



THE UNITED NATIONS APPEALS

THE UNITED NATIONS APPEALS TRIBS

... Having reviewed the investigation report, the Commissioner-General then decided that:

The findings set out in the investigation report indicate that you have engaged in misconduct, and have failed to meet the standard of conduct and integrity expected of an international civil servant pursuant to International Staff Regulation 1.4, by submitting a non-accredited degree in support of your successful application for the post of Senior Procurement Officer, General Stores, P4. By submitting a non-accredited degree, you misrepresented your academic qualifications to the Agency, in direct violation of the statement you signed under paragraph 33 of your Personal History Form dated 14 March 2000.

... By letter dated 20 October 2008, [Mr. Walden] responded to the investigation's findings ... alleging that the investigation report misrepresented facts

6. The UNRWA DT failed to exercise its jurisdiction when it did not adequately compensate Mr. Walden for the infringement of his due process rights and the moral damages he suffered. He is entitled to increased compensation beyond the statutory limit because his case is exceptional within the meaning of Article 10(5)(b) of the UNRWA DT Statute.

7.

The Commissioner-General's Appeal

12. The UNRWA DT erred on a question of law in its interpretation and application of “knowingly misrepresented” legal standard. The Commissioner-General submits that the UNRWA DT’s “improvised” definition of elements of “knowingly misrepresented” has no basis in the administrative framework of the Agency or in generally accepted principles of law. It resulted in an unduly narrow legal construction of the uncontroverted facts the Agency presented.

13. The UNRWA DT erred on a question of law or exceeded its competence in holding that Mr. Walden’s actions and omissions did not constitute misconduct. The UNRWA DT impermissibly considered the correctness of th

and in the belief that the qualification was legitimate. Therefore, he could not have knowingly misrepresented this fact.

19. The UNRWA DT did not err on a question of law or exceed its competence in holding that Mr. Walden's actions did not constitute misconduct. He fully disclosed to the 2000 recruitment board that his MBA qualification was based on prior experience and not on campus studies. The UNRWA DT made findings of fact that called into question the Agency's finding of misconduct. The Agency failed to interview more than one of the members of the recruitment board and, when a second member was contacted and corroborated Mr. Walden's statements to the board, the Agency did not follow up with the other members of the board. Thus, the decision to dismiss him was a "foregone conclusion despite evidence to the contrary".

20. The UNRWA DT did not err on issues of fact by failing to take into consideration Mr. Walden's admissions as he did not make any admissions of fault. He also did not hide or misrepresent information relating to his MBA, which he did not know was not legitimate. His discussion with the Chief, Personnel Services was taken out of context.

21. The UNRWA DT did not err in making a finding that the decision to terminate Mr. Walden was tainted by procedural irregularities and that the evidence showed actual prejudice to his due process rights.

22. The damages awarded were not excessive.

23. Mr. Walden requests that the Appeals Tribunal reject the Commissioner-General's appeal.

Considerations

24. It is settled jurisprudence of this Tribunal that, "when reviewing a disciplinary sanction imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence".³

³ *Nasrallah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-310, para. 23, quoting *Masri v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-098; *Maslamani v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-028; and *Haniya v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-024.

25. In the instant case Mr. Walden submitted a Personal History Form and a curriculum vitae which indicated, *inter alia*, that he had an MBA from Trinity College & University (TC&U), South Dakota, USA.

26. Following interviews by a recruitment board, he was offered a one-year fixed-term appointment on 2 July 2000 which was subsequently extended.

27. In 2006, a report by OHRM entitled “Diploma Mills: A Report on Detection and Prevention of Diploma Fraud” made reference to fake diplomas issued by TC&U, South Dakota, among other universities.

28. Mr. Walden was asked to respond to a list of questions regarding his MBA from the said university.

29. By memorandum dated 24 October 2007 he, *inter alia*, stated that he never doubted the credentials. He also said that when enquiring about his suitability for a P-3/P-4 position, he was advised that a person of his age, qualifications and experience should be looking to formalizing his skills and experience through a University such as TC&U. He explained that he questioned the ethics of accepting such a qualification and was advised that many people within the Organization had already obtained a qualification from this university and that it was acceptable to the Organization. The qualification was based on “recognition of prior learning” and no attendance was required. He was awarded a degree with distinction and never questioned it.

30. The undisputed fact is that Mr. Walden knowingly presented non-existent credentials in spite of questioning the ethics of accepting the document with his qualifications.

31. To determine whether this established fact amounts to misconduct we look at the International Civil Service Commission’s 2001 “Standards of Conduct for the International Civil Service” (circulated to UNRWA staff by Memorandum from the Commissioner-General dated 27 January 2003) which provide, with regard to the standard of conduct expected of United Nations’ staff: “The concept of integrity enshrined in the Charter of the United Nations embraces all aspects of behaviour of an international civil servant, including such qualities as honesty, truthfulness, impartiality and incorruptibility. These qualities are

as basic as those of competence and efficiency, also enshrined in the Charter.”⁴ The Charter of the United Nations of 1945 in Article 101.3 states, in part, that “[t]he paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity”. While the 2001 Code of Conduct post-dates Mr. Walden’s recruitment, the principles it enshrines were equally applicable in 2000.

32. Mr. Walden was aware that he had obtained his professional position within the Organization with an inexistent university degree.

33. International Staff Regulation 10.2 states: “(a) The Commissioner-General may impose disciplinary measures on staff members whose conduct is unsatisfactory. (b) The Commissioner-General may summarily dismiss a staff member for serious misconduct.”

34. Once having accepted the facts and the offence, the third test is that of proportionality. The Appeals Tribunal considers that termination is not disproportionate to the offence taking into account that Mr. Walden’s recruitment, in the first instance, was predicated on the existence of a degree subsequently established to be without merit and which never would have qualified him for selection by the Organization.

35. The UNRWA DT Judgment applied the right test but arrived at the wrong conclusion when determining termination as disproportionate to the misconduct.

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Judgment

39. The UNRWA DT Judgment is vacated.

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