
before: Judge Agnieszka Klonowiecka-Milart

registry: Nairobi

registrar: Abena Kwakye-Berko

BRANGLIDOR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Not represented

Counsel for the Respondent:
Young An, AAS/ALD/OHR
Yany Batrouni, AAS/ALD/OHR

INTRODUCTION AND PROCEDURAL HISTORY

1. The Applicant is a former staff member of the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”). He filed applications on 4 June 2019 and 8 August 2019 challenging the decision to impose on him the disciplinary measure of separation from service (Case No. UNDT/NBI/2019/057) and a decision he characterizes as the “failure in entitlements” disbursements after separation from service” (Case No. UNDT/NBI/2019/117). By Order No. 142 (NBI/2019), the Tribunal consolidated the two cases for adjudication in one judgment. Subsequently, upon a finding that gathering information relevant only to Case No. UNDT/NBI/2019/117 would delay the issuance of the present judgment, the case was severed by way of Order No. 027 (NBI/2021). Case No. UNDT/NBI/2019/117 remains under consideration.

2. The Respondent filed a reply to Case No. UNDT/NBI/2019/057 on 11 July 2019.

3. The Tribunal held a case management discussion (“CMD”) with the parties on 5 November 2019.

4. In response to Order No. 001 (NBI/2020), dated 3 January 2020, the Applicant requested an oral hearing and proposed his spouse, SB, as a witness. The Respondent filed a response on 24 January 2020 in which he submitted that an oral hearing was not necessary and objected to SB being called as a witness. The Respondent also submitted that one of the two persons directly implicated, the Director of Administration at the Institute for American Universities (“DoA/IAU”), had previously expressed her

FACTUAL BACKGROUND

10. On 3 June 2015, the Applicant submitted a signed P.45 form to MINUSMA Human Resources Management (“HRMS”)³, dated 2 June 2015, requesting an education grant advance for the 2015-2016 academic year for KB.⁴ The P.45 form was received by the Regional Service Center Entebbe (“RSCE”) on 11 June 2015.⁵

sent the emails to the EGSL/RSCE because she had spoken frequently of “exposing” the Applicant, had previously tried unsuccessfully to get KB to do it and had previously used her children’s email addresses in order to conceal her authorship.¹³

13. On 29 December 2016, the Office of Internal Oversight Services (“OIOS”) received a report alleging that the Applicant had submitted false information in support of education grant claims. The allegations concerned education grant claims submitted between September 2014 and April 2017 for the Applicant’s dependent children, DB, GB, KB and GRB.¹⁴ OIOS initiated an investigation into the allegations.

14. According to the DoA/IAU, sometime in April 2017, the Applicant visited her unexpectedly at IAU in Aix-en-Provence, France, and asked her to sign two P.41 forms for his daughters KB and GB for him to be reimbursed by the United Nations. She signed and stamped the forms as requested and emailed copies to him on 10 April 2017.¹⁵

15. By email dated 11 April 2017, the EGSL/RSCE directed the Applicant to submit his education grant claim for KB via FSS to allow them to proceed with processing.¹⁶ On 12 April 2017, the EGSL/RSCE notified the Applicant that if he did not create the claim and submit the supporting documents by close of business, the advance paid to him on 14 December 2015 would be recovered.¹⁷ He responded the same day that he did not have access to FSS because he was away from his duty station and that he was “stuck in bed at home” due to a severe medical condition that was hampering his movement. He was therefore willing to accept a recovery “should it take place”.¹⁸ The Applicant failed to submit the P.41 form for KB in FSS by the education grant claim deadline of 12 April 2017, thus there was a recovery of the 14 December 2015 advance.¹⁹

¹³ Ibid., pages 212 and 215.

¹⁴ Ibid., page 5 (OIOS Investigation Report).

¹⁵ Ibid., page 386 (DoA/IAU interview of 25 July 2017 with OIOS, lines 279-280 and 288).

