
**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1259



**Maguy Bamba
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Kanwaldeep Sandhu, Presiding
Judge John Raymond Murphy
Judge Dimitrios Raikos

Case No.: 2021-1574

Date

Counsel for Appellant: Julia Kyung Min Lee, OSLA

Counsel for Respondent: Rupa Mitra

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Maguy Bamba (the Appellant), former staff member and Nurse at a United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) clinic, contested the decision to dismiss her from service with compensation in lieu of notice and without termination indemnity for misconduct. The misconduct was for applying for maternity leave on the basis of fraudulently obtained medical certification without being pregnant and taking said maternity leave. She had argued that she had a legitimate expectation that an earlier investigation into her conduct was closed with no further action and that the subsequent reopening of the investigation was unlawful. Further, she said she did not have the mental capacity to commit fraud due to her mental state at the time.

2. In Judgment No. UNDT/2021/051 (the Impugned Judgment), the United Nations Dispute Tribunal (UNDT or the Dispute Tribunal) found her evidence not credible and dismissed her application. Ms. Bamba appeals and argues the Dispute Tribunal erred because she did not have mental capacity to commit the fraud, the Administration failed to undertake a thorough investigation, and the disciplinary sanction is disproportionate.

3. For the reasons below, we dismiss the appeal and affirm the Judgment.

Facts and Procedure

4. Ms. Bamba joined MONUSCO in 2004 as a Nurse on a fixed-term appointment. At the time of her separation, she was a Nurse at the G-4 level at a MONUSCO clinic in Bukavu.

5. The following summary of relevant facts is taken from the Impugned Judgment (footnotes omitted):

6. On 4 May 2015, the Applicant attended the Centre Hospitalier Biopharm to undergo a pregnancy check-up. This medical test confirmed that she was four and a half months pregnant.

7. On or around June 2015, six months into her pregnancy, the Applicant suffered a miscarriage. She became depressed as a result of the miscarriage, was admitted to the Centre Psychiatrique Sosame in Bukavu and received treatment for major depressive disorder.

8. On 30 September 2015, the Applicant was found to be pregnant with a fetus that was not viable.

9. On 17 December 2015, the Investigations Division of OIOS received a report implicating the Applicant in child trafficking. In or around December 2015, OIOS opened an investigation under case no. 0572/15, to investigate the allegations of child

The UNDT Judgment

6. In her application to the Dispute Tribunal, in addition to her arguments regarding capacity, Ms. Bamba advanced the legal argument that she had a legitimate expectation that a previous investigation into her misconduct which included these allegations wa5.3 (a5 AD-8.6 (o)1 mi)-8.6 w

is “misconstrued”, leading a manifestly unreasonable finding that her account of events was “very unreliable thereby leaving the Respondent’s contention [...] uncontroverted.”

20. Further, Ms. Bamba argues that the UNDT completely disregarded her evidence relating to her mental state at the time of the alleged misconduct and that it erred in law by ignoring her arguments that the elements constituting misconduct were not established as required, namely that there was no intention to commit the act of fraud (see *Ashgar*¹⁴

Moreover, even if the UNDT had accepted the test result in question, it would not have changed the UNDT's finding that the contested decision was lawful, as the material fact was that she was not pregnant at the time of the request for maternity leave and that she had not given birth when she took the maternity leave.

29. The Respondent submits that Ms. Bamba does not demonstrate any error on the part of the UNDT in its finding that her statements on being ashamed about her miscarriage were contradictory, but rather Ms. Bamba simply disagrees with the Impugned Judgment in this regard and reiterates her submissions before UNAT.

30. As for her argument that the Dispute Tribunal failed to see that she had "responded to each and every argument raised by the Respondent", the Respondent submits that the Dispute Tribunal admitted her evidence and submissions but found them "unresponsive or unreliable".

31. As for whether the elements constituting misconduct were established, the Respondent submits that the Dispute Tribunal correctly found that the facts upon which the sanction was based were established by clear and convincing evidence and the established facts constituted misconduct.

32. The Respondent argues that the UNDT did not ignore Ms. Bamba's claims that she lacked the mental capacity to commit fraud due to a serious depression as she submits, but rather the Dispute Tribunal clearly considered the submissions and found them unpersuasive. It properly exercised its discretion in rejecting those submissions, because it found that there was insufficient evidence of a nexus between Ms. Bamba's actions and her diagnosis of depression two months later. In addition, Ms. Bamba had taken many concerted and coordinated actions that clearly required planning and presence of mind, such as making the appointment, giving the doctor false details, making a request for maternity leave and arranging for someone to replace her in her official functions, and visited the doctor with two babies, claiming they were hers and indicating she had given birth to a third baby who was in an incubator. These actions appeared deliberate, calculated and premediated.

