



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1452

Case No. 1532

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Sir Bob Hepple; Mr. Agustín Gordillo;

Whereas, on 15 May 2007, a former staff member of the United Nations filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

....

8. ...[To]:

- (a) ... rescind the decision of the Secretary-General finding that misconduct occurred and imposing the disciplinary penalty of separation from service on the Applicant;
- (b) ... order that the Applicant be reinstated with effect from 1 April 2007;
- (c) ... find and rule that the Joint Disciplinary Committee [JDC] erred in matters of law and fact in its conclusions;
- (d) ... find and rule that the decision of the Secretary-General was vitiated by gross procedural irregularities affecting the Applicant’s right to due process;
- (e) ... award the Applicant three years’ net base pay as compensation for the actual, consequential and moral damages suffered; [and]

(f) to award the Applicant as cost, the sum of \$10,000.00 in legal fees and \$500.00 in expenses and disbursements.

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 22 October 2007, and once thereafter until 26 November;

Whereas the Respondent filed his Answer on 25 October 2007;

Whereas the Applicant filed Written Observations on 31 March 2008;

Whereas the Applicant submitted an additional communication on 12 May 2009;

Whereas, on 13 July 2009, the Tribunal decided not to hold oral proceedings in the case;

Whereas the statement of facts, including the employment record, contained in the report of the JDC reads, in part, as follows:

“II. Employment History

... According to the Administration, the staff member commenced service with the Organization in Arusha, Tanzania, at the P-2 level as Associate Buildings Management Officer in December 1998. He also served as Officer-in-Charge [OIC], Building Management Services [BMS], at the International Criminal Tribunal for Rwanda (ICTR) offices in Kigali. [From] 17 August 2004 he ... serve[d] as an Operations Officer with the United Nations Operation in Burundi (ONUB) at the P-3 level in Bujumbura, Burundi, on a fixed-term appointment.

III. Background

... As indicated by the Administration, the JDC was informed that the conduct of [the Applicant] was the object of two separate, and apparently[] unrelated investigations. The main investigation began in April 2003, and ended with the issuance of a report by the Office of Internal Oversight Services (OIOS), received by the Office of Human Resources Management (OHRM) in July 2004. A parallel investigation, examining the loss of shipping containers and other ICTR equipment, had been initiated in April 2002, and extended over a lengthy period of time; OIOS's report on that parallel investigation was received by OHRM in December 2004.

... The JDC was informed that the action on [the Applicant's] case was initiated shortly after ICTR [had] referred the findings of the main investigation to OHRM in July 2004. At that time, OHRM was not aware of an on-going parallel investigation. As a result, on 26 August 2004, [the Applicant] was charged with various acts of misconduct, solely on the basis of the information contained in the main investigation. OHRM subsequently learned of the on-going parallel investigation when [the Applicant] submitted comments on the charges. Action on the pending charges was therefore deferred until OHRM had an opportunity to review the entirety of the documentation contained in both the main, and parallel investigations.

... OHRM reviewed all the information contained in the parallel investigation, and determined that the conclusions reached in it, were either duplicative of those reached in the main investigation, or did not support the findings of misconduct. OHRM therefore recommended that disciplinary action under the main investigation be continued, and that no action be initiated under the parallel investigation.

IV. Main Investigation

... The main investigation into the alleged misconduct of [the Applicant is based on] three documents:

- a. Audit Observation Memorandum (the 'Audit Memo'), dated 30 April 2003 from ... [the] External Audit Team Leader, ... [the] Chief of Accounts and Budget, ICTR;
- b. Inquiry Report on Allegations against Kigali - ICTR Building Management Service (the 'Inquiry Report'), dated 24 June 2003, prepared by an ICTR fact-finding team; and;
- c. Report of Investigation (the 'OIOS Report'), dated 1 July 2004, prepared by ID/OIOS, on the allegations of fraudulent activities in the Building Management Section, ICTR-Kigali.