¹⁶ Reply, annex 5, page 139.

¹⁷ Ibid., page 98.

¹⁸ Ibid., page 138.

¹⁹ Ibid., pages 98 and 138-139.

16. On 28 April 2017, the Applicant submitted the education grant claim for KB's attendance at IAU for 2015-2016.²⁰ This submission contained a P.41 form signed by the DoA/IAU and the P.45 form signed by himself. Both documents were dated 24 April 2017. The P.41 stated that KB attended IAU from 14 September 2015 to 20 May 2016 at a cost of USD27,230.²¹ This claim was rejected, and no payment was made to the Applicant.²²

17. OIOS issued its report on 30 April 2018²³ and on 26 December 2018, the Assistant Secretary-General for Field Support referred the matter to the Office of Human Resources Management ("OHRM") for appropriate action.²⁴

18. On 30 January 2019, formal charges of misconduct ("allegations memorandum") and relevant supporting documentation were emailed to the Applicant.²⁵ The allegations memorandum alleged that the Applicant had engaged in misconduct by submitting to the Organization, between September 2014 and April 2017, one or more education grant claims and/or documentation for KB and DB that contained false information. He acknowledged receipt of the email and was given two weeks to respond to the allegations.²⁶ He submitted his response to the allegations on 10 February 2019.²⁷

19. By a letter dated 18 March 2019 ("sanction letter"), the Assistant Secretary-General for Human Resources informed the Applicant that the allegations in respect of education grant claimed for DB were dropped. This was notwithstanding a finding that the Applicant had submitted claims for non-existing schooling expenses for DB and one of them had resulted in a payment which would be subject to recovery. In respect of KB, there was clear and convincing evidence that his conduct amounted to misconduct because he had submitted one or more education grant claims and/or

documentation that contained false information for the period September 2015 through April 2017. She further informed him that his conduct had violated staff regulation 1.2(b) and section 9.1 of ST/AI/2011/4 (Education grant and special education grant for children). Accordingly, the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity in accordance with staff rule 10.2(a)(viii) was imposed on him.²⁸

20. The Applicant was separated from service on 2 April 2019.

Scope and standard of review in disciplinary matters

21. In the context of disciplinary cases, the UNDT is to examine:²⁹

- a. Whether the facts on which the sanction is based have been established;
- b. Whether the established facts qualify as misconduct under the Staff Regulations and Rules;
- c. Whether the sanction is proportionate to the offence; and
- d. Whether due process rights were observed.

22. The Tribunal recalls that as per the United Nations Appeals Tribunal (“UNAT/Appeals Tribunal”) full bench holding in *Applicant*, “[j]udicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration.”³⁰ In its jurisprudence since *Applicant*, the UNAT has maintained that it is not the role of the UNDT to conduct a *de novo* review of the evidence and place itself “in the shoes of the decision-maker”³¹, as well as the definition of “judicial review” articulated in *Sanwidi*

²⁸ Reply, annex R/9.

²⁹ *Mahdi* 2010-UNAT-018; *Haniya* 2010-UNAT-024; *Sanwidi* 2010-UNAT-084; *Masri* 2010-UNAT-

retains actuality:

During [its] process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision maker's decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker's administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due deference is always shown to the decision-maker, who in this case is the Secretary-General.³²

Considerations

Whether the facts on which the sanction is based have been established

23. The Respondent's case is that the facts have been established by clear and convincing evidence because:

a. Between September 2015 and April 2017, the Applicant submitted one or more education grant claims and/or related documentation that contained false information with respect to KB's attendance at IAU College for the school year 2015-2016 to the RSCE. These documents include: the 8 September 2015 invoice from IAU College for the 2015-2016 school year, which he submitted to the RSCE on 5 November 2015; the Applicant's signed P.45 form of 24 April 2017 for the 2015-2016 school year; and the P.41 form for KB for the 2015-2016 school year, signed by the DoA/IAU.

