



Administrative Tribunal

Distr. Limited
30 September 2009

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1454

Case No. 1535

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 23 May 2007, a former staff member of the United Nations, filed an Application requesting the Tribunal, inter alia:

“III. PLEAS

8. ...

(a) to rescind the decision of the Secretary-General imposing the disciplinary penalty of separation from service on the Applicant;

(b) to find and rule that the recommendations of the JDC [Joint Disciplinary Committee] and resulting decision ... are based on errors of fact and law and tainted by procedural irregularity;

(c) to order that the disciplinary action imposed on the Applicant be rescinded, that the Applicant be re-instated in service ... and that all adverse material dealing with this matter be removed from his official file;

(d) to order ... a letter confirming the Applicant’s complete exoneration from any wrongdoing.... [;]

(e) to award the Applicant appropriate and adequate compensation[;]

....

(g) to award the Applicant [legal fees and expenses and disbursement].”

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 8 October 2007, and once thereafter until 10 December;

Whereas the Respondent filed his Answer on 5 December 2007;

Whereas the Applicant filed Written Observations on 30 October 2008;

Whereas, on 14 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*

... Effective 17 September 2000, [the Applicant] joined the Organization at Headquarters on a fixed-term appointment (FTA) limited to service with OHRM [Office of Human Resources Management] as First Officer at the P-4 level. Effective 7 February 2002, he was offered a two-year FTA against a core post of Computer Information Systems Officer at the P-4 level. Effective 1 March 2003, [the Applicant] was promoted to the P-5 level as Chief of Section of Human Resources Information Technology, OSD/OHRM. Since 19 December 2005 he has been suspended from duty with full pay.

III. *Summary of relevant facts*

... [The Applicant] was accused of giving evasive and untrue answers to the OIOS [Office of Internal Oversight Services] investigators during their inquiries in 2005 and of knowingly representing to OHRM that he possessed legitimate B.A. and M.A. degrees, when he had in fact obtained them from a diploma mill. The allegation of having given evasive and untrue answers to the OIOS investigators arose as a result of an investigation into [the Applicant's] failure to pay rent in a timely manner while under the rental subsidy scheme.

a) *Failure to pay rent in a timely manner and OHRM investigation*

... On 1 October 2000, [the Applicant] entered into a sublease agreement for an apartment in mid-town Manhattan owned by two UN staff members who were to go on mission to East Timor. The term of the sublease ran from 1 October 2000 for a monthly rent of USD 2,300. [The Applicant] rented, and resided in, the apartment till 11 November 2001. He applied for, and received, rental subsidy on a monthly basis for the period from 1 October 2000 through 11 November 2001.

... In December 2001, after her return from mission ... one of the two landlords, discovered that not all the rent had been paid, and that [the Applicant] owed her and ... the other landlord, six months of unpaid rent totaling USD 13,800 [the Applicant] gave [the first landlord] USD 1,000 on 31 December 2001, USD 1,000 on 30 March 2002, and only paid up the remaining debt of USD 11,800 on 31 July 2002, after [the] Chief of Common Services Activities at Headquarters Section, OHRM, had spoken to [the Applicant] about the need to pay without delay.

... In response to allegations made by an OHRM staff member on 4 November 2004 of misuse of rental subsidy on the part of [the Applicant] [the] then Assistant Secretary-General for OHRM, established a Fact-Finding Team composed of [the] Deputy Chief, Conditions of Service Section, HRPS /DOD [Division for Organizational Development]/OHRM, and [a staff member from the] Staff Development Services, DOD/OHRM.

... In a report dated 4 February 2005, the Fact-finding Team concluded that it was clear that [the Applicant] had failed to pay rent for six months in a timely manner. However, it was difficult for the Team to evaluate whether the non-payment of rent had happened on purpose or by accident, though it expressed its concern that [the Applicant] fully paid the back rent only more than eight months after he had vacated the apartment and only after the landlords had failed in their own attempts to demand payment from him and had enlisted the assistance of the Staff Union, Staff Counselor, UN Credit Union and OHRM.

... Under cover of a memorandum dated 14 April 2005 to [the then Assistant Secretary-General for OHRM], [the Applicant] provided comments on the report of the Fact-finding Team.

b) Giving Evasive and Untrue Answers to OIOS Investigators

... In a memorandum dated 28 April 2005 to [the] then Director, Investigations Division, OIOS, [the then Assistant Secretary-General for OHRM] asked OIOS for its assistance in investigating the issues raised in the report of the Fact-Finding Team. In a memorandum dated 13 May 2005, [the Applicant was advised] of her decision to submit his case to OIOS for an independent investigation, 'in order to avoid the appearance of a conflict of interest in this matter.'

... In a report dated 28 October 2005, OIOS presented the results of its investigation. The OIOS investigators had reviewed the report of the Fact-Finding Team and [the Applicant's] response thereto. In addition, they had interviewed staff members including [the Applicant]. According to their report, [the Applicant] had provided them with statements that either contradicted his earlier statements or were not supported by the record. The OIOS investigators concluded that '[the Applicant] did not pay agreed upon rent for the apartment he sublet, and when confronted with the truth of the matter, did not promptly pay his debt.' In their view, 'this conduct was not of the highest standards of integrity as required by Staff Regulation 1.2 (b).'

c) Educational credentials

... In a note to [the then Assistant Secretary-General for OHRM] dated 11 February 2005, the initial OHRM investigator ... also brought to ... attention the '[i]ssue of [the Applicant's] highly unconventional university degree.' [The investigator] had learned from the Assistant Director of Human Resources of [the Applicant's] former employer, WIPO [World Intellectual Property Organization], that a school called Trinity College & University ('TC&U'), which had awarded [the Applicant's] the degrees of Bachelor of Science and Master of Science in 1996 and 1997 respectively, did 'not exist as a regular educational institution with actual course work. Instead, it is an institution where degrees and course transcripts can be bought, allegedly based on life experience.'

... This issue first affected the Organization when [the Applicant] on 18 May 2000 submitted to OHRM a United Nations Personal History (P.11) form. Under section 24 'Educational' [the Applicant] wrote that he attended 'Trinity College & University, London, England' from June 1994 through June 1996, and was awarded a Bachelor's Degree in Computer Science (BS) with honors. From July 1996 through May 1997, [the Applicant] stated that he attended 'Trinity College & University, London, England,' and acquired a Masters Degree in Computer Science and Information Management (MS). In section 28 of the P.11, [the Applicant] stated his objection to OHRM's making inquiries of his then employer (WIPO). Under section 33, [the Applicant] affixed his signature, certifying that the statements made by him in answer to the questions in the P.11 form 'are true, complete and correct to the best of [his] knowledge and belief,' and declaring that he 'understand(s) that any misrepresentation or material omission made on a Personal History form or other document requested by the Organization renders a staff member of the United Nations liable to termination or dismissal.'

... At the time he filed the above application, [the Applicant] was a Consultant with the IT Projects Division, WIPO, in Geneva, Switzerland, and was under consideration for a direct appointment with WIPO. In the context of pre-recruitment work for the direct appointment, WIPO attempted to contact [the Applicant's] academic institution for degree verification, but was unable to do so. [The] Director of Human Resources Management, WIPO, contacted [the Applicant] to ask him how he had obtained his degrees from TC&U and requested from him a detailed summary of his educational background.