External Audit Team

... ICTR began the main investigation in the spring of 2003 when it conducted an audit on certain of ICTR-Kigali activities. The audit was performed by an External Audit Team, whose findings were set out in the Audit Memo of 30 April 2003. The audit focused solely on the activities of the ICTR-Kigali Building Management Service (BMS), and in particular, those of the [OIC], [the Applicant]. The External Audit Team observed that [the Applicant]:

- a. Wasted UN assets by routinely inflating prices or quantities of items required for projects;
- b. Exposed ICTR to possible legal liability under a lease of the ICTR-Kigali communications compound by removing structural items that were used later on at the Amahoro facilities;
- c. Diverted and sold cement to have been used in the construction of an ICTR transport centre garage floor, resulting in the rapid deterioration of the floor; and,
- d. Inflated the price of one particular contract, and then demanded, and received, a 20% bribe (RWF 1 million – US \$1,695) from a local contractor as a price for acquiring future business from ICTR.

The Audit Report recommended that ICTR undertake further investigations into what the auditors identified as 'possible fraudulent activities.'

Inquiry Report on Allegations against Kigali- ICTR Building Management Service

... An ICTR fact-finding team conducted a further investigation in May 2003. Again, the focus of this investigation was on the activities of [the Applicant] and resulted in the Inquiry Report, issued on 26 June 2003. The Inquiry Report confirmed the findings of the Audit Memo and added additional possible instances of misconduct, namely that [the Applicant] had:

- a. Ignored UN procedures and requirements regarding purchase, receipt and recording of vendor goods;
- b. Used the services of ICTR workers at his home for his personal benefit;
- c. Misappropriated UN fuel for his own purposes; and,
- d. Improperly gave one ICTR shipping container to his subordinate [...].

The Inquiry Report recommended that a formal OIOS investigation be conducted.

OIOS Report

... By transmittal memorandum dated 1 August 2003, the Registrar, ICTR, referred the findings of the Inquiry Report to the [OIC], OHRM. The Registrar recommended that, in light of the seriousness of the information therein, [the Applicant] be suspended from duty with pay, pending the completion of the then ongoing OIOS investigation and any subsequent disciplinary proceedings. Although this request was later withdrawn, ICTR did take 'precautionary measures' with regard to [the Applicant], first by revoking his certifying authority as of 14 August 2003, and next, by transferring him from his duty post in Kigali to Arusha on 23 December 2003, to work under the direct supervision of the Chief of the BMS, ICTR.

... OIOS conducted further fact-finding and interviews between October 2003 and March 2004. In the resulting OIOS Report, the investigators reiterated the alleged misconduct cited in the Inquiry Report and added another finding concerning bribery.

... By transmittal memorandum dated 27 July 2004, the Registrar, ICTR, referred the findings of the OIOS Report to OHRM for appropriate action.

Elements of Alleged Misconduct

... The Administration grouped into two sections a summary description of each of the ten major elements of alleged misconduct by [the Applicant], one section concerning the allegations of unnecessary inflation of project estimates and bids, and the other section concerning the allegations of bribery, theft and/or misappropriation of UN property, and abuse of authority.

Concerning Unnecessary Inflation of Estimates and Bids

... The elements of alleged misconduct by the [Applicant] concerning the allegations of unnecessary inflation of project estimates were presented as follows:

- a. Estimates for materials to construct a communications satellite facility - The investigators found that there was a 'sharp difference' between the estimates that [the Applicant] submitted for this project (\$14,400) against the estimate submitted by his subordinate in the BMS (\$12,900).
- b. Estimates to procure a water storage tank - As a comparative test, the auditors examining this project solicited bids from a number of Kigali area vendors of water storage tanks and apparently received estimates from one or more of them in the amount of RWF 278,000, which compared unfavourably with the actual cost paid by ICTR (based on [the Applicant's] estimate) of RWF 420,000.
- c. Estimates for materials to construct a remote data storage facility - In this instance, it is alleged that [the Applicant] deliberately inflated the cost of one project item - reinforcing concrete - at some \$1,080, when his supervisor stated that the cost should be in the range of about \$150 to \$200.
- d. Procurement of steel tubing for construction of a security control tower - it is alleged that [the Applicant] deliberately inflated the quantity of steel tubing required to build a security tower at twice the amount actually used, the implication being that [the Applicant] may have sold the excess tubing on the black market.
- e. Substandard work on the transport centre cement floor - In the Audit Memo, it is alleged that [the Applicant] ordered a substantial amount of cement required for the project, used only half of it, and then sold the other half on the black market. The use of only half the normal amount of cement required for the construction of the garage floor is alleged to be the reason for its abnormally rapid deterioration.

