







UNHCR Telecoms Unit and that she had not logged in to her email account via the Webmail interface on 1 September 2006.

10. On 29 September 2006, IGO sent the Applicant a draft report of the preliminary investigation which showed that at the time the email account of the Head of the North Africa Desk had been accessed via the Webmail interface, 11.51 a.m on 1 September 2006, three people were using that software, whose computers were identified by their respective IP addresses, and one of them was the Applicant's. It also showed that at 11.55 a.m. on 1 September 2006, the printer assigned by default to the Applicant's computer had been used and that at 11.59 a.m., a Google search had been made from the Applicant's computer of the first and last names of the government representative to whom the email of 31 August 2006 had been sent. It showed, too, that the message sent anonymously on 1 September 2006 from the address "fairhonest2006@yahoo.com" came from the Applicant's computer, as did the document in PDF format attached to that email. Lastly, it stated that, when asked what he had been doing between 11.50 a.m. and 1.19 p.m. on 1 September 2006, the Applicant had given no explanation, but that records had revealed that at 1.28 p.m. he had taken the lift from the garage to the UNHCR offices.

11. On 5 October 2006, the Applicant submitted his observations on the draft preliminary investigation report, claiming that he had nothing to do with the sending of the email on 1 September 2006.

12. IGO submitted the final version of its preliminary investigation report on 9 October 2006 and sent it to the Director, DHRM. The report stated that the evidence justified the conclusion that the Applicant had accessed the email account of the Head of the North Africa Desk without authorisation, that he had copied the email of 31 August 2006 and then sent it to several senior officials under cover of an anonymous email.

13. On 20 October 2006, the Director, DHRM personally handed the Applicant a letter dated 11 October 2006 together with the IGO report. The letter set out the acts he was alleged to have committed, namely that he had accessed

another staff member's Webmail account without authorisation in order to obtain a copy of an email, and sent it in the form of a PDF document to a number of senior managers. She stated that, if the facts were established, they would constitute misconduct within the meaning of staff rule 110.1 and invited him,

18. On 31 March 2009, having obtained six extensions of time, the Applicant filed an application with the former UN Administrative Tribunal appealing against the Secretary-General's decision. On 28 September 2009, having requested and been granted two extensions of time by the UN Administrative Tribunal, the Respondent filed his answer. The Applicant, who was granted two extensions of time, submitted observations on 31 December 2009.

19. On 1 February 2010, having obtained two extensions of time, the Applicant filed an amended version of his observations with the Dispute Tribunal. The Respondent filed comments on the said observations on 29 March 2010.

20. By letter of 10 February 2011, the Registry of the Dispute Tribunal notified the parties of the decision of the Judge assigned to the case to hold a hearing.

21. On 9 March 2011, the hearing was held in the presence of the Applicant, his Counsel, and Counsel for the Respondent.

#### Parties' contentions

22. The Applicant's

c. The JDC was wrong to reject the Applicant's explanations regarding his absence from his office, and to place greater reliance on its site visit even though that did not enable it to faithfully reconstruct the facts;

d. The JDC did not accept the hypothesis that a third party could have committed the facts held against the Applicant, while photos taken by him in October 2008 showed that it was perfectly possible for someone to have sat at his workstation and then used the printer without being noticed, on 1 September 2006 between 11.50 a.m. and 1.30 p.m., especially in view of the fact that the colleague with whom he shared his office was absent that day. Staff members at UNHCR can access the network from any workstation, and, furthermore, persons who are not necessarily UNHCR staff members have free access to the building at lunchtime to eat in the cafeteria. The fact that three emails were opened in the Applicant's professional email account at the time when the disputed facts were taking place does not prove that he was present at the time. Nor does the fact that the online course on harassment he was following was not closed until the end of the afternoon. Lastly, the acts he is alleged to have committed seem irrational for someone of his experience, and would have required a particular motive. But the motive imputed to him by the JDC for committing the said acts, the tension that allegedly existed between him and the Head of the North Africa Desk, lacks credibility, as she told the JDC that she thought their relations were good until the events in question occurred. There is, in addition, a contradiction between, on the one hand, taking account of his past loyalty and team spirit as mitigating circumstances and, on the other, accepting the existence of tensions in the workplace as a motive for the acts alleged;

e. The evidence gathered in the course of the investigation is incomplete, questionable, and insufficient to establish that the Applicant committed misconduct: (i) the Administration has not produced the file containing a list of logins to the network. As his computer was not