... In a memorandum dated 22 May 2000 to [The Director of Human Resources Management, WIPO] [the Applicant] described how he had obtained his BS and MS degrees from TC & U. He indicated '...' for purpose of degree confirmation. [citation omitted] At the end of [the Applicant's] memorandum there was a handwritten note, stating that

DIRECT INQUIRIES (INTERNATIONAL) GUA
THEY HAVE NO TELEPHONE LISTING OF TRINITY COLLEGE & UNIVERSITY
@ ILKESTON
NEITHER OF ...
24-5-00 (Initial illegible)

... Separately also on 22 May 2000, four days after he had submitted his P.11 application to OHRM, OHRM made [the Applicant] an offer of a one-year FTA at the P-4 level as First Officer in Office of the Human Resources Planning and Management Information Systems Service, OHRM. The offer letter stated that *'[t]his offer is subject to satisfactory completion of pre-recruitment formalities, including medical clearance and reference checks, and will be confirmed to you as soon as all information is received.'*

... In an email dated 24 May 2000 [the Chief of Common Services Activities at Headquarters Section, OHRM] asked [the Applicant] to communicate to OHRM the address of Trinity College and University, London, for purposes of degree verification. On 24 May, [the Applicant] responded, supplying the address of the TC&U Alumni Association, Suite 50, 10 College Terrace, London, E5 5AN. On 25 May ... a Human Resources Officer, OHRM, wrote to the TC&U Alumni Association for verification of [the Applicant's] degrees. Eventually the envelope was returned to the United Nations with the remark 'address incomplete.' On 9 June, [the Chief of Common Services Activities at Headquarters Section, OHRM] sent a second request to the TC&U Alumni Association. On 13 June, [she] advised [the Applicant] of the difficulties she too was having in reaching the TC&U Alumni Association for reference checks, because 'we were unable to find a telephone or fax number as well as an E-mail address to enable us to communicate through these means for a prompt reaction from the institution.' She asked the Applicant to name a contact person in order to 'hasten the process,' 'so you can report to work on 1 July 2000.' On 13 June, [the Applicant] responded and gave [her] a fax number to 'try,' (...), which [she] did, but she received an illegible fax response on 14 June.

... On 15 June 2000, [the Chief of Common Services Activities at Headquarters Section, OHRM] received another fax containing a letter dated 14 June 2000, this time legible, from ... of TC&U confirming that [the Applicant] had been awarded BS and MS degrees in computer science by TC & U. It came from 'SES Consultants.' [The] letter arrived in hard copy on 22 June 2000. It may be noteworthy that the purported signature of ... appeared different from that on the letter of 28 May 1997 from [the same person] to [the Applicant]. ... Moreover, the envelope was postmarked Derby, and not London, and the letter listed at the bottom both the London address and the Malaga (Spain) mailbox address of TC&U.

... On 16 June 2000 [the Chief of Common Services Activities at Headquarters Section, OHRM] contacted ... [the Applicant's] immediate supervisor at WIPO, whom [the Applicant] had named in his P.11 of 18 May 2000 both as his supervisor (item 27) and a personal reference (item 30). [citation omitted] [The supervisor] provided a positive reference. The Human Resources Management of WIPO was not contacted, in keeping with [the Applicant's] wishes, as confirmed

by [the Chief of Common Services Activities at Headquarters Section, OHRM] in a 24 May 2000 email to her coworkers.

.... While the UN's recruitment efforts were proceeding, WIPO was still weighing whether [the Applicant] should be granted a direct appointment. However, in a memorandum dated 10 August 2000 to [the] then Assistant Director-General, WIPO, [Mr. N] referred to the earlier efforts by WIPO's Engagements Section to 'receive confirmation on the type of course [the Applicant] had followed [at TC & U] to gain his degrees, since the dates of his employment and studies coincided.' [Mr. N] stated that as [the Applicant] had failed to revert immediately to the request for information, the Engagement Section had called TC&U directly. However, 'Trinity College & University (TC & U), London, could not be traced, despite contacting various recognized bodies in the UK.' The Engagement Section eventually learned about TC&U from a reference book that

'[t]his non-existent school certainly has a cosmopolitan presentation – they have a British address, claim to operate from Spain with licensing from Delaware, and 'we will consider awarding degrees in any subject' based solely on payment of a fee. They also maintain an equally nonexistent accrediting association, the Correspondence Accreditation Association, which will certify that the degree was in fact purchased.'
[citation omitted]

[Mr. N] then quoted an excerpt from the FAQ page of the website maintained by TC&U (<http://www.trinity-college.edu/fac.html>) which 'shed further light on the type of operation' of TC&U. The last question and answer read as follows:

