
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/082

Judgment No.: UNDT/2019/125

Date: 8 July 2019

Original: English

Before: Judge Agnieszka Klonowiecka Milart

Registry: Nairobi

Registrar: Abena Kwakye Berko

Introduction

1.

that the Applicant had been forthright in his admission that he did not indicate that his brother was employed by the Organization in PIP in violation of United Nations regulations

10. Following further transmittals between UNMISS and the Department of Field Support¹⁰, on 12 March 2018, Ms. Lisa Buitenheim, Assistant Secretary General for Field Support (ASG/DFS), sent a memorandum to Martha Helena Lopez, Assistant Secretary General for Human Resources Management (ASG/OHRM), transmitting the UNMISS/SIU Investigation Report and recommending that the Applicant be subject to disciplinary action¹¹.

11. On 15 May 2018, Mr. Mathew Sanidas, Chief, Human Resources Policy

investigator and confirmed that on this occasion he had spoken the truth. He came into employment with the Organization before his brother. He joined the SCSL in June 2004, while Mr. Tumusiime Barabwa joined UNMIL in November 2004. At the time when he joined SCSL, Mr. Tumusiime Barabwa was not working with any United Nations Organization as his contract with UNESCO had expired.

15. In turn, Mr. Tumusiime Barabwa was dishonest in his PHP when he applied for UNMIL in October 2004. He was also dishonest when he indicated that he had come to know that the Applicant was employed by the United Nations only on 30 June 2014, whereas it had been Mr. Tumusiime Barabwa who had assisted him to fill in the check-in documents for the SCSL in May 2004. Mr. Tumusiime Barabwa should have indicated him in his PHP in November 2004 rather than 10 years later in 2014.

16. The Applicant admitted having known that his brother got the employment in the United Nations

24. The facts were established by ~~clear~~ and convincing evidence.

a. The Applicant does not deny the fact that between December 2006 and January 2007, he knowingly stated in his job application that he did not have a relative working for a public international organization, even though he was aware that his brother was working for the United Nations at the time. In his application, the Applicant again explicitly accepts the responsibility for his conduct.

b.

SL to

the United Nations. Specifically, the Applicant alleges that, in May 2004, the

SCSL and knowingly submitted false information that he had no relative employed by the United Nations in his job application with UNMIL submitted in October 2004.

f.

first are irrelevant. As a matter of fact the SIU undertook a preliminary investigation into Mr. Tumusiime Baraba's conduct, which resulted in a conclusion that Mr. Tumusiime Baraba has truthfully and consistently

and financial disclosure documents. In addition, as a general rule, the Applicant cannot compel the Organization to undertake an investigation into Mr. Tumusiime

g. T

Mr. Tumusiime

with the SCSL did not constitute employment with the United Nations. The SCSL was established based on a treaty between the United Nations and the Government of Sierra Leone in accordance with Security Council resolution 1315 (2000) of 14 August 2000. Under the terms and conditions of the Agreement, only the Registrar of the SCSL was a staff member of the United Nations. On the contrary, other staff of the SCSL were not United Nations

Tumusiime Baraba would not have been under an obligation to disclose the

had a relative employed by the UNS.

h. The evidence on the record indicates that the Applicant knew the nature of his position at the SCSL. The Applicant stated in his PHP of 2007

Common System.

25.

us misconduct.

a.

PHPs. In his comments on the allegations and in his Application, the Applicant indeed accepted the responsibility for his conduct failure

2007. In the application, the Applicant provided no basis for his contention that he was not given a fair hearing and judgment to the said allegations

28. The decision to impose the disciplinary measures on the Applicant based on

brother

with the United Nations ceased by invoking the same justifications for not disclosing

appointments.²⁷

39. C his misrepresentation was not

the Organization as rightly pointed out by the Respondent, the Applicant benefited from the non-disclosure by unduly elevating his chances for appointment.

40. Since it was established that the Applicant acted intentionally, he was also in breach of staff regulation 1.2(b) which required the Organization, that staff members uphold the highest standards of 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. This went against the requirement of honesty and truthfulness. , a circumstance on

subject of the proceedings is immaterial for the Applicant.

41. Based on the aforesaid, the Tribunal concludes that misconduct has been properly established.

Proportionality of sanction

42. As determined by staff member shall be proportionate to the nature and gravity of his or her. Furthermore, the Appeals Tribunal, indicated that other factors to be considered in assessing the proportionality of a sanction include the length of service, the disciplinary record of the employee, the attitude of the employee and his past conduct, the context of the violation and employer consistency.²⁸

43. The gravity of the misconduct is related to the subjective element of a faulty state of mind, and to the objective dangerousness of the act, including the

²⁷ ST/SGB/2002/1

²⁸ *Rajan* 2017-UNAT-781 at para 48.

rank of the norm breached, the degree of the breach and any negative consequences entailed by it. The faulty state of mind in the present case manifested itself in an intentional omission signifying dishonesty. As held by the Appeals Tribunal, as a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal. The Tribunal finds, moreover that all the mitigating and aggravating circumstances were properly identified by the Respondent. The Tribunal finds no basis for intervening with the sanction.

CONCLUSION

44. The application is dismissed.

(Signed)

Judge Agnieszka Klonowicz-Milart

Dated this 8th day of February 2019 at G2 0 61f4C q 0 G28P- re