Concerning Bribery, Theft of UN Property and Abuse of Authority

... Alleged theft/improper 'gift' of an ICTR container to [his subordinate] - The original evidence of this subject matter is [his subordinate's] direct testimony that [the Applicant] made an inappropriate gift of an ICTR shipping container to him. However, a Fact-Finding Panel in the parallel investigation came to the conclusion that [the subordinate's] testimony was suspect and possibly unreliable.

... Alleged bribery of an unnamed ICTR contractor - Allegations of bribery came from an anonymous ICTR contractor (the contractor's name was not disclosed because of possible intimidation and victimization), who claimed that [the Applicant] helped him deliberately inflate the cost of an unspecified project worth approximately RWF 5 million and then demanded a kickback of RWF 1 million. The contractor stated that [the Applicant] said that this would be the cost of securing this contract, as well as future work with ICTR. Support for this evidence cited in the Inquiry and OIOS Reports is a receipt from the contractor's bank account showing that he withdrew RWF 1,400,000, of which he claimed he gave [the Applicant] RWF 1 million (in 8 cash bundles), the remaining RWF 400,000 he claimed he kept for himself. Further support was offered in an entry in a UN log book that showed the contractor was on ICTR premises on the day he claimed to have paid the bribe. However, there were no witnesses to the alleged transaction.

... Alleged bribery of two contractors at an ICTR Christmas party - It was claimed that [the Applicant] approached two contractors at an ICTR Christmas party and solicited money from them. Both contractors had done business before with ICTR. The OIOS Report states that each had given him approximately RWF 50,000 (\$85), although [the Applicant] stated that ... [one contractor] had given him RWF 50,000 and the other RWF 35,000.

... Alleged misappropriation of UN fuel for use in personal generator - Evidence on this issue was presented by ... an ICTR generator mechanic, who alleged that at the direction of [the Applicant], he regularly provided him with jerry cans of UN petrol that the [the Applicant] then used in his personal electrical generator at home. [The generator mechanic] claimed that at [the Applicant's] direction he then recorded the amount of fuel taken as being used for UN lawn mowers.

... Alleged use of ICTR casual staff to perform work on [the Applicant's] private residence while being paid by ICTR.

... Allegation of improperly giving away an ICTR container to a staff member without the permission of ICTR."

On 8 August 2006, the case was initially considered by the JDC in New York. Thereafter, hearings were held. The JDC adopted its report on 16 February 2007. Its considerations, conclusions and recommendation read, in part, as follows:

“VII. Consideration by Panel

35. On the basis of the available materials and testimonies [given] by the parties and witnesses, the Panel noted that the allegations of misconduct against [the Applicant] were drawn from a variety of sources - the findings of the independent auditors; presentation of comparable cost estimates for various ICTR construction projects; and, the testimony of numerous staff members and workers in ICTR.

36. The Panel also noted that the charges against [the Applicant] resulted from three investigators/auditor reports indicating that he and/or BMS/ICTR did not follow the proper

procedure, that he mismanaged the United Nations assets, and that he was involved in criminal activity.

37. The Panel found that the charges against [the Applicant] could be narrowed to three issues which could not be considered as individual events, but must be considered as part of a sequence or pattern of events that led to three separate investigations being launched:

(1) Not exercising proper control and oversight over the United Nations assets, equipment and resources through the proper administration of adequate procedures and respect for relevant rules and regulations;

(2) Possible unnecessary inflation of estimates, procurement and bids; and,

(3) Receiving a bribe from a contractor; hence, not epitomizing the highest standards of integrity and professionalism demanded of United Nations staff.

Consideration of failing to exercise proper oversight of UN property

38. The Panel considered the body of evidence presented to it by way of witness statements and the results of previous investigations. It was clear to the Panel that [the Applicant] deliberately created an environment in which UN material could be easily misappropriated, by encouraging staff under his supervision to circumvent the established UN rules and regulations relating to inspections and receiving of United Nations property, engaging in direct purchase agreements with suppliers and by failing to provide oversight or a reporting mechanism to account for UN equipment and material in his care as the OIC of BMS/ICTR.