33. The Respondent submits that the UNDT correctly noted that Ms. Bamba had admitted to obtaining medical certification by mispresenting that she was pregnant and using that certificate to request and receive maternity leave. Further, even if Ms. Bamba's claims of difficult personal

circumstances had been verified, it would not have justified her knowingly requesting and receiving a benefit from the Organisation to which she was not entitled and putting her own interests before those of the Organisation and at the expense of the Organisation.

34. In addition, the Respondent submits that the UNDT correctly found that Ms. Bamba's due process rights had been respected in the investigation and the disciplinary process. On the claim that OIOS allegedly failing to seek sufficient exculpatory evidence, the Respondent states that the UNDT rightly held that Ms. Bamba had been given sufficient opportunity to present her account and that there was enough indication that the investigators had tried to obtain corroborative evidence. Further, the Respondent submits that suggestions as to how the OIOS investigators could have tried to seek additional information were not before UNDT. The Respondent submits that it is not clear that any such efforts would have supported Ms. Bamba's case and notes that she does not provide an explanation as to why she did not volunteer or suggest these avenues of information to the investigators herself.

35. Finally, the Respondent argues that the UNDT correctly found that the sanction imposed was proportionate and that the Appeals Tribunal's findings in *Rajan*¹⁸ do not support her claim. The Dispute Tribunal thoroughly addressed all aspects of the proportionality of the sanction and Ms. Bamba has failed to demonstrate any error in this analysis.

Considerations

36. It is largely not disputed that Ms. Bamba was not pregnant when she made her request for maternity leave, that she obtained a medical certificate based on a misrepresentation that she was pregnant, and that she sought and obtained maternity leave benefits based on this inaccurate certificate.¹⁹ She states that the Dispute Tribunal erred by not accepting that she did not have the mental capacity to commit fraud because of she was 32 -0 1-0.47b,-0.8 (J)92 ()]5.3 (gm-4.3

Standard of Review in Disciplinary Cases:

37. In disciplinary cases, the Dispute Tribunal must establish: i) whether the facts on which the sanction is based have been established, ii) whether the established facts qualify as misconduct under the Staff Regulations and Rules, iii) whether the sanction is proportionate to the offence, and iv) whether the staff member's due process rights were observed in the investigation and the disciplinary process.²⁰

38. In the present case, we find Ms. Bamba merely repeats arguments raised before the Dispute Tribunal regarding the evidence. The appeals procedure is not an opportunity for a party to reargue their case, which is essentially what Ms. Bamba has done in this appeal.²¹ Nevertheless, we find the Dispute Tribunal did not err in fact or in law in the Judgment.

Whether there is clear and convincing evidence to establish the facts in the allegation and whether these facts amount to misconduct under the Staff Regulations and Rules

39. Ms. Bamba essentially does not dispute that if the facts establish the allegations, these facts amount to misconduct under the Staff Regulations and Rules. She argues the facts do not establish the allegations due to her lack of mental capacity. We disagree and accept the Dispute Tribunal's finding that there is clear and convincing evidence to establish the facts underlying the allegations of misconduct in (e)-4ly[(uc)-0.6 (t)-5.8 (ieq87[(f)-3.9 (ac)-3.1 (nc))-0.6 (a)-5932

and clearly and convincingly supports the finding that in making the misrepresentation of being pregnant, she had the requisite “intent to defraud or deceive”.³² Ms. Bamba also argues that the Dispute Tribunal erred in making factual findings that she was never pregnant, never endured enforced abortion and was not labouring under any violence at the time of the misconduct.

47. In the Impugned Judgment, the Dispute Tribunal questioned Ms. Bamba’s credibility of her

54. In the Impugned Judgment, the Dispute Tribunal appropriately assessed the proportionality of the disciplinary sanction of dismissal, in particular, it reviewed whether the decision-maker considered the context of the alleged misconduct, the mitigating factors such as Ms. Bamba's long service and her admissions, and aggravating factors such as her position of trust. The Administration could have imposed more severe sanctions such as dismissal without compensation in lieu but chose in its discretion not to. Both the Dispute Tribunal and Administration considered Ms. Bamba's difficult personal circumstances and mental state but found they were not sufficient to justify obtaining an entitlement for which she was not eligible and not to be sanctioned for it. Committing fraud and receiving unlawful benefits from an

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59. The Dispute Tribunal reviewed these allegations and dismissed them. o

Judgment

61. The appeal is hereby dismissed, and UNDT Judgment No. UNDT/2021/051 is upheld.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022 in New York, United States.