Introduction

1. The Applicant contests the disciplinary measure imposed on him of a loss of two steps in grade and deferral for two years of eligibility for salary increment for concealing and abetting fraud in that he failed to report the preparation of a backdated

10.2(a)(ii) and (iii)

2. The Respondent filed his reply on 6 May 2019 urging the Tribunal to dismiss the application in its entirety.

3. On 29 September 2020, pursuant to Order No. 175 (NBI/2020), the Applicant filed an amended application[1] challenging the contested decision.

4. The Tribunal received oral evidence from the Applicant and from Ms. Helina Tadesse, Programme Specialist, United Nations Development Programme Country Office in Ethio . For reasons given below the application is dismissed.

Facts

5. On 18 November 2015, the UNDP anti-fraud hotline email account received La . Abeje Belew, alleging corruption in the award of the National Soil Testing Centre (NSTC) project to Digata Industries Public Limited Company (Digata PLC/Digata) (NSTC project).[2]

6. On 23 April 2016, a local Ethiopian newspaper, The Reporter, published an article Ministry denies blame against misuse of UNDP Fund in reference to the NSTC project, the article alleged misuse of UNDP funds, reporting that the

[1] The original application was filed on 29 March 2019 but was not submitted in the appropriate form and within the 10-page limit.
[2] Reply, annex 1, exhibits 2 and 3.

Ethiopian Ministry of Agriculture (MOA) hired Digata PLC in violation of formal bidding procedures exercised by public agencies in the country.

7. On 27 April 2016, the Applicant sent an email to Mr. Tegegnework Gettu, UNDP Associate Administrator, referring to The Reporter article.

8. On 30 January 2017, the UNDP

coordinate with OAI that he started to see the files. As argued in his response to the charges of 30 August 2018, he was never involved in the process of contracting Digata. In his witness statement, he reconfirmed to the OAI that he could have done something had there been any information he noticed at that time. He raised the criminality of back dating an MOU to the Investigators to reflect his general understanding and this should not be taken as confession on the issue.

16. At no time did he admit or confess to avoiding opening emails related to Digata because he suspected that there were irregularities in the way UNDP Ethiopia was conducting its process. In his 17 January 2017 investigation interview, he testified that he raised his concern of direct contracting of Digata in the past projects without any competitive process and the challenges he endured in 2012 and 2013, proved by the testimony of the previous Country Director, Ms. Alexandera Tisso. He had no information that there was an irregularity in the 2014 NSTC project process and of his obligation to report the existence of a risk.

17. The Letter of Intent was reviewed and changed to a MOU by Digata and submitted for the further thoughts of the Minister, MOA. However, OAI in its investigation report, for unknown reasons, changed the Letter of Intent to a MOU in violation of section 4 of the OAI Investigation Guidelines which requires the Office to maintain objectivity, impartiality and fairness.

18. D August 2014 was the only email in which the signing of the MOU between Digata and the MOA was communicated to him for the first time. In his handover note, he was referring to the MOU that was raised by Dr. Bwalya, not the backdated one which he neither prepared nor instructed to be drafted.

19. The backdated MOU was signed before the circulation of his handover note of 14 August 2014. However, Ms. Tadesse communicated to the Minister on Friday, 15 August 2004 at 5:19 a.m., nine hours prior to the circulation of his handover note. The Applicant argues that the issues of Back dated MOU and Letter of Intent were erroneously understood both by the OAI and the Bureau of Management Services

(BMS) and urges the Tribunal to, examine [his] handover note email and the mentioned email of Ms. Tadesse between lines to reach to logical conclusion [8].

20. The chains of email communications between 9 and 19 August 2014 were not copied to him or the delegated acting Team Leader, Ms. Selamawit Alebachew. According to these communications, the back dated MOU was signed prior to his handover note of 14 August 2014.

21. The justification of recklessness raised by BMS disregards the objective standard of recklessness which depends on hisn f recklessne

that they could not support the award of a direct contract to Digata, did the Country Director search for alternatives, and this search is what ultimately led, on 22 October 2014, to MOA contracting Digata directly.

appropriate training. The Respondent considered that these mitigating factors justified the relatively light sanction of a loss of two steps in grade and deferral of eligibility for salary increment. This sanction was proportionate.

34. The Applicant complained of procedural irregularities in his matter but provided no evidence of any irregularity or prejudice to .

> Acts or omissions in conflict with the general obligations of staff members set forth in article 1 of the staff regulations, chapter 1 of the staff rules and other administrative issuances as applicable; failure to comply with the standards of conduct expected from international civil servants.

d. Paragraph 25 (e) of the UNDP Legal Framework which prohibits:

> Misrepresentation, forgery or false certification, including but not limited to, in connection with any official claim or benefit, the failure to disclose a fact material to that claim or benefit.

e. Paragraph 25(q) of the UNDP Legal Framework which prohibits;

> Abetting, concealing or conspiring in any of the above actions, including any act or omission bringing the Organization into disrepute.

f. Section 3 of the UNDP Policy on Fraud and other Corrupt Practices applicable at the time (UNDP Anti-Fraud Policy) defining fraud as

> Any act or omission that intentionally misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

g. Section 6 of the UNDP Policy on Fraud and other Corrupt Practices app - which provided that;

> [s]taff members and other personnel have the obligation to report information pointing to fraud involving UNDP staff members or affecting UNDP funds and assets.

h. Section 20 of the International Civil Service Commission (ICSC) Standards of Conduct for the International Ci

CSC)

38. The Applicant disagreed with the conclusions that he had breached any rules and regulations and urged the Tribunal to find that the Respondent had not made its case and that the sanction was unwarranted and should be set aside.

39. The Tribunal heard two witnesses including the Applicant. The Respondent s witness, Ms Tadesse, gave clear, cogent and uncontradictory evidence that she worked under the direct supervision of the Applicant. That although the Applicant was not involved in the management of the contract leading to these proceedings, he was privy through email communications and instructions to her, to the back-dated nBT/F1 12 Tf1 0 0 1 MOU. The witness averred that she prepared a fraudulent Letter of Intent which was attached an email copied to the Applicant as her supervisor. She was emphatic that the Letter of Intent was the same fraudulent MOU it was just the title that changed andJETQ0.00000912 g1W*nBT/F1 12 Tf1 0 0 1 431.11 477.07 Tm0 g0 G[(it)6(le 950.00000912 0 612 792

No	Programme	Activities	Action	Remark
10	AGP	Foll signing of MoU between DIGATA and MoA		Helina to follow up

40. The Tribunal reviewed the Applicant s submissions to the investigators, his testimony in this Tribunal and his closing submissions. The impression that the Tribunal gets is that the Applicant is not a credible witness. He would like the

admitted that the MOU referred to in his hand over notes was the one and the same fraudulent MOU subject of these proceedings[11].

c. The Applicant s play with semantics in relation to whether the fraudulent document was a Letter of Intent or MOU is not relevant because it was clear from the evidence and from the totality of the case that the Letter of Intent was fraudulently prepared under his supervision and its change to an MOU by a third party did not diminish the fraudulent act.

director

Tribunal heard Ms. Tadesse and found her to be a truthful and reliable witness. The Tribunal finds that the Applicant s due process rights were respected.

(iii) Whether the decision was vitiated by bias or bad faith

50. The Tribunal was also asked to examine whether the decision was vitiated by bias or bad faith, that is, if it was taken for an improper purpose. A decision taken for an improper purpose is an abuse of authority. In this respect, the Tribunal may examine the surrounding circumstances to determine whether the impugned decision was tainted by abuse of authority or motivated by ill will.[17] The onus is on the staff member alleging ill motive including bias and discrimination to prove the allegation to the satisfaction of the Tribunal.[18] The Tribunal did not find any evidence of ill motive.

(iv) Whether the sanction is proportionate to the offence

51. The Tribunal reminds itself that the Administration has a broad discretion in determining the disciplinary measure imposed on staff members because of wrongdoing. It is best suited to select an adequate sa7a7a7a7a7a7a7a7a7a7a7a7a7a7a7a79(bro)-6(a)4

sanction. The Tribunal finds that the sanction is appropriate.

Judgment

53 The Applicant has failed to satisfy the Tribunal that the Administration acted unlawfully in sanctioning him for misconduct. He failed to comply with standards of conduct expected from him as an international civil servant. The application is dismissed.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 14th day of April 2022

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