



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/077

Judgment No.: UNDT/2012/206

Date: 31 December 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

JAHNSEN LECCA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

April Carter

Counsel for Respondent:

Susan Maddox ALS/OHRM, UN Secretariat

Jérôme Blanchard ALS/OHRM, UN Secretariat

Introduction

1. The Applicant seeks rescission of the decision of 13 August 2012 taken by the Under-Secretary-General for Management, on behalf of the Secretary-General, to separate her from service with compensation in lieu of notice and with termination indemnity.

Facts

2. On 7 June 2011, the Applicant, a staff member holding the position of Trial Support Assistant at the G-5 level in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (“ICTY”), took, without the owner’s authorization, a bicycle that was parked in the bicycle parking area for staff of the ICTY and removed it from the main premises.

3. Following a complaint from the owner in question, an investigation was launched and a preliminary fact-finding panel (“fact-finding panel”) was convened. After viewing closed-circuit television footage from the ICTY’s cameras, the fact-finding panel interviewed the Applicant for the first time on 14 June and then again on 15 June 2011. At each interview, the Applicant denied having taken the bicycle.

4. On 16 June 2011, the Applicant requested to meet with the fact-finding panel and admitted having taken a bicycle that did not belong to her. She then offered to reimburse the owner for the basket and lock that had been on the bicycle.

5. On 28 June 2011, the fact-finding panel submitted its preliminary report.

6. On 23 November 2011, the Registrar of the ICTY informed the Assistant Secretary-General for Human Resources Management that the Applicant had engaged in misconduct that could lead to disciplinary action.

7. On 8 December 2011, the Applicant was informed by the Chief of the Human Resources Policy Service of the charges of misconduct brought against her, namely the taking, without authorization, of another person's property. She was invited to respond to those allegations and, in the absence of a reply from her, she was again invited to respond in May and June 2012.

8. By letter dated 13 August 2012, the Assistant Secretary-General for Human Resources Management informed the Applicant of the decision of the Under-Secretary-General for Management, on behalf of the Secretary-General, to impose on her the disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, on the grounds that she had taken, without authorization, another person's property, thereby demonstrating a lack of integrity not befitting her status as an international civil servant.

9. The Applicant received the letter informing her of the disciplinary measure on 27 August 2012.

10. The Applicant filed her application with the Registry of the Dispute Tribunal on 18 September 2012.

11. On 17 December 2012, the Dispute Tribunal held a hearing in which the Applicant and Counsel for the Applicant participated by videoconference from The Hague, while Counsel for the Respondent participated by videoconference from New York.

Parties' submissions

12. The Applicant's contentions are:

a. She did not reply to the letter detailing the charges against her, because she had suffered a heart attack in January 2012 and she did not know what to say;

b. The disciplinary measure imposed is disproportionate to the misconduct. This is her first misconduct and one that has not prevented her

from carrying out her duties at the ICTY, because the relationships of trust have not been affected and she has continued to work for the ICTY for more than a year after the incident. Her supervisors and the Senior Trial Attorney have provided written statements in her support;

c. The fact-finding panel found that she did not intend to steal the bicycle for her permanent future use or for sale to a third party;

d. The staff member whose bicycle was taken considered that, with the return of the bicycle and reimbursement for the lost items, the matter had been satisfactorily resolved;

e. The case should be heard on an expedited basis because the facts are undisputed and only the proportionality of the disciplinary measure is at issue;

f. The Applicant is a single mother of two boys for whom she is the sole financial provider. She will suffer significant financial losses and lose her medical insurance at a time when she is ill. She has expressed remorse for her act.

13. The Respondent's contentions are:

a. The application should be dismissed. The Applicant has not demonstrated that she did not intend to steal the bicycle; the close-circuit television footage from inside the ICTY indicated the contrary and, in particular, that the Applicant, as she acknowledged, removed the bicycle from the ICTY premises;

b. The Applicant did not see fit to reply to the letter informing her of the charges against her, despite their seriousness. The fact-finding panel did not find that the Applicant had no intention of stealing the bicycle, it merely found no evidence that she had intended to steal the bicycle for her permanent future use or sale to a third party; the fact-finding panel concluded that she had taken the bicycle in the full knowledge that it was

not hers. Her behaviour, at the time and thereafter, shows that she did not intend to borrow the bicycle;

c. The Applicant eventually returned the bicycle nine days after having been interviewed by the fact-finding panel twice and having denied taking it. There is no evidence that she would have returned it if she had not been questioned by the fact-finding panel;

d. The Applicant's behaviour amounts to theft, a serious misconduct; the disciplinary measure is proportionate, since the lack of integrity has been established. The disciplinary measure imposed is consistent with those applied in similar situations;

e. There is no good reason to hear the case on an expedited basis.

Consideration

14. In seeking rescission of the decision taken by the Under-Secretary-General for Management, on behalf of the Secretary-General, to separate her from service with compensation in lieu of notice and with termination indemnity, the Applicant is not disputing the facts of her actions, namely that she took, without the owner's authorization, a bicycle that was parked in the bicycle parking area for staff of the ICTY, removed it from the main premises, and left it, padlocked, a short distance away.

15. However, the Applicant claims that she did not intend to steal the bicycle, but simply to borrow it in order to run an errand more quickly. Nonetheless, the video footage submitted shows that the Applicant, after leaving the premises of the ICTY with the bicycle in question, returned to work about five minutes later, thus without having had time to run any errand. After viewing the footage, the fact-finding panel interviewed the Applicant, who denied for several days that she was the person seen taking the bicycle. Then, after having admitted taking the bicycle and having returned it to its owner, the Applicant, while denying that she intended to steal it, was unable to justify her behaviour.

16. The Tribunal considers that the facts, as described by the Secretary-General in the disputed decision imposing the disciplinary measure, namely having taken, without authorization, another staff member's property, constitute misconduct under the Staff Regulations and Rules.

17. It remains for the Tribunal to decide whether the disciplinary measure imposed is proportionate to the misconduct. In this regard, the Tribunal recalls the Judgment of the United Nations Appeals Tribunal in *Aqel* 2010-UNAT-040:

Having established misconduct and the seriousness of the incident, the Appeals Tribunal cannot review the level of sanction imposed. Such a decision, which falls within the remit of the Commissioner-General, can only be reviewed by the Appeals Tribunal in cases of obvious absurdity or flagrant arbitrariness, which has not been established.

18. Therefore, it follows from the aforementioned case, confirmed by several other judgments of the Appeals Tribunal (see e.g. *Sanwidi* 2010-UNAT-084, *Shahatit* 2012-UNAT-195), that the Judge's remit over the proportionality of the disciplinary measure is limited and that the Judge can only rescind a measure that is manifestly disproportionate. The Applicant's misconduct is serious, especially as she works for a Tribunal, and the disciplinary measure imposed is not the most severe available, since, although she has been separated from service, it is with compensation in lieu of notice and with termination indemnity.

19. The Applicant maintains that the Secretary-General should have taken into account the fact that she had never been sanctioned before, that she had expressed regret for her actions, and that her supervisors had asked for leniency, particularly in view of her professional qualities and her family situation. However, no text requires the Secretary-General to consider the opinions of those who have worked with the Applicant and, in any event, it is clear from the wording of the decision imposing the disciplinary measure on her that the Secretary-General had acknowledged some extenuating circumstances by not imposing on her the maximum sanction under the Staff Rules, which is dismissal.

20. The Tribunal therefore finds that the disciplinary