*'Duration
How long does it take to obtain a Trinity degree?
This depends upon the program and the basis of your qualifications. It can take as little as 30 days....'*

[Mr. N] also noted that '[t]here are only two addresses, one in London, the other in Malaga, Spain. These appear to be mainly for mailing purposes and in the case of the former, a telephone service (answering machine) acting as an Alumni Association for receiving inquiries.' After having learned [these] facts, [Mr. N] '... met with [the Applicant] so that [he] might learn [the Applicant's] views on the matter. His position was that his behavior had on all counts been correct and that both degrees were on previous experience and some course work (his UN work at the time) apparently submitted to the TC & U ... as part of the course.' [Mr. N] concluded that he could not recommend [the Applicant] for a direct appointment with WIPO because 'the degrees listed are not only questionable, but most certainly do not meet our recruitment standards...'
[citation omitted]

... On the UN side, in a letter dated 22 August 2000, [the Chief of Common Services Activities at Headquarters Section, OHRM] announced to [the Applicant] the completion of pre-recruitment formalities and confirmed the terms of her offer of appointment of 22 May 2000. Effective 17 September 2000, [the Applicant] began to work for OHRM. He was placed against a core P-4 post in February 2002, after the completion of 'pre-recruitment formalities' [citation omitted] and promoted to the P-5 level in March 2003, always within OHRM.

... The record shows that, subsequently on two additional occasions, [the Applicant] listed his TC&U degrees on P.11s he submitted to OHRM, once in putting forward his candidacy for the core P-4 post and once when applying for the P-5 post of Chief of Section of Human Resources Information Technology. One P.11 was dated 1 September 2000; this P.11 was referenced, but it was not provided. The other P.11 was submitted sometime before 1 December 2002. In this latter P.11 form, [the Applicant] wrote that he attended 'Trinity College' in London, United Kingdom, from May 1994 to June 1996 with a 'BSc. Computer Science' degree and from June 1996 to May 1997 with a 'MSc. Computer Science' degree. [citation omitted] While he indicated no objections to OHRM's making inquiries of his current employer, [the Applicant] expressed his objections to

his Personal History Profile (PHP) being made available to other agencies of the United Nations system that might be interested in applicants like him.”

On 19 December 2005, the then Officer-in-Charge, Division for Organizational Development, OHRM, informed the Applicant that he was formally charged with:

“...violating the basic obligations of UN staff members . Specifically, [the Applicant] was accused of having ‘failed to comply with the standards of integrity required of a UN staff member in giving evasive and untrue answers to OIOS investigators in connection with its inquiries.’ Moreover, he was accused of having “submitted information on a form P.11 regarding the degrees that [he had] received from Trinity College & University, and attested to the truth of that information, at the time knowing that the degrees conferred were not legitimate.”

The Applicant was warned that those accusations, if established, would constitute a violation of staff regulation 1.2 (b) governing a basic obligation of staff. The Applicant was informed of the decision to suspend him from duty with full pay with immediate effect, in view of the fact that he had “*unlimited access to personal and confidential data of UN staff members*”.

On 22 February 2006, the case was referred to the JDC in New York. The JDC adopted its report on 10 November 2006. Its considerations, conclusions, and recommendations read, in part, as follows:

“VII. Findings

129. The Panel found that the misrepresentation of his degrees by [the Applicant] constituted a fundamental breach of integrity, making [the Applicant] unsuitable as an international civil servant. The Panel considered that its finding of serious misconduct on this one issue was sufficient for it to recommend a sanction.

130. The Panel agreed with the Representative of the Secretary-General that [the Applicant’s] misconduct is accompanied by aggravating circumstances in that ‘...*he is a senior staff member within OHRM, and given the responsibilities with which he has been entrusted, the Organization must be able to rely with total confidence upon the information delivered by the Human Resources Information and Technology Section to the Secretariat and the Member States.*’

131. The Panel therefore unanimously recommends that [the Applicant] be separated from service with immediate effect.

132. The Panel unanimously recommends that OHRM as a matter of priority, establish a clear policy as to what constitutes a ‘full,’ ‘legitimate’ and ‘genuine’ university degree.

