mayer Gabay, President; Ms. Marsha A. Echols; Mr. Spyridon

Flogaitis;

Whereas, on 26 March 1999, Edwin C. Sangoyo, a former staff member of the United Nations Development Programme (UNDP), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 August 1999, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read as follows:

"II. PLEAS

[The] Applicant ... respectfully prays:

1. That the [United Nations] Administrative Tribunal review the decision of the UNDP Administrator ... (who had accepted all the recommendations of the Disciplinary Committee), separating the Applicant immediately from ... service effective 1 February 1999, for not being supported by the facts and evidence and for non-observance of the elementary requirements of due process;
2. That pending the review of the decision of the UNDP Administrator, a suspension of action on such decision be granted and the status quo of his employment be preserved;

3. That after review, the contested decision be reversed and set aside and ordering the Respondent:

(a) [T]o reinstate [the] Applicant with full back salaries plus all other benefits, bonuses and general increases from the date of his termination up to his reinstatement;

(b) [T]o pay [the] Applicant the total amount of US \$350,400.00 representing loss [of] income and benefits, moral, exemplary, punitive damages, legal fees and miscellaneous expenses, computed as follows:

(i) US \$90,000.00 for the loss of expected income as an international staff (from 1 January 1998 to 1 February 1999);

(ii) US \$200,000.00 for moral, exemplary and punitive damages;

(iii) US \$58,400.00 representing legal fees (...); and,

(iv) US \$2,000.00 for miscellaneous expenses.

[The] Applicant further prays for any further relief that the [United Nations] Administrative Tribunal may consider just and equitable in the premises."

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time-limit for filing a Respondent's Answer until 31 January 2000, and periodically thereafter until 31 July 2001.

Whereas the Respondent filed his Answer on 13 July 2001;

Whereas the Applicant filed Written Observations on 22 October 2001.

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP on 1 July 1986, as Associate Programme Officer, UNDP, Manila, at the NOB/IX level. At the material time, the Applicant held the position of Assistant Resident Representative, UNDP, Manila, at the NOD/I level. He had supervisory authority over the Finance, Personnel and Administration Sections, and was Chairman of the Local Property Survey Board (LPSB).

In March 1995, the Development Training and Communications Project (DTCP), a United Nations Office for Project Services (UNOPS) project, was closed down. On 23 June 1995, its equipment was inventoried and valued at US \$185,490.

On 9 March 1996, the transport company responsible for moving and storing the DTCP equipment transported several items from the former DTCP premises to the Applicant's residence.

On 28 March 1996, the UNDP Office, Manila, requested permission from UNOPS to sell and donate the DTCP equipment. The memorandum, which was signed by the Applicant, indicated that some of the equipment could not be accounted for but that efforts were under way to recover it from the responsible party. On 30 July 1996, UNDP sent UNOPS an updated inventory of the equipment, which included a list of missing items valued at \$38,450. The total value of this inventory was listed as \$166,730, a discrepancy of \$18,760 when compared with the inventory dated 23 June 1995. UNDP proceeded with the sale and donation of some of the equipment.

On 11 December 1996, the Applicant circulated a three-page list of equipment available for bidding to the UNDP Office staff. The version of this list filed in the LPSB records included a fourth page which listed eight air-conditioners, for which the Applicant received an external bid in February 1997. A computer entry file indicated, however, that the fourth page listing the air conditioners was not created until 24 March 1997, *i.e.* after the date on which the memorandum was circulated and after the Applicant received the bid.

In January 1997, the Registry Clerk, UNDP, discovered that three DTCP Registry files were missing.

On 16 June 1997, a local investigation panel, the UNDP Country Office Sub-Committee on Property Review (SCPR), launched an investigation into irregularities in the disposal of the DTCP equipment. In its report dated 1 September 1997, the SCPR concluded that the Applicant had been involved in the misappropriation of DTCP property, and recommended that an independent audit be carried out. The report was transmitted to the Applicant on 5 September and he submitted his comments thereon.