“accountability”, “IGO” and “IOMFOM/2005/iom5405.htm” on the UNHCR intranet. The theory that the Applicant’s computer was being used remotely, for instance by a hacker, was considered but ruled out in the end because it would have required someone at the Applicant’s workstation to accept the remote access. It also presupposed a particular motive, which was lacking in the present case. The Applicant retrieved an email from the email account of the Head of the North Africa Desk, without authorisation. The Applicant then sent that

supervisor's email account without authorisation, second that he made a copy of an email in it, and then that he forwarded it to a number of senior UNHCR officials under cover of an anonymous email.

25. Both in his written submissions and at the hearing, the Applicant has alleged that there were several lacunae in the investigation of the facts mentioned above. He maintained, among other things, that IGO should have examined the recordings of the video surveillance cameras at UNHCR and ensured that the hard disk of his computer was preserved in order to examine it. Even assuming the investigation could have been conducted in a more exhaustive manner, that fact alone does not enable the Applicant to establish that he did not take the impugned actions. The Tribunal must, therefore, base its findings only on those facts that are beyond dispute. The only facts set forth below are those the Tribunal considers are established by the evidence on the record for the day of 1 September 2006:

- At 11.51 a.m., the Applicant's computer, the IP address of which is 10.9.143.44, was connected to the Webmail interface, as were two other computers at UNHCR headquarters;
- At 11.51 a.m., the email account of the Head of the North Africa Desk was accessed via the Webmail interface;
- At 11.55 a.m., one page was printed on the printer assigned as the default printer to the Applicant's computer;
- Between 11.56 a.m. and 11.57 a.m., three emails were opened in the Applicant's work email account;
- At 11.59 a.m., a Google search of the first and last names of the representative of the government to whom the email of 31 August 2006 was addressed was made from the Applicant's computer;
- At 12.03 p.m., one email was opened in the Applicant's work email account;

- At 12.33 p.m., a search was made from the Applicant's computer under the words "accountability", "IGO" and "IOMFOM/2005/iom5405.htm" on the UNHCR intranet;
- At 1.18 p.m., the Applicant's computer connected to the Yahoo website;
- At 1.19 p.m., the Applicant's computer disconnected from the Yahoo website.

26. Therefore, even though uncertainty remains about some of the other operations carried out from the Applicant's computer, the Tribunal has no doubt that the consultation of the email account of the Applicant's supervisor was carried out from his computer, and that all the other steps leading to the sending of an anonymous email to a number of senior UNHCR managers were also taken from that computer.

27. The written pleadings and the discussions at the hearing also show that the Applicant does not dispute that his work computer w



appears to the Tribunal that the hypothesis that another staff member committed the acts in question cannot reasonably be entertained.

32. Having ruled out the hypotheses of intervention by a third party, it remains for the Tribunal to examine whether, in spite of what has been said above, there were circumstances making it physically impossible for the Applicant to have committed the said actions.

33. The Applicant maintained, first, that it was impossible for him to open his supervisor's email account, as he did not know the password. His supervisor, however, has contradicted that statement, explaining that she had given it to him and one other person in April 2006, so that they could access her email inbox in her absence, and that she had not changed it since giving it to him. There is no reason to doubt the statements made by the applicant's supervisor.

34. The Applicant then maintained that it would have been impossible for him to be in his office at 1.19 p.m., the time of the last connection to which this case relates. It seems plausible to the Tribunal that the Applicant, who was questioned as part of the investigation two weeks after the events took place, might not have remembered what he was doing during the disputed period. Later, he stated that he had left the UNHCR building on that day to do some shopping, then returned via the garage to put his purchases in his car and took the lift at 1.28 p.m., which, he claims, makes it impossible for him to have been in his office at 1.19 p.m. That said, while it is common ground that he used the lift at the time stated, there is nothing to show that the Applicant had actually been shopping beforehand, and he thus had the time, as the JDC verified during its site visit, to go to the garage between 1.19 and 1.28 p.m. for a quite different reason than dropping off shopping in his car.

35. There is, therefore, no fact or circumstance that would have made it impossible for the Applicant to commit the acts with which he is charged.

36. Lastly, the Applicant maintains that he had no motive to commit the acts with which he is charged. The Tribunal takes the view that, since the

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