133. The Panel unanimously recommends that, in order not to single out one particular case, the Administration conduct a comprehensive review of the current staff against an up-to-date diploma mills list, and that it take appropriate action.

134. The Panel unanimously recommends that the Administration consider using, as one of its tools of evaluation, particularly in pre-recruitment formalities, a commercial academic credential evaluation service to verify candidates’ degrees (for example, <http://www.wes.org/>).

135. The Panel unanimously recommends that OHRM establish an advisory service to advise applicants and staff members, especially in field missions, as to the legitimacy and acceptability of the institutions in which they plan to enroll or from which they hold degrees.

136. The Panel unanimously recommends that OIOS review its interview procedures to bring them in line with the *Sokoloff* judgment, in particular the recording of investigations, the vetting of transcripts or reports and the recourse to counsel by the person under investigation.”

On 14 November 2006, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

“The Secretary-General has examined your case in the light of the JDC's Report, as well as the entire record and the totality of the circumstances. He agrees with the findings and conclusions of the JDC, including its finding that your actions constitute serious misconduct. He also agrees with the recommendation by the JDC that you be separated from service with [i]mmediate effect. The Secretary-General is of the view that your actions are inconsistent with the standard of integrity required for international civil servants and *that the severity of your misconduct is incompatible with continued service in the Organization*. Accordingly, the Secretary-General has decided that, with immediate effect, you be separated from service with compensation in lieu of notice in accordance with Staff Rule 110.3(a)(vii).”

On 23 May 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. His due process rights were violated.
2. He did not commit any misconduct.
3. The Respondent did not properly exercise his discretionary authority in the decision to separate him from service.
4. The penalty imposed for the alleged misconduct was not proportionate.
5. He should be reinstated or granted appropriate compensation and additional fees and cost.

Whereas the Respondent's principal contentions are:

1. The Applicant's due process rights were upheld.
2. The Applicant's conduct amounted to serious misconduct.
3. The Respondent validly exercised his discretionary authority in the decision to separate the Applicant from service.
4. The penalty was proportionate to the offense committed by the Applicant.
5. The Applicant's claim for compensation is groundless.

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

I. The first issue is whether the Respondent was entitled to summarily dismiss the Applicant on grounds of serious misconduct. In reviewing the Secretary-General's exercise of discretion to impose disciplinary sanctions, the Tribunal has consistently followed the guidance in Judgement No. 941, *Kiwanuka* (1999), para. III:

“In reviewing this kind of quasi-judicial decision and in keeping with relevant general principles of law, in disciplinary cases the Tribunal generally examines (i) whether the facts upon the disciplinary measures were based have been established; (ii) whether the established facts legally amount to misconduct or serious misconduct; (iii) whether there has been any substantive irregularity (e.g. omission of facts or consideration of irrelevant facts); (iv) whether there has been any procedural irregularity; (v) whether there was an improper motive or abuse of purpose; (vi) whether the sanction is legal; (vii) whether the sanction imposed was disproportionate to the offence; (viii) and, as in the case of discretionary powers in general, whether there has been arbitrariness. This listing is not intended to be exhaustive.” (See also Judgement No.898, *Ugla* (1998), para.II).

Moreover, the Tribunal has emphasized that the recommendations and conclusions of the JDC are advisory and are not binding on the Administration. The Respondent has discretion to reach a different conclusion after consideration of all the facts and circumstances of the case.

II. The Tribunal notes that the JDC carefully examined the facts to which the charges relate. In respect to the charge of giving evasive and untrue answers to OIOS investigators the JDC held that, in the absence of a verified record of the interviews with the Applicant, it had not been established that the Applicant gave evasive and untruthful answers during the OIOS inquiries. However, the JDC found as a fact that the Applicant had submitted information regarding the TC&U degrees, and attested to its truth, at the time knowing that the degrees conferred were not legitimate. They concluded that the Applicant “deceived the Organisation into believing that he was endowed with bona fide academic degrees when that was not true”.