39. The Panel found that it was not enough to state as [the Applicant] did during [his] testimony [before] the Panel that he had delegated the responsibility for accounting for UN equipment and material stored in the BMS compound to a subordinate, waited for the extent of loss to [the] UN, if any, to be uncovered and determined by external auditors, and then claimed as OIC BMS/ICTR, that he was not responsible for the loss. During his testimony to the Panel [the Applicant] could give no rational explanation for the disappearance of material and equipment or his failure to launch an investigation into such disappearance.

40. The Panel found that [the Applicant's] failure to observe the United Nations rules and regulations and his failure to ensure that his subordinates follow the said rules and regulations were the direct cause of significant financial loss to the Organization.

Consideration of Unnecessary Inflation of Estimates and Bids

41. The Panel considered the elements of alleged misconduct by [the Applicant] concerning allegations of unnecessary inflation of project estimates and his defence of those actions.

42. The Panel listened carefully to, and took note of, the testimonies on the above allegations from [four witnesses]. The Panel found that the testimonies repeated, more or less, the testimonies given by the witnesses in the Main Investigation, and that they did not shed new light on the case.

43. The Panel took note of paragraph 20 of [the Director's, Division for Organizational Development, OHRM] memorandum of 22 December 2005, namely that, 'It is noted that each of the above-mentioned allegations of misconduct is presented to show that [the Applicant] over-estimated or inflated the cost of materials on various ICTR projects. However, it is also noted that, except in one instance, there are no actual allegations of misconduct lodged against [the Applicant], in the sense that there are no direct claims that he somehow personally benefited from inflating contract estimates. It is submitted, however, that each of such allegations, if substantiated, would show a failure to maintain the highest standards of integrity expected of an international civil servant'.

44. The Panel noted that discrepancies in [the Applicant's] preparation of project estimates were brought to his attention by his supervisor long before any of the investigations were launched. The Panel also noted that [the Applicant's] supervisors and colleagues used the same sources and methodology for determining the prices of materials for projects and yet there were significant inflation and overestimation of prices on estimates prepared by [the Applicant] when compared to the estimates prepared by his colleagues for the same projects.

45. The Panel considered that the three inquiries conducted contemporaneously with the events had reliably found these to be the facts. The Panel noted that despite [the Applicant's] denial of the ... above mentioned allegations, it was highly likely that he was in fact responsible for the unnecessary inflation of cost and material estimates.

46. The evidence and testimony related to overestimation or inflated cost of material when viewed in isolation may not be sufficient to demonstrate that [the Applicant] had personally benefited from an inflation of estimates and bids. However, the testimony of (the previously anonymous contractor) ... (as outlined below), the contractor who alleged that [the Applicant] solicited a bribe from him, that adds credence to the Administration's allegations that [the Applicant] unnecessarily inflated estimates and bids; it in fact reveals the possible motive for [the Applicant's] behaviour and provides the method by which he was able to benefit personally.

Receiving bribe from a contractor

47. At the Panel's request, OIOS released the name of the contractor whose name was not disclosed earlier because of possible intimidation and victimization, and the contractor testified before the Panel. In his testimony ... the contractor stated that [the Applicant] had solicited the money to ensure he would be awarded future contracts. [The contractor] had just received the sum of RWF 6 million for work he did at the ICTR Information Centre and [the Applicant] had asked for RWF 1 million of that money. [The contractor] understood that there would be further contracts after he made payment.

48. [The contractor] explained that [the Applicant] asked him, 'What would you do for me if I give you the contract?' [The contractor] said that he replied that he would provide a 'gift' but [the Applicant] demanded money. [The contractor] said that at that point he offered \$1,000 but [the Applicant] retorted that it was too small. He said that they eventually agreed on RWF 1 million. Payment was to be made to [the Applicant] once [the contractor] was paid by ICTR.

49. [The contractor] said that [the Applicant] called him and told him that there was a check payment for him from the ICTR cashier and reminded him to keep his promise to make the payment. [The contractor] explained that he went to ICTR the same day and got the funds. [The contractor] said that he had withdrawn RWF 1,400,000 in cash, RWF 400,000 of which was for the salary of his assistant.

