



JUDGE MARTHA HALFELD , PRESIDING .

... At the oral hearing, the Applicant was cross-examined about this inconsistency as to whether it was the Belgian Embassy or an immigration law firm making the arrangements. He responded that during his OIOS interview he may have forgotten some aspects of the process. These events happened years before the interview, and when being interviewed he had not yet returned to Ivory Coast. He later returned, checked documents, and spoke to people who clarified things. Hence the new information about an immigration law firm that appeared in his application.

... The Applicant, who then worked at UNOCI, was approached in 2007 by two Ivorian nationals; Mr. TA [“the Complainant”] and Mr. AB whose travel to Europe the Applicant was to facilitate for this project.

... As participants in the project, Messrs. TA and AB paid the Applicant, respectively 4 million and 4.9 million West African CFA francs. The Applicant collected their photos and birth certificates. In his interview with OIOS, he stated that he would have received a gift of 500,000 West African CFA francs if the project had succeeded.

Under cross-examination before this Tribunal, the Applicant stated that he had received a gift of 500,000 West African CFA francs if the project had succeeded.

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... According to the judgment, the Applicant had been indicted for fraud. The Court found the Applicant guilty of fraud, sentenced him to 12 months' imprisonment and a fine of 100,000 CFA francs. The Complainant's civil claim for reimbursement was included as part of the trial proceedings. The Court ordered the Applicant to pay the Complainant 2

10. The UNDT found that Mr. Amani was afforded his due process rights because he was advised of the matters being investigated, fully heard during an interview, and given extra time to provide further responses in writing.⁵

11. The UNDT found that there was nothing absurd, arbitrary, or excessive about the sanction imposed and that it was proportionate to the offence.⁶

12. The UNDT dismissed the application.⁷

Procedure before the Appeals Tribunal

13. On 23 February 2022, Mr. Amani filed an appeal of the impugned Judgment with the UNAT and, on 25 April 2022, the On

THE UNITED NATIONS APPEALS TRIBUNAL

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42. Mr. Amani submits that the UNDT lawfully concluded that there was insufficient evidence that he had violated local laws. UNDT lawfully and duly conducted an examination of surrounding circumstances and of the Ivorian Court judgment. The evidence and irregularities rendered the judgment less than clear and convincing. Mr. Amani submits a list of alleged irregularities

Considerations

Receivability of cross appeal – when the UNDT order is beneficial to the Appellant.

45. Before considering the merits of the arguments on receivability, it is necessary as a preliminary matter to determine if the appeal of the Secretary-General is itself receivable. The Secretary-General was the success3.42c84.6 74 (ne)-9.4 (ra)-4.8 (l)On3 (o)2.5 iitrac.

48. This Tribunal has since provided further clarification of the principles on which a successful party may file an appeal in *Saffir and Ginivan*.¹² Before an appeal may be allowed, the judgment of the UNDT must entail a concrete and final decision which generates “the harm that constitutes the condition *sine qua non* of any appeal”.¹³ Therein, the Appeals Tribunal held:¹⁴

... It is not enough to claim that the grievance comes from the reasoning of the judgment, from all or part of its motivation or from the rejection of certain or all of the arguments submitted by a party.

... The right to appeal arises when the decision has a ~~826-0374 (2) 198182098) Fj (98008) 162-510281 (g) ad (2)~~

case, the cross-appeal cannot be received. It would indeed have no impact on the final determination on of the case.

51. The Appeals Tribunal thus dismisses the Secretary-General's cross-appeal and addresses his contentions therein as part of his answer to Mr. Amani's appeal.

The merits of the appeal

52. The crux of the matter before this Appeals Tribunal is whether the UNDT erred when it found that the decision to terminate Mr. Amani's appointment was justified on the grounds of his withholding of pertinent information about his background in his PHP, which was specifically required in his application process for the position of Engineer at MINUSMA in 2013.¹⁶

53. The applicable legal framework is as follows:

Staff Regulation 1.2

Basic rights and obligations of staff

Core values

...

(b) 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;

Staff Rule 10.1

Misconduct

(a) ~~Failure by a~~ Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

(b) ~~Where the staff~~ Where the staff member's failure to comply with his or her obligations or to observe the standards of conduct expected of an international civil servant is determined by the Secretary-General to constitute misconduct, such staff member may be required to reimburse the United Nations either partially or in full for any financial

¹⁶ Impugned judgment, para. 119.

loss suffered by the United Nations as a result of his or her actions, if such actions are determined to be wilful, reckless or grossly negligent.

(c) ~~× × The decision ×~~ to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

Standards of Conduct for the International Civil Service

44. Violations of the law can range from serious criminal activities to trivial offences, and organizations may be called upon to exercise judgement depending on the nature and circumstances of individual cases. *A conviction by a national court will usually, although not always, be persuasive evidence of the act for which an international civil servant was prosecuted; acts that are generally recognized as offences by national criminal laws will normally also be considered violations of the standards of conduct for the international civil service.*¹⁷

54. It is undisputed that the letter terminating his service with the Organization (the sanction(s)-0.7i (n(s)-0.7i)1 (e)4.4 cral wi3.2 ()26 (il)5.6 (l n)m3hf2l wtl ntl nrds .8 (at)-32sf4.3 (ion)

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