III. The Tribunal notes that there was no dispute that, at the time of the JDC report and also in 1998-99, TC&U was a “degree mill”, that is “an unaccredited institution that requires students to do little or no work to earn degrees” (“Degrees of Suspicion”, a Special Report in the *Chronicle of Higher Education*, cited by the JDC). The JDC was entitled to find, as it did, on the basis of extensive evidence that TC&U was also a “degree mill” in the period 1994 to 1997, when the Applicant claimed to have attended. This evidence included the fact that the Applicant’s alleged “academic work”, produced at a late stage of the proceedings, was highly questionable. The crucial issue of fact was whether the Applicant knew that Trinity College and University was a “degree mill” in 1994 to 1997, at the time he submitted his P.11 Personal History and signed the declaration that the facts stated were true. In this respect the JDC based its finding that he did have such knowledge “on a wealth of circumstantial evidence”. One of these circumstances was the contradictory manner in which the Applicant presented his educational credentials to WIPO in Geneva and OHRM in New York. In particular, he gave OHRM a London location for TC&U, although he had been instructed by TC&U to use, what turned out to be an accommodation address in London of the TC& U Alumni Association, strictly only for purposes of verification of his degrees. He gave WIPO an Ilkeston, Derbyshire, UK, address for verification purposes, while on all but one of the letters he had received from TC&U during 1994 to 1997, when he claimed to have attended TC&U, the

address given was Malaga, Spain. Another relevant circumstance was that a day before he submitted his P.11 form to OHRM, and, again four days later, he was contacted by WIPO about his degrees. On the basis of these facts, and all the other circumstantial evidence, the Tribunal finds that the JDC was fully entitled to draw the inference that the Applicant knew that the degrees were not legitimate and that he deceived the Organisation into believing that he was endowed with bona fide academic degrees when this was not true. The Tribunal has considered but rejects all the arguments by the Applicant which question these findings of fact.

IV. The Applicant submits that “the fundamental problem with the allegations regarding the evaluation of his degrees is that the Respondent is applying standards retroactively and trying to hold the Applicant accountable for its own action or, in this case, inaction”. It is true, as the JDC found, that “the pre-recruitment formalities were deeply flawed”. There were a number of circumstances which should have made OHRM suspicious of the legitimacy of the Applicant’s degrees, in particular he did not want that his present employer, WIPO (who had questioned his degrees) be contacted. Moreover, OHRM did not conduct a simple Internet search for TC&U, which would have revealed its status, and its addresses could not be identified. The two degrees were done within a period of three years while the Applicant was employed on a full-time basis. In view of the clear administrative guidelines on recruitment, which state that “the Organisation does not recruit or promote staff members who hold degrees it knows are not legitimate”, there was undoubtedly negligence and contributory fault on the part of OHRM in failing to make proper checks at the time of recruitment in 2000. However, in the Tribunal’s judgement, these failures on the part of the Administration cannot be considered as exculpating the Applicant for his own misconduct. Nor is it correct to say, as the Applicant submits, that standards were applied retroactively to him.

V. First, on his P.11 of 18 May 2000, he signed a declaration that he “understand(s) that any misrepresentation or material omission made on a Personal History form or other document requested by the Organisation renders a staff member liable to termination or dismissal”. Secondly, staff regulation 9.1(a) states that “the Secretary-General may also, giving the reasons therefor, terminate the appointment of a staff member...(ii) if facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment, should under standards established in the Charter, have precluded his or her appointment”. Neither the P.11 declaration, nor the Staff Regulations specify any time limits beyond which a staff member may not be held accountable for his or her fraudulent conduct anterior to his or her recruitment.