50. [The contractor] stated further that he gave the money to [the Applicant] in two batches of 5,000 x 100 divided equally in his two trouser pockets. He said that he first gave [the Applicant] one batch, but [the Applicant] protested that it was not enough. The second batch was then handed over and [the Applicant] expressed his gratitude.

51. [The contractor] stated that he gave the money to the Staff Member on the understanding that he would get more contracts. To his disappointment, he did not receive any further contracts from ICTR, despite the payment. He reiterated that he was extremely upset since it was unfair for the Staff Member to receive RWF 1 million on a contract of RWF 6 million and not to give him any additional contracts. He asked if he could be reimbursed for the RWF 1 million that he had given to [the Applicant]. He also stated that he had asked OIOS to maintain his anonymity fearing reprisals from [the Applicant], but now that his identity was known to all, including [the Applicant], he was ready to lodge a formal complaint.

52. The Panel found that [the contractor] was very detailed and consistent in his testimony and it appeared that his disappointment over the non-deliverance on the part of [the Applicant] was genuine. [The contractor's] testimony provides the link between the inflation of cost estimates, the solicitation of the bribe and the personal benefit that [the Applicant] could derive from his position with the Organization. The Panel found his testimony to be plausible when he stated that his motivation in acquiescing to the bribe was to ensure future work for himself with ICTR.

53. On cross examination by the Counsel for the [Applicant], [the contractor] admitted that he had talked to [another witness] about [the Applicant's] solicitation of the bribe and that he had in fact paid him the sum of RWF 1,000,000.

VIII. Finding of fact

54. The Panel was requested to advise the Secretary-General, whether or not the facts found by it indicated that [the Applicant] violated, as charged;

- “a. Staff regulation 1.2(b): failing to uphold standards of competence and integrity;
- b. Staff regulation 1.2(g): abusing his UN position for private gain;
- c. Staff regulation 1.2 (q): improperly using the property and assets of the UN; and
- d. Staff rule 101.2(i): Soliciting and accepting bribes in his official UN capacity having failed to comply with the highest standards of integrity expected of an international civil servant.

55. The OIOS report contained a long list of at least eleven allegations against [the Applicant]. The Panel tried as far as possible to address all of them.

56. The Panel considered that on all cases the credibility and reliability of witnesses must be assessed and weighed. As the Administrative Tribunal noted in Judgement [No.] 1246 (2005):

‘... in all cases testimony must be gathered in such a way and contain the necessary elements in order to allow [the Tribunal to dispose of a case with comprehensive knowledge of the facts, as well as statements and their credibility.’ (Emphasis added)

57. The Panel noted that it is incumbent on the finders of fact in disciplinary cases to consider all elements of the facts presented to determine whether the Administration satisfied its burden of proof. In other words, is the evidence on which the Administration relies sufficient to support its charges of misconduct? And although there are elements of criminal activity in this case — i.e., bribery, misappropriation of assets, etc. — the burden of proof in administrative proceedings such as this is not that employed in a criminal proceeding, where a prosecutor must prove the guilt of an accused *beyond a reasonable doubt*. This administrative standard of proof was well-defined by the UN Administrative Tribunal in [Judgement No.] 1023, *Sergienko* (2001).

58. The Panel felt that [the contractor's] testimony was credible, and was convinced that [the Applicant], in all likelihood, did indeed extract a bribe from him for an ICTR contract.

59. The Panel also noted that [the Applicant] in his defence stated that [one of the witnesses] had a personal grievance against him and that [this witness] was the source of the initial allegations made against him. However, the Panel noted that even if this were true, [this witness] was fulfilling his duty as a staff member by reporting any incidents of fraud, mismanagement, theft or criminal activity that came to his attention as required by the Organization.

