



Case No.: UNDT/NBI/2009/0'

Judgment No. UNDT/2010/073

Date: 29 April 2010

Introduction

1. The Applicant, a former staff member of the United Nations Children's Fund (UNICEF), is appealing an administrative decision taken by the Deputy Executive Director, dated 11 December 2008, to summarily dismiss him for serious misconduct. The charges related to harassment, aggressive behaviour and gender discrimination against a colleague at work place.

The Facts

2. The Applicant joined the Organization on 1 August 2002 in the UNICEF Kadugali office as a Health Specialist at the National Officer level 3.
3. On 24 August 2008, the Applicant and the then-Officer-in-Charge (OiC), Ms. (...), had an incident of an interpersonal nature in the UNICEF Kadugali office. Two colleagues in the office witnessed the argument.
4. On 27 August 2008, the UNICEF Sudan Country Office conducted an investigation and issued its findings in a report dated 4 September 2008.
5. As a result of the investigation findings, the Division of Human Resources charged the Applicant, on 20 October 2008, with:

“harassment and threatening of another staff member conduct unbecoming of international civil servants by aggressively addressing [the then-Officer-in-Charge] on 25 August 2008, waving [his] hand in front of her in an aggressive manner, shouting and intimidating her, and making disrespectful and demeaning remarks that attacked her nationality and gender”.

“Transitional measures related to the introduction of the new system of administration of justice”. By order of change of venue, the case was transferred to the Nairobi Registry on 6 August 2010

12. A hearing was held on 8 February 2010. Parties did not call any witness nor provided any additional documentation.

Applicant's Submissions

13. The Applicant avers that there is no evidence to substantiate the Respondent's claims of misconduct for the incident of 24 August 2008. He also denies any reference to prior history of shortcomings.

14. The Applicant further argues that the incident of August 2008 was a misunderstanding. He never had any problem with the Officer-in-

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16. The Respondent submits that, on the basis of the evidence as presented by the investigation, the Applicant was summarily dismissed for “harassment and threatening of another staff member and conducting of international civil servants by aggressively addressing another staff member on 25 August 2008, by acting in an aggressive manner and verbally abused her by shouting

misconduct and that the then-OiC and the eye witness provided false statements to the investigation panel.

21. In his response to the Charges letter dated 20 Octo

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27. In its Article 101 (3), the Charter provides that the paramount consideration in the employment of staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity (...)."

28. UN Staff Regulation 1.2 (a) reads as follows:

"(...) Staff members shall exhibit respect for all cultures; they shall not discriminate against any individual or group of individuals (...)."

29. UN Staff Regulation 1.2 (b) further provides that:

"Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status."

30. The provisions of UN Staff Rule Article 110.1 ~~generally~~ define misconduct as:

"Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the UN Staff Regulations and Staff Rules or other administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct within the meaning of staff regulation 10.2, leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct."

31. UNICEF Human Resources Manual on Policy and Procedure Chapter 15, section 2, paragraph 15.2 ~~reads~~ reads as follows:

“Activities that would constitute misconduct include, but are not limited to, the following:

d) Assault upon, harassment of, or threats to other staff members.”

32. The Tribunal notes that the Secretary-General's ~~letter~~ ST/SGB/2008/5 dated 11 February 2008, on “Prohibition of Discrimination, Harassment,

“(…) the improper use of a position of influence or authority against another person. (…). Abuse of authority include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, ~~clats~~, blackmail or coercion. Discrimination and harassment (…) are ~~equally~~ particularly serious when accompanied by abuse of authority.”

35. The Tribunal observes from the Investigation Report dated 4 September 2008 that the Panel interviewed six people, namely the Applicant, Ms. (...), the witnesses, Mr. (...) and Mr. “S”, and the two cleaners. Having examined the witness statements, the Tribunal does not find that the witnesses recollection of the 24 August 2008 incident were contradictory in any way.

36. As regards the allegations made by the Applicant that the OiC had mistreated two cleaners working in the office, the Tribunal ~~is~~ ~~not~~ ~~in~~ ~~line~~ ~~with~~ the cleaners’ statements that “they did not feel mistreated by the OiC. The evidence takes care of the Applicant’s allegation that the OiC had mistreated the two cleaners.

37. The documentary evidence belies the Applicant’s ~~claim~~ ~~allegations~~ that no investigation had been conducted and that the ~~system~~ ~~system~~, including the two cleaners, had not been interviewed. In fact the Applicant had been communicated a copy of the final report and was ~~offered~~ ~~offered~~ an opportunity to respond to the Charges based on the investigation report.

38. In matter of discipline, the Tribunal considers that the standard of proof in disciplinary proceedings is not as high as in ~~criminal~~ ~~criminal~~ trial¹. Furthermore, the Tribunal adopted the following reasoning in the ~~case of~~ ~~case of~~ *Diakite*:

¹ See Judgment No. UNDT/2010/41 *Liyanarachchige*, dated 9 March 2010 wherein the Tribunal referred to the case *Čatmir Limaj et al v. Prosecutor*, Case No. IT-03-66-T, International Criminal Tribunal for the Former Yugoslavia (ICTY), Trial Judgment, 30 November 2005.

“The Tribunal has first to determine whether the evidence in support of the charge is credible and capable of being accepted upon (...). Once the Tribunal determines that the evidence in support of the charge is credible the next step is to determine whether the evidence is capable of leading to the irresistible and reasonable conclusion that the act of misconduct has been proved. In other words, the facts presented permit one and only conclusion that has been made out? (...).”²

39. In the present matter, the Tribunal finds that the evidence in support of the charges was credible and that the Applicant has failed to prove that the questioned decision was arbitrary or motivated by prejudice or other extraneous factors, or was flawed by procedural irregularities or error of law.

40. In the light of the foregoing, the Tribunal is satisfied that the Respondent did not impinge on the Applicant’s rights to due process in respect of disciplinary matters and there were sufficient elements to determine that the Applicant had engaged in misconduct.

41. In respect of the proportionality of the disciplinary measure, the Tribunal recalls that respect for diversity and integrity are core values of the UN, which every staff member must follow, irrespective of the

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42. For the foregoing reasons, the application is ~~dismissed~~ in its entirety.