VI. The Applicant argues that it was inconsistent with the Tribunal’s Judgement No. 981, *Masri* (2000), and contrary to the principles of good faith and fair dealing, for the Administration to question the basis of its own decisions years after it had ratified them through two competitive recruitment and review

processes, and subsequent extensions of his employment contract. In the Tribunal's judgement, the *Masri* case is distinguishable from the present case. In *Masri*, the Respondent was deemed, prior to the staff member's recruitment, to have constructive knowledge of the staff member's brother's appointment with the Organisation. The Organisation was, therefore, estopped from relying on his brother's employment as a reason for not renewing the Applicant's contract. Moreover, the staff member did not mislead the Respondent, as he did not deny having a brother who was a staff member. In the present case, as the JDC found, the Respondent had neither actual nor constructive knowledge concerning the legitimacy of the Applicant's degrees, but relied on the information provided by the Applicant himself. Although this information was not properly checked by the Administration at the time, it was the Applicant who knowingly misled the Respondent in the first instance. For these reasons, the Tribunal upholds the JDC's finding, which was accepted by the Respondent, that the Applicant failed to meet the standards of integrity required by international civil servants, and that this amounted to serious misconduct.

VII. The second issue raised by the Applicant, is whether there were mitigating circumstances, which rendered the decision to terminate the Applicant's services disproportionate. The Applicant submits that "there is something inherently unjust in using the services of the Applicant over a period of 12 years and suddenly penalizing him for the situation which the Organisation itself created, while ignoring his exemplary record of service, letters of commendation, and later promotions". The Applicant was in fact employed by OHRM for a period of less than five years before his deception came to light in the course of an investigation into his alleged misuse of a rental subsidy. The Tribunal questions the statement that the Organisation "itself created" the situation. As stated above, it was the Applicant's own conduct of deception which led to the situation, although the Administration might have discovered the deception by more diligent inquiries at the time of recruitment. The Tribunal has consistently held that the imposition of sanctions for misconduct involves the exercise of a discretionary power by the Administration and that the Tribunal will not interfere with a sanction unless it is disproportionate or tainted by extraneous factors. In the Tribunal's judgement, the Secretary-General was fully entitled to separate the Applicant from service because the Applicant held a senior position and the way in which he had obtained his various positions in the Organisation was tainted by deception, in respect of a post for which he knew that a university degree was a pre-requisite. This was contrary to the "highest standards of ... integrity" which is the "paramount consideration in the employment of staff by the Organisation" (See Article 101, para 3 of the Charter; see also staff regulations 1.1. (d), 1.2(b), 1.2(e), 1.2(f), 4.1. and 4.2).

VIII. The third issue raised by the Applicant is that his due process rights were violated. He complains that he was not provided with a record of the interviews with OIOS, and that he was not afforded the right to counsel during these interviews. The JDC Panel expressed regret at the failure of the OIOS investigators to record their interviews with the Applicant and criticized them for refusing to allow the Applicant's counsel to be present during his interviews. The Tribunal repeats these criticisms, but finds that these

procedural irregularities at an early stage of the investigation process did not have an “inevitable direct impact on the decisions in the following stages” (See Judgement No. 1246 (2005)). There was a full hearing before the JDC, at which the Applicant was represented by counsel, and the facts were fully investigated. The errors of the OIOS investigators did not amount to a breach of due process rights of a kind that would invalidate the decision of the Respondent, nor did it give rise to any injury or harm to the Applicant.

IX. The Applicant also complains about his suspension on full pay, pending completion of the disciplinary proceedings against him. The JDC found that the suspension was justified in order to protect the interests of the Organisation and its staff, given that the Applicant had unlimited access to personal and confidential data. Staff rule 110.2 provides that “suspension shall be without prejudice to the rights of a staff member and shall not constitute a disciplinary measure”. The Tribunal is satisfied that the suspension did not result in any harm to the Applicant, and was not unreasonably long given the seriousness of the charges and the need for a full investigation into those charges in the interests both of the Organisation and of the Applicant.

X. Finally, the Applicant points to in paragraph 62 of the JDC report which reads as follows:

“The Panel first wished to address the fact that one of its members holds a degree from a non-accredited institution. However, in fundamental difference to [the Applicant]’s situation, the Panel member also holds degrees from *bona fide* institutions. These *bona fide* degrees served as educational credentials at the time of the Panel Member’s recruitment to the United Nations. The Panel Member obtained the non-accredited degree while already a UN staff member in the professional category.”

It appears (para. 63) that the Panel became aware of this only in mid-October 2006, after its hearings. The Tribunal has consistently stated that a properly constituted Panel is an essential part of due process. In Judgement No. 870, *Choudhury and Ramachand* (1998), the Tribunal stated:

“VII. It is a general principle of international administrative law that a committee involved in the taking of administrative decisions should be properly constituted. (Cf. Judgement No. 28, *Wallach* (1953)). The principle requires that, in the constitution of a committee, in keeping with the maxim that justice must not only be done but must be seen to be done, if there is representation, there must be properly distributed representation. The constitution of the SPRP was defective in this regard, and in fact, improper, as there was no representation, direct or indirect, of the LSA in Srinagar or of the staff in New Delhi. As a result, there was disproportionate representation of the LSA in Rawalpindi. The Respondent’s explanation for this lack of representation was that travel restrictions between Pakistan and India prevented representation from staff in the Srinagar and New Delhi offices. The Tribunal finds this explanation to be inadequate. Following the recommendations of the JAB, the Respondent indicated that “he will examine the implications [of, *inter alia*, the persistent absence of New Delhi staff from the SPRP] to determine whether a change in the existing procedures is warranted.” The record indicates that no change has been made.

The disproportionate representation is a procedural irregularity which violated the rights of the Applicants. It is not necessary for the Applicants to show that, had there been proper

representation, they would have been promoted. What is relevant is that there was improper constitution of the SPRP which could have affected the chances of the Applicants' being promoted. Furthermore, the fact that the SPRP was an advisory body and not the authority taking the final decision on promotions is also immaterial. Insofar as it gave advice, its advice was tainted by the procedural irregularity. This is sufficient injury to the Applicants, for which compensation is due."

There is no suggestion that the non-accredited degree held by the panel member was from TC&U. The Tribunal also notes that in Judgement No. 1175, *Ikegame* (2004), it was held that there was a violation of due process rights when the Applicant was not informed in a timely manner precluding her from objecting to a member of the panel. The question in the present case is whether the fact that one of the panel members held a degree from a non-accredited institution gives rise to an actual conflict of interest or could give the appearance of a conflict of interest. The JDC noted that in this case the panel member had obtained his appointment on the basis of degrees from bona fide institutions and that he obtained the non-accredited degree while already a United Nations staff member. In those circumstances, this Tribunal finds that there was no need for the JDC to disclose the panel member's non-accredited qualification. There was no suggestion that the panel member had obtained his appointment on the basis of a non-accredited degree, nor that he had deliberately misled the Organisation, and it appears that the non-accredited degree was not from TC&U, the body involved in the present case. In the Tribunal's judgement, there was no actual or apparent conflict of interest.

XI. The Tribunal finally turns to consider the Applicant's application for costs. In Judgement No. 237, *Powell* (1979) the Tribunal held that:

"...the Tribunal will not, as a general rule, grant costs to Applicants whose claims have been sustained by the Tribunal. Nor does the Tribunal order costs against the Applicant in a case where he fails. In exceptional cases, the Tribunal may, however, grant costs if they are demonstrated to have been unavoidable, if they are reasonable in amount, and if they exceed the normal expenses of litigation before the Tribunal."

The Tribunal finds that in the present case, the Applicant has not demonstrated exceptional circumstances, which would justify the award of costs. This plea is therefore rejected.

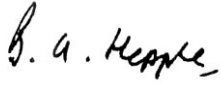
XII. Accordingly, the Tribunal rejects the Application in its entirety.

(Signatures)



Spyridon **Flogaitis**

President



Bob **Hepple**
Member



Agustín **Gordillo**
Member

Geneva, 31 July 2009



Tamara **Shockley**
Executive Secretary