IX. Conclusions

60. Based on the evidence and testimony presented in this case, the Panel found that:
- a) Construction projects in Kigali were badly managed by [the Applicant];
 - b) [The Applicant], as [OIC] BMS/ICTR, did not demonstrate due diligence in managing the control and oversight of the UN assets and property and deliberately created an environment in which UN material could be easily misappropriated by encouraging staff under his supervision to circumvent the established UN [Regulations and Rules] relating to inspections and receiving of UN property, engaging in direct purchase agreements with suppliers and by failing to provide oversight or a reporting mechanism to account for UN equipment and material in his care;
 - c) The charges of (1) unnecessary inflation of estimates and bids and (2) receiving a bribe from a contractor, have been substantiated based on the evidence provided to the Panel, including the testimony of the (formerly anonymous) contractor The Panel, after considering the totality of the evidence was of the opinion that [the Applicant] inflated the estimates of materials/services on contracts in order to possibly solicit a bribe, as he did with [the contractor], and that a clear and compelling nexus was formed between the elements of the two charges, making it ‘more likely than not’ that [the Applicant] was guilty of both charges;
 - d) Based on para. (c) above [the Applicant] abused his UN position for a private gain; and,
 - e) Based on the totality of all the facts presented in this case [the Applicant] failed to uphold the standards of competence and integrity required of ... [an] international civil [servant].

X. Recommendations

61. In the light of the above considerations, the Panel concluded that [the Applicant] could not continue to serve in the Organization. It therefore recommends that he be separated from the Organization.”

On 16 March 2007, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that:

“The Secretary-General has examined your case in the light of the JDC’s report and the entire record and the totality of the circumstances. The Secretary-General agrees with the JDC’s conclusions and considers that your actions constitute misconduct within the meaning of staff rule 110.1, and, therefore, has decided to accept the recommendation of the JDC concerning your separation from service and has further decided that such separation shall be with compensation in lieu of notice in accordance with Staff Rule 110.3(a) (vii).”

On 15 May 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The JDC erred in law and fact.
2. The Secretary-General’s decision was vitiated by gross procedural irregularities, which violated his due process rights.
3. The penalty of separation from service was not proportionate to the alleged offence.

4. He should be compensated for the actual, consequential, and moral damages suffered as a result of the contested decision, including delays in the adjudication of his case.

5. The exceptional circumstances of this case warrant compensation for costs.

Whereas the Respondent's principal contentions are:

1. The Secretary-General has broad discretionary authority as regards disciplinary matters, including the determination of what constitutes misconduct warranting separation from service.

2. The Applicant did not meet the standards of conduct required of an international civil servant, and therefore, the Secretary-General's decision to separate him was a necessary and valid exercise of his discretion.

3. The Applicant's rights were fully respected and the penalty imposed was proportionate to the offence.

4. The contested decision and disciplinary measure imposed was not vitiated by bias, improper motive, or other extraneous factors.

5. The Applicant's appeal is without merit and he is not entitled to compensation.

6. The Applicant has not proven that exceptional circumstances exist to justify the award of costs.

The Tribunal, having deliberated from 29 June to 31 July 2009, now pronounces the following Judgement:

I. The Tribunal notes that on 16 March 2007, the Applicant was separated from service for disciplinary reasons, with compensation in lieu of notice, for: (a) not exercising proper control and oversight over United Nations assets, equipment and resources, through the proper administration of adequate procedures, and respect for relevant Staff Regulations and Rules; (b) unnecessary inflation of estimates, procurement, and bids; and, (c) receiving a bribe from a contractor. Those charges refer to his former position as OIC, BMS, with the ICTR in Kigali, Rwanda.

II. The Tribunal further notes that the activities of the BMS and in particular, the Applicant, as OIC, were audited by external auditors. The subsequent Audit Memo identified irregularities and "possible fraudulent activities". The auditors recommended that the ICTR further investigate the BMS. Thereafter, the Registrar of the ICTR instituted a two-man Inquiry Team to investigate these findings.

III. The Inquiry Team interviewed a contractor, whose name was withheld at the time, who stated that he paid the Applicant a bribe in order to be granted an ICTR contract. Several current and former BMS staff members who served under the Applicant, including a plumber, two cleaners, and a building supervisor, were also interviewed. The witnesses stated that the Applicant, as OIC of the BMS, ran the Unit at his own discretion. Allegations of wrongdoing included, *inter alia*, the theft of doors, windows,

galvanized roofing sheets, a motorcycle, metal tubes, and gasoline belonging to the Organization. Additionally, at the request of the Applicant, requisition forms were raised; the Applicant would sign these forms, and collect the materials directly from the vendors. Most of the materials referenced above were later taken to the Applicant's house.