b. The evidence provided by KB to the OIOS investigator, specifically the email chain of 27 September 2015, establishes that the Applicant knew that she

³² See *Ouriques* 2017-UNAT-745 para 14 and 15, citing to *Sanwidi* 2010-UNAT-084. Conducting a

had not attended IAU during the 2015-2016 school year.

c. The DoA/IAU's statement that the Applicant visited her office around 10 April 2017 is corroborated by the Applicant's leave record showing that he had travelled to Marseille, France, between 8 and 17 April 2017. Further, the DoA/IAU's statement that the Applicant had brought with him a P.45 form that he had signed and dated 24 April 2017 and the two P.41 forms for his daughters KB and GB that he had already completed is consistent with her e-mail of 10 April 2017, by which she forwarded to the Applicant scanned copies of the documents. The DoA/IAU's statement that the Applicant visited her "around April 30th or shortly after" was in relation to KB's attendance for the 2014-2015 school year, which is not relevant to the Applicant's April 2017 visit.³³

d. The Applicant's contention that he had submitted a payment plan to IAU for KB for the 2015-2016 school year does not change the fact that KB had not attended IAU for that school year and that no payment was made to IAU College.

24. The Applicant's case is that the facts were not proven by clear and convincing evidence. Inchoate arguments have been advanced by him; namely, initially his averment was that no irregularity occurred, and the claims corresponded to payments actually made. Subsequent averments are centred on his unawareness of the fallacy of the claim. Specifically:

a. KB denied authorship of the emails sent to the RSCE;

b. When submitting the claim, he did not know that KB had dropped out of IAU College. Among others, he had submitted a payment plan to IAU for KB's 2015-2016 attendance and the DoA/IAU confirmed such attendance on the education grant form;

c. It has not been established that he went to meet the DoA/IAU. She

³³ Reply, para. 23.

session in June 2015 and did not attend IAU during the 2015-2016 academic year.⁴¹ The DoA/IAU told the OIOS investigator that: (i) she had no record of the 8 September 2015 invoice in the IAU database;⁴² (ii) the invoice “looks a little strange” because the font used for KB’s name and address was different and the payment of USD3845 was entered in a format that she did not use;⁴³ and (iii) there was no record in the IAU database of the payments listed⁴⁴ on the P.41 form⁴⁵ for KB.

28. The Tribunal concludes that the Applicant has not offered any evidence which would contradict the fundamental findings on the objective element of the impugned conduct, that is, that he had made requests based upon untrue information, to which he attested.

29. As concerns the subjective element, that is, knowledge and intent on the Applicant’s part, in his evidence before the Tribunal on 15 September 2020 the Applicant stated that he had learned for the first time that KB had not attended IAU in 2015-2016 from the OIOS investigator during his 9 August 2017 interview. Before, he was unaware of it because he had not signed a parental discharge form required for KB who had then been a minor, to change schools. Additionally, he had last seen KB in August or September 2015 and she did not mention any arrangements to attend AMU to him. He had not communicated with her since May 2016.⁴⁶ Further, he was unaware because the DoA/IAU had failed to inform him of KB’s withdrawal from IAU and had signed the P.41 form confirming her attendance.⁴⁷

30. The DoA/IAU told the OIOS investigator that the Applicant had visited her unexpectedly at IAU in Aix-en-Provence, France, and asked her to sign documents for

⁴¹ Reply, annex R/2, pages 67 – 81 (DoA/IAU emails to OIOS investigator); page 384 (DoA/IAU interview of 25 July 2017 with OIOS, line 231); and page 399, lines 572-575.

⁴² Ibid., page 383 (DoA/IAU interview of 25 July 2017 with OIOS, lines 207-208).

⁴³ Ibid., pages 381-382, lines 168-170; 174-175; 193-197.

