



JUDGE MARK P. PAINTER, Presiding.

Synopsis

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THE UNITED NATIONS APPEALS TRIBUNAL

11. On 28 June 2007, the Office of Human Resources Management (OHRM) notified Cabrera of the charges of misconduct, and provided him with the PTF report. Cabrera submitted his observations on the charges and the PTF report on 13 July 2007. By letter dated 8 November 2007, Cabrera was informed that he was summarily dismissed for serious misconduct, effective immediately.

12. On 8 January 2008, Cabrera filed a request with the Joint Disciplinary Committee (JDC) to review his summary dismissal. Both parties filed written submissions in 2008, a hearing was held before the JDC and the JDC issued its report on the case. At the time that the JDC was abolished on 30 June 2009, the Secretary-General had not taken a decision on the recommendations of the JDC. The case was then transferred to the UNDT following the abolition of the JDC. The UNDT decided that it would not consider the JDC report, but it would consider all the documents that were before the JDC. The documents examined by the UNDT included the PTF report of 20 June 2007; the memorandum dated 28 June 2007 to Cabrera from OHRM notifying him of the charges of misconduct; the comments of Cabrera on the charges of misconduct and Cabrera's request for review of his summary dismissal to the JDC. The UNDT also decided to join the cases of Cabrera and Streb and issue a single judgment for both cases.

13. On 25 February 2010, the UNDT issued Judgment No. UNDT/2010/034 in which Meeran, J. found that the summary dismissal of Cabrera was justified and proportionate.

Submissions

Cabrera's Appeal

14. Cabrera submits that the UNDT failed to properly consider that the Procurement Division's Guidelines allowed the acceptance of "modest hospitality" at the time when Cabrera accepted "lavish hospitality" from Kohli. The UNDT Judge committed a number of factual errors by selectively quoting from the Gift and Hospitality Guidelines to make his point. Although the Judge noted the existence in the UN of a culture of "acceptance of modest hospitality from vendors", this statement failed to underscore the reality that the rules allowed accepting modest hospitality from vendors. While the Judge correctly pointed out that the policy of "zero-tolerance" for the acceptance of any hospitality was not in place

2002 when the incident took place, this fact is used against Cabrera. There is no evidence that the two procurement officers in this case had any knowledge of Bahel's criminal acts.

15. Cabrera further submits that the UNDT erred in finding that Kohli's motive in providing "lavish hospitality" to Cabrera was to gain commercial advantage for the companies he represented. Cabrera submits that it is a well documented reality in United Nations procurement circles that vendors can offer hospitality and in some cases lavish hospitality without any intention to bribe. The events of the evening started out as a simple get together meeting for drinks after work, but soon got out of hand as the evening progressed and alcohol took over. The Judge has indicated repeatedly during this case that there was no evidence that Cabrera had conferred any benefits on the two vendor companies or any other company.

16. Cabrera alleges that the UNDT erred on a question of law in determining that his summary dismissal was a proportionate sanction. The Secretary-General violated the equality of treatment standard as articulated by the former Administrative Tribunal in UNAT Judgment No. 1011, Iddi (2001).

17. Cabrera finally submits that the Secretary-General by his acknowledgement had allowed extraneous factors to enter into his decision, confirming that an improper motive or wrongful purpose were factors in im

Secretary-General's Answer

18. The Secretary-General submits that the UNDT correctly upheld the Secretary-General's decision to summarily dismiss Cabrera. In the present case, the facts upon which the disciplinary measure was based were clearly established. The interview records of Cabrera and Streb on 24 May 2007 establish that they had accepted "lavish hospitality" from Kohli. The acceptance of such "lavish hospitality" not only violated the Staff Regulations and Rules and the Procurement Division's "Guidelines on Acceptance of Gifts and Hospitality by the Procurement Division Staff", but was particularly egregious in view of the nature of the hospitality; as such, Cabrera's conduct legally amounted to serious misconduct. The disciplinary procedures leading to Cabrera's summary dismissal were conducted with full respect for his due process rights and there was no procedural irregularity. Finally, in view of the serious nature of the misconduct established, the sanction of summary dismissal was proportionate to the offence.

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21. The UNDT did not err on a question of law in determining that the summary dismissal of Cabrera was a proportionate sanction. Iddi can be distinguished from the present case. Unlike the staff member in Iddi, Cabrera's conduct at issue was related to his work for the United Nations. Cabrera cites the dissenting opinion in the former Administrative Tribunal's UNAT Judgment No. 1310 to support his argument that only cases of fraud normally lead to summary dismissal or separation from service. But Cabrera's argument is contradicted by the Judgment itself in that case. The Secretary-General further submits that the UNDT's determination that the sanction of summary dismissal was proportionate in the present case is consistent with the Appeals Tribunal's Judgment in Maslamani,¹ in that Cabrera's misconduct is comparable in severity to the misconduct examined by this Tribunal in that case.

22. The UNDT correctly held that it was appropriate for the Secretary-General to consider the views of Member States in relation to the present case. First, the UNDT did not find that the Secretary-General was unduly influenced by the Member States. Second,

Considerations

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