IV. The cleaners interviewed stated that they also worked at the Applicant's house as "house help" during ICTR work days and hours, without reporting to ICTR, but received their wages from ICTR. These staff members cleaned the Applicant's house, cut his grass, washed the Applicant's family's clothes, and laid tiles. One of the cleaners informed the Inquiry Team that when he quantified materials required for a project, he added 5% to 10% to the estimate as a matter of caution and that if such projects were to be contracted to outside companies, the Applicant would add 15% of the total cost as transportation cost, 25% as profit, and 25% for labor cost. He also stated that in 2003, the R & I staff attempted several times to physically inspect certain materials but could not locate them. This cleaner explained that usually request forms were filled out by the BMS staff and approved by the Applicant as OIC, and that the staff or the Applicant collected materials directly from the vendors.

V. The building supervisor interviewed by the Inquiry Team stated that the Applicant, as the OIC of the Unit, instructed and authorized him, as well as other BMS employees, to raise requisitions and purchase orders, and collect the merchandise directly from the vendors, without reporting or delivering these materials first to the R & I Unit, as required. Additionally, any unused materials were either returned to the BMS store or to the vendor in exchange for other goods, as instructed by the Applicant. These transactions were completed without informing the Deputy Chief of Administration and without following the standard procedures for disposal of goods of the Organization. The Building Supervisor asserted that operations were completed on the instruction and approval of the Applicant and that he, as the OIC, was responsible for knowing and implementing the proper guidelines and procedures.

VI. The Inquiry Team also interviewed the OIC Logistics and Supplies, who stated that on several instances when the Applicant went to her office with the relevant documents for her action, she informed him that she could not carry out the R & I procedures because the materials referenced in the documents were not seen and/or inspected by her Unit. Additionally, she claimed that the BMS always went directly to the vendors to collect materials personally, which was contrary to UN procedures. She also stated that in another Purchase Order when her staff attempted to carry out the R & I of certain materials, it was discovered that the items that were delivered did not correspond to the items on the Purchase Order and that her Office did not endorse the documents, but instead reported the irregularity. An R & I clerk was also interviewed and stated that BMS usually brought documents weeks after the fact and claimed "Operational Urgency" in order to bypass physical inspections of merchandise collected by BMS. The clerk also stated

that BMS usually arranged to have their gasoline fuel delivered on Saturdays and that BMS never contacted the R & I Unit in order to participate in the inspection.

VII. After, those preliminary interviews the Inquiry Team interviewed the Applicant on two occasions. The Applicant denied most of the charges but acknowledged “that he only wanted to act his part with caution *by approving and recommending the higher cost*”. (Emphasis added). Regarding the missing metal tubes he stated that they were either used on other projects or exchanged for other materials at the vendor’s shop but that no record was kept on these types of transactions because they were based on mutual agreement with the vendors. The Applicant claimed that BMS had blanket purchase orders with three vendors, from whom materials were collected when necessary, and in some cases materials were urgently required and consequently the R & I was completed on a later date.

VIII. Based on the evidence collected, the Inquiry Team concluded that the Applicant disregarded standard administrative procedures and that the BMS Unit, headed by the Applicant, conducted its operations without any regard to the United Nations Regulations, Rules, procedures and requirements in relation to procurement, inspection and receiving of purchased items by R & I Unit. It also concluded that these violations did not allow the PCIU to properly maintain a complete and up-to-date record of the Organization’s assets, and that therefore, a substantial amount of materials purchased for the Organization were unaccounted for and mismanaged. The examples provided by previous testimony were the subject of seven additional indictments in the report of the Inquiry Team of the ICTR. The Inquiry Team also concluded that many of the disturbing observations raised in the Audit Memo were substantiated and that the Applicant was involved in all of the purchasing discrepancies in the BMS Unit. It recommended that a formal investigation be conducted by the ID/OIOS.

IX. Between October 2003 and February 2004, the ID/OIOS investigated the allegations against the Applicant. In its report, it concurred with the external auditors and the Inquiry Team, and concluded that the Applicant had inflated prices and estimates related to the Organization’s financial resources, extracted a bribe from a contractor, gave away the Organization’s property to a staff member without seeking permission from ICTR, abused his authority by utilizing ICTR staff members to work at his home during official working hours, and instructed ICTR staff members to supply him with fuel that was the property of the Organization.