⁴⁴ Ibid., page 387 (DoA/IAU interview of 25 July 2017 with OIOS, line 313).

⁴⁵ Ibid., page 174. The P.41 form or the certificate of attendance and costs and receipt for payments is submitted by a staff member when there is an education grant claim for the previous school year. Part A of the P.41 form is filled out by the staff member while part B is filled out by the educational institution. See pages 14 and 15 of ST/IC/2014/12/Rev.1.

⁴⁶ Applicant’s oral evidence of 15 September 2020. See also reply, annex R/2, page 239, lines 207-212 and page 245, lines 342-345 and 354-358.

⁴⁷ Applicant’s oral evidence of 15 September 2020.

him to be reimbursed by the United Nations.⁴⁸ She signed and stamped two P.41 forms, which had all the information, including the date, 24 April 2017, typed in. She did not fill in any of the information.⁴⁹ One form was for KB for the school year 2015-2016 and the other was for his other daughter, GB, for the school year 2016-2017.⁵⁰ The DoA/IAU was unsure of the date of the Applicant's visit but told the OIOS investigator during her 25 July 2017 interview that it was in April 2017.⁵¹ She explained that the Applicant presented her with many documents that he wanted her to sign immediately⁵² so it is possible that she had not read them carefully before signing and mistook the forms as relating to the 2014-2015 school year.⁵³

31. As to the Applicant's contention about the dates of his visits to IAU, the

did not provide a copy of his email to the DoA/IAU to the Tribunal. His evidence was also that he could not have gone to IAU in April 2017 because he was sick and was under the care of a doctor.⁵⁷ He told the OIOS investigator that his wife had subsequently picked the signed originals from the DoA's office and given them to him⁵⁸ but then told the Tribunal that his other daughter, GB, had picked the forms from the DoA's office and given them to him and then he had forwarded copies of the signed forms to the RSCE on 28 April 2017 for processing of his education grant claim/settlement.⁵⁹ The Tribunal also recalls that the Applicant told the OIOS investigator that he had only filled out his personal details in the yellow portion of the P.41 form and that the DoA/IAU had filled out the rest of the form upon receipt of his email.⁶⁰ On the same issue, the Applicant's evidence before the Tribunal was that prior to emailing the P.45 and P.41 forms to the DoA/IAU, he had filled in all the information on the forms and dated them 24 April 2017 as this was the date of his scheduled return to Mali.

33. The Tribunal considers that the Applicant's 12 April 2017 email alleging that he was ill on that date does not create an alibi for him on 10 April 2017. Neither does the *ex post facto* doctor's note dated 26 April 2017. On the other hand, the Applicant's shifting story about the circumstances of filling out and obtaining signatures on the forms, is of low credibility. Obviously, the DoA/IAU had no interest in filling out the forms to unduly benefit the Applicant.

34. According to KB's statement to the OIOS investigator, the Applicant was aware that she was not attending IAU because: he had paid "inscription [registration]" fees for her attendance at AMU for the 2015-2016 school year; in August and September 2015 he had sent her the documents needed to complete her registration for AMU; and he had helped her fill out the forms in October 2015.⁶¹ When she started AMU in

⁵⁷ Applicant's oral evidence of 15 September 2020. See also application, annexes 2 and 6; reply, annex 5, page 138.

⁵⁸ Reply, annex R/2, pages 284-286, lines 1266-1284, page 292-294, lines 1432-1457, page 295, lines 1454-1457, page 296, lines 1518-1520, page 317, lines 1972-1988 and page 321, line 2076.

⁵⁹ *Ibid.*, pages 321-322, lines 2082-2102; reply, annex R/3, pages 39, 59; reply, annex R/5, page 97.

⁶⁰ *Ibid.*, page 287, lines 1298-1317 1, lin3600044 Tm 10 T42082-id., page 20 6.382-id., pchh 20.8349chh 20.67-a

this assertion, even if true, would undermine the fact that money had been transferred from the Applicant's credit card to AMU, or, for that matter, the veracity of the statement that he had been informed of the purpose of the payment by KB.