On 15 September 1997, the UNDP Office of Audit and Performance Review (OAPR) commenced an investigation. On 26 September 1997, the Applicant was suspended with full pay pending the outcome of the investigation and any disciplinary proceedings.

In its report dated 31 December 1997, OAPR recommended that disciplinary action be taken against the Applicant and other staff members, and that consideration be given to attempting financial recovery from the Applicant and one other staff member.

On 7 January 1998, the Applicant was charged with seven counts of serious misconduct. He was provided with a copy of the OAPR report and invited to comment on the charges against him. After receiving additional documents upon his request, the Applicant responded to the charges against him by letter dated 26 February 1998. OAPR evaluated his comments, but determined that they did not "warrant review of the ... conclusions and recommendations ... in the OAPR report".

On 21 August 1998, the Office of Human Resources advised the Applicant that his case would be submitted to the UNDP/UNFPA/UNOPS Disciplinary Committee (JDC). The JDC adopted its report on 20 January 1999. Its conclusion and recommendation read as follows:

"VII. CONCLUSION AND RECOMMENDATION

48. The Panel concluded that the allegations against [the Applicant] were supported by the evidence. As the official with overall supervisory authority over Finance, Personnel and Administrative Sections, he was responsible for the proper custody of UNDP assets, the observance of UNDP policies and procedures, and the supervision of staff whose duties included the maintenance of proper records and inventories. He is therefore accountable for the financial losses to UNDP due to the improper custody of the equipment left by UNOPS and for the poor oversight and questionable performance in management of UNDP property.

49. The Panel unanimously recommends that [the Applicant] be separated from service. Bearing in mind that [the Applicant] has been on suspension with full pay since 25 September 1997, the Panel recommends that the separation be without notice or compensation in lieu thereof, under the terms of staff rule 110.3 (a) (vii), and that, in accordance with Annex III (c) to the Staff Regulations, he not be paid termination indemnity.

50. The Panel notes that recovery of monies owed to the Organization is not considered a disciplinary penalty under staff rule 110.1 (b) (ii). For this reason, and because the amount of the losses attributable to [the Applicant] and to other staff members, the Panel is unable to make any recommendation as to recovery or the amount to be withheld from [the Applicant]'s separation payments."

On 1 February 1999, the Administrator, UNDP, transmitted a copy of the JDC report to the Applicant and informed him as follows:

"...

After giving due consideration to your case, given the seriousness of the charges against you, and the evidence in record, I have decided to accept all the recommendations of the Panel, and to separate you immediately from service, in accordance with Staff Rule 110.3 (a) (vii), and without the termination indemnity of Annex III(c) of the Staff Regulations.

..."

On 27 August 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The evidence does not support the findings of fact and conclusions in the report of the JDC.
2. The Applicant's rights of due process were violated.

Whereas the Respondent's principal contentions are:

1. It is within the Secretary-General's discretionary power to determine what behaviour constitutes misconduct as well as the disciplinary measure to be imposed. The facts on which the disciplinary measure was based were established and the offence constituted misconduct.
2. The Applicant's due process rights have been fully respected and there was no procedural irregularity.

The Tribunal, having deliberated from 29 October to 20 November 2001, now pronounces the following Judgement:

- I. The Applicant, employed by UNDP since July 1986, was appointed to the position of Assistant Resident Representative, UNDP, Manila, on 1 January 1993. As such, he had

jurisdiction over the Finance, Personnel and Administration Sections and was Chairman of the Local Property Survey Board (LPSB). In the course of his duties, the Applicant was required to take responsibility for equipment which had been used by the Development Training and Communications Project (DTCP), a UNOPS project which was closed in March 1995. On 23 June 1995, this equipment was inventoried and valued at US \$185,490; some time later, it was discovered that part of the equipment could not be accounted for.

II. The Tribunal is satisfied that the facts are well established in the report issued by the JDC. On 30 July 1996, inventory listings communicated by UNDP to UNOPS showed a discrepancy of \$18,760, when compared with the inventory of 23 June 1995. It was determined that some of the equipment was moved to the Applicant's house: on 9 March 1996, the transport company responsible for moving and storing the DTCP equipment had transported several items directly from the former DTCP premises to the Applicant's residence, where it was personally received by the latter.

III. The Tribunal takes note that, on 11 December 1996, a memorandum signed by the Applicant was circulated to the UNDP Office staff. Attached thereto was a three-page list of equipment which was available for bidding. Some time later, it was discovered that the version of this memorandum filed in the LPSB records included a fourth page which listed eight air-conditioners. Evidence retrieved from a computer indicated, however, that this page was created on 24 March 1997, *i.e.* well after the date on which the memorandum was circulated (11 December 1996) and, in fact, also after an offer had been received for the air-conditioners' purchase (February 1997).

The Tribunal also notes that in January 1997, it was found that the original UNDP files concerning the DTCP equipment and its movements were missing; the Applicant was informed by the Head, General Support Services Unit, and another UNDP staff member hired by the Applicant, that the DTCP files had been burned by this staff member, on the instruction of the Head, General Support Services Unit.

Finally, the Tribunal notes that, when the Applicant was instructed to donate the remaining equipment to the National Economic and Development Authority of the Philippine

Government, he did not comply with the instruction but rather donated equipment to the Department of Education, Culture and Sports of the Philippine Government.

IV. The Tribunal considers that any employee who is assigned responsibility for the equipment of the Organization is, in principle, answerable under the Regulations and Rules of the Organization, when it is found that all or part of it is missing. This is undoubtedly so when it has been found that the employee in question misappropriated the property or disregarded direct instructions given to him. In the present case, it was determined that not only did the Applicant not fulfill the functions of his post but, to the contrary, he was personally involved in misappropriating UNDP property.

The JDC established, *inter alia*,

"As the official with overall supervisory authority over [the] Finance, Personnel and Administrative Sections, [the Applicant] was responsible for the proper custody of UNDP assets, the observance of UNDP policies and procedures, and the supervision of staff whose duties included the maintenance of proper records and inventories. He is therefore accountable for the financial losses to UNDP due to the improper custody of the equipment left by UNOPS and for the poor oversight and questionable performance in management of UNDP property."

V. The Tribunal is satisfied that the Applicant failed to comply with his duty to oversee the property in question, resulting in a partial loss thereof; misappropriated property; failed to take action with regard to the unauthorized destruction of UNDP files; and, failed to comply with direct instructions. Therefore, the Tribunal considers that these facts clearly constitute serious misconduct under Chapter X of the Staff Rules warranting separation from service in accordance with staff rule 110.3(a) (vii).

VI. The Tribunal recalls Judgement No. 815, *Calin* (1997), wherein it stated, *inter alia*,

"The Tribunal acknowledges that the Secretary-General exercises broad authority and discretion in defining 'serious misconduct' under the Staff Rules and Regulations and in determining the proper punishment for such conduct. (Cf. Judgement No. 582, *Neuman* (1992), Judgement No. 479, *Caine* (1990)). The Tribunal limits its review of the Secretary-General's exercise of that discretion to decisions tainted by prejudice or other extraneous considerations,

mistake of fact, or lack of due process. (Cf. Judgement No. 510, *Camara* (1991), Judgement No. 436, *Wield* (1988), Judgement No. 563, *Khan* (1992))."

VII. The Tribunal finds neither substantive procedural irregularity nor proof of improper motive or abuse of discretion. Further, it finds that the sanction was neither illegal nor disproportionate under the circumstances. (See, *inter alia*, Judgements No. 890, *Augustine* (1998) and No. 967, *Ogbewe* (2000).)

VIII. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Mayer GABAY
President

Marsha A. ECHOLS
Member

Spyridon FLOGAITIS
Member

New York, 20 November 2001

Maritza STRUYVENBERG
Executive Secretary