X. After receipt of the ID/OIOS report, the Registrar of the ICTR sent a copy of the report to the Assistant Secretary-General for Human Resources Management on 27 April 2004, for appropriate action. It was communicated with the corresponding charges to the Applicant on 26 August 2004, including the ID/OIOS report.

XI. The Tribunal went on to consider the JDC proceedings in this case. It notes that the Applicant responded to the formal charges against him, denying any wrong-doing on his part and stating that "... if it were true, it would simply imply a liability not associated with the dishonesty [he had] been accused of". He recognized and defended the increases in his estimates, affirming that they did not constitute inflation of values, because the increases were based on his professional opinion. He also stated that he believed in his professional judgement, even if it were later proven to be incorrect. The Applicant faulted his deputy head of unit and stated that he had not revised the calculations made by his deputy. With respect to the allegations that he had submitted an estimated figure of \$ 2,534.00 for electrical work, he recognized that his supervisor had criticized him and required that he provide a detailed breakdown of the figures. A review of the breakdown reveals that one item was shown to be \$1,080.00, when it should have been, according to the Applicant, \$108.00. He explained the difference as a typographical error. Based on the foregoing, the Tribunal is not satisfied with the Applicant's explications and finds that his actions and omissions do not exonerate him from responsibility.

XII. The Tribunal notes that the Applicant challenges the JDC's proceedings the several grounds, including: (1) that the name of the contractor who testified that the Applicant had accepted a bribe from him remained undisclosed; (2) that the proceedings before the JDC were fraught with interruptions of the videoconference; and, (3) that his counsel's intervention during the proceedings were limited. The Tribunal finds that the Applicant was subsequently provided with the name of the contractor during the JDC proceedings and was given the opportunity to respond to the charges. As to his claims regarding interruptions during the JDC proceedings and the limitations placed on his counsel, the Tribunal is satisfied that the Applicant's counsel was afforded the opportunity to intervene during the JDC hearing and that the Applicant had the benefit of counsel throughout the proceedings.

XIII. The Tribunal is mindful that the Organization did not take immediate disciplinary action against the Applicant once it reviewed the findings of the Audit Memo and the reports of the Inquiry Team and the ID/OIOS, but instead convened the JDC in accordance with Chapter X of the Staff Rules. The Tribunal notes that the JDC found that the witness' testimony was "credible", "very detailed and consistent", and concluded that in all likelihood the Applicant did indeed extract a bribe from one of the contractors for an ICTR contract, inflated bids, and committed other acts of misconduct as outlined in the JDC report. Thereafter, the Secretary-General accepted the JDC's findings and conclusion, which the Tribunal finds were reasonable and substantiated by the evidence.

XIV. Lastly, the Tribunal considers the Applicant's claims that the Administration's delay in adjudicating his case constituted a due process violation. The Tribunal again notes that there was sufficient evidence to summarily dismiss the Applicant and despite that, the Organization chose to deepen and amplify the investigations before taking final action. That cannot be said to have been to his prejudice,

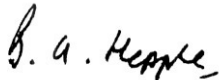
even more so when he continued to receive full payment during the entire period of the proceedings, thus suffering no financial harm for the alleged delay. The initial findings of fraudulent conduct were made on 30 April 2003, by the External Auditors; it warranted further investigation and this was completed by the Inquiry Team, who produced its report in June 2003. The ID/OIOS conducted its investigation between October 2003 and February 2004. On 26 August 2004, after the Applicant received a copy of the OIOS report, he was formally charged with misconduct. Subsequently, the Organization requested the JDC's recommendation on the case and on 8 August 2006, the JDC took up the Applicant's case. After further examination of the Applicant's case, including scheduling videoconferences and interviews with witnesses, the JDC adopted its report on 16 February 2007 and on 16 March 2007, the Applicant was informed of the Secretary-General's decision. Therefore, the Tribunal finds that the Administration proceeded with caution, duly followed its own procedures, and concludes that the Applicant's due process rights were not violated.

XV. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)



Spyridon Flogaitis
President




Bob Hepple
Member



Agustín Gordillo
Member

Geneva, 31 July 2009



Tamara Shockley
Executive Secretary