36. As previously indicated, it proved impossible to secure KB's and the DoA/IAU's appearance before the Tribunal. The Tribunal finds, nevertheless, that their written responses to questions posed by OIOS and, subsequently, their recorded statements to the OIOS investigator, are exhaustive, voluntary, apparently sincere, do not disclose any tendency to unduly incriminate the Applicant, are coherent internally and with each other, and confirmed by documents. They are altogether credible. Issues flagged out by the Applicant as unclear (the date of the Applicant's visit; the amount of the registration fee at AMU), are peripheral details. The Tribunal finds, in any event, that the main evidence against the Applicant consists in facts attested to by documents, that is; that KB was not registered as an IAU student during the school year 2015-2016; that she instead signed up for and attended AMU; that the Applicant did not pay for IAU; that he instead paid a far lesser registration fee at AMU; and that the Applicant applied for and received the education grant advance, and subsequently, submitted a claim for the regular disbursement of the education grant indicating IAU as the educational institution. Considering, moreover, that for an average employee of the Organization making a payment of USD27,045.14 is a fact unlikely to be overlooked or forgotten and that the impulse for this investigation was not an audit but rather an email informing of fraud which came from a person close to the Applicant and well informed, these facts add up to form a very high probability of an act committed with knowledge and intent. In these circumstances, the import of the witness statements lies mainly in the express confirmation of what has already transpired from the remaining evidence.

37. In conclusion, the Tribunal finds that the relevant facts have been established to the requisite standard of clear and convincing evidence.

Whether the established facts qualify as misconduct under the Staff Regulations and Rules.

38. The Respondent submits that: the Applicant's conduct amounted to misconduct because he violated staff regulation 1.2(b) (by failing to uphold the highest standards

Whether the sanction is proportionate to the offence.

42. The Applicant submits that the sanction was not proportionate to the offence because the Respondent failed to take the following mitigating matters into consideration: the OIOS investigator's failure to report his cooperation in providing contact details for KB and SB; his long service in volatile duty stations that had adverse impacts on his family life, psychological and physical being; his responsibility for the care of his ailing father who passed away in March 2016; his exemplary personal and professional performance; and OSLA's refusal to provide him with legal representation.

43. The Respondent submits that the sanction imposed was proportionate because it was in line with the Secretary-General's past practice in comparable disciplinary cases. There is no obligation for the Administration to consider his service in field missions or positive performance as mitigation in the case of gross dishonesty such as submitting a false education grant claim. The Applicant's claim that he had been taking care of his ill father was not raised during the disciplinary process and has no relevance to this case. Similarly, the Applicant's purported illness and medical treatment were not raised by him and in any event have no relevance to his conduct at issue.

44. The Tribunal recalls that a long record of unblemished service has been traditionally recognized by the Respondent as a mitigating circumstance. This said, it also holds that the measure applied in this instance was proportionate to the offence, and was consistent with the established practice in similar matters.⁶⁹ The Tribunal does not consider it disproportionate.

in the investigation must be accorded a special status. They are not hearsay and are more than ordinary documentary evidence as they are given under assurances of speaking the truth, drawn up by an authorised official according to a formalised procedure and are either signed by the interviewee or recorded.

49. Since it was not possible to have KB and the DoA/IAU testify before it, the Tribunal was entitled to rely on the written record. The Tribunal evaluated the quality of these statements for their credibility and considered the Applicant's critique. The Tribunal found, moreover, that interviews in the investigation were neither the only evidence relied upon nor, in viewing the evidence as a whole, had a decisive bearing on the question of the Applicant's responsibility.

Conclusion

50. As the impugned decision conformed to the established requirements and standards, the Tribunal finds no grounds for it to intervene.

JUDGMENT

51. The application is dismissed.

