



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1460

Al Waleed Abdelrahman Abdrabou
(Appellant)

v.

Secretary -General of the United Nations
(Respondent)

JUDGMENT

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| Before: | Judge Leslie F. Forbang, Presiding Judge Katharine Mary Savage Judge Abdelmohsen Sheha |
| Case No: | 2023-1831 |
| Date of Decision: | 28 June 2024 |
| Date of Publication: | 30 July 2024 |
| Registrar: | Juliet E. Johnson |

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| Counsel for Appellant: | Self-represented |
| Counsel for Respondent | Francisca Lagos Pola |

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under the medical insurance plan (MIP), which is a self-insurance plan.⁸ The MIP provided health insurance for eligible staff members and their family members. Cigna International Health Service (Cigna) administered the MIP on behalf of UNDP, reviewed claims submitted and processed

an Operations Analyst (OA) and a Human Resources Analyst (HRA)—, according to whom he had admitted to them that his son did not receive the medical treatments claimed and that he knew the inauthenticity of the documents submitted. In support of the finding, the Sanction Letter stated that he had submitted inconsistent and inaccurate information to OAI.

17. Referring to the Charge Letter, the Sanction Letter maintained a reference to Staff Regulation 1.2(b), paragraph 25 of the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct (Legal Framework),²⁰ paragraph 7 of the UNDP Policy on Fraud and Other Corrupt Practices (Fraud Policy)²¹ and Staff Rule 10.1(a), applicable at the relevant time.²²

18. With regard to the proportionality of the sanction, the Associate Administrator of UNDP stated in the Sanction Letter:²³

In reviewing your case, I have considered all relevant circumstances, including a number of aggravating and mitigating factors. In this regard, I note that you have not cooperated with the investigation and, as noted above, attempted to mislead investigators about the fact that you had already received reimbursement for the medical claims at issue. You have

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to believe that a payment in cash of such a large amount of money was made, including more than USD 6,000 being carried by third parties in a far area of a country facing many security problems. PW2 did not confirm to the investigators the alleged facts. Given the large sum of money at issue, it is highly unlikely that if such a transfer had bfa5.6 (a)6.7u0a-1bm.9 (8n0((a5.6 (a)6.7u0).3

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evidence. The established facts amount to misconduct. The sanction is proportionate to the offence. Mr. Abdrabou's due process rights were respected. In the contested decision, UNDP had considered all comments and exculpatory evidence submitted by him.

43. The Secretary-General contends that Mr. Abdrabou has not established any errors warranting reversal of the impugned Judgment. The UNDT did not err in its consideration of the 19 October 2020 letter from USTH. Furthermore, on record, there is a copy of a genuine invoice, issued by USTH in connection with another patient on 24 November 2019, i.e. around the same time, showing an advance payment, unlike the invoice in dispute.

44. The Secretary-General further submits that the UNDT did not err in relying on the witness statement of the OA. It is corroborated by the statements of the HRA. Contrary to Mr. Abdrabou's claim, the HRA did not indicate having been pressured into providing the statement. There is no reason to conclude that the statement of the HRA was fabricated by OAI. Nevertheless, the statement of the OA is sufficient.

45. Lastly, the Secretary-General states that the UNDT did not err in considering the OAI Investigator Notes on interviews of TI and PW2. Their evidence does not directly relate to whether the invoice in dispute and the medical report were authentic. Mr. Abdrabou has submitted no evidence of bias by the OAI investigators.

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(d) Mr. Abdrabou's failure to submit any evidence to show that the operation on his son actually occurred or that payments had been made to USTH for the alleged expenses submitted to Cigna, and the absence of any evidence of the effectiveness of the medical treatments such as statements from the medical practitioners or nurses or other staff members of USTH, or his ex-wife and her brot8 ()Tj 0.n2 (b.)10.76 (o)9.4en3 Pd 3113 Tw 0.37 0 Td [(v

under oath or affirmation, there must be some other indicia of reliability or truthfulness for the statement to have probative value.⁵⁰ In *Messinger*, we noted the UNDT's broad discretion in the determination of both the admissibility and the weight of the evidence :⁵¹

There is a distinction between the admissibility of evidence and the weight to be attached to such evidence. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure and the weight to be attached to such evidence. This Tribunal is also mindful that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT.

60. In order to establish that the UNDT erred, it is necessary to establish that the evidence, if dismissed, would have led to different findings of facts and changed the outcome of the case. In the case at bar, we find that the dismissal of the unsworn testimony of the HRA would not have changed the outcome of the case. The statement of the OA and the evidence from the R/USTH refuting the authenticity of the invoice and the medical report

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loss of the then equivalent of USD 6,167.06 in undue reimbursement paid to Mr. Abdrabou. This qualified as misconduct under paragraph 25(e) of the Legal Framework. Therefore, the Dispute Tribunal was not wrong to conclude that even if Mr. Abdrabou did not himself cooperate in the forgery and it pe 55 (o)-3.5Mthoew.8 (i)0dq x••À €•• ••%oá %o; !'X ÷ R U ,Cá(ŽT -t_R Y

73. As a result, we find that the sanction imposed on Mr. Abdrabou is lawful and proportionate. Accordingly, the UNDT did not err in finding that the sanction was proportionate to the offence.

IV. Whether the UNDT erred in finding that Mr. Abdrabou's due process rights were respected

74. The UNDT in the impugned Judgment concluded that Mr. Abdrabou's due process rights were respected during the investigation and disciplinary process. Mr. Abdrabou contends that one of the witnesses lied and one of them, the HRA, had ulterior motives. He further alleged that his interview before OAI was selective and biased.

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merit a reversal except in clear cases of denial of due process of law affecting the right to produce evidence”.⁶²

78. Therefore, we find that the UNDT did not err in finding that Mr. Abdrabou 's due process rights were respected.

Judgment

79. Mr. Abdrabou's appeal is dismissed, and Judgment No. UNDT/2023/037 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)

Judge Forbang, Presiding

(Signed)

Judge Savage

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 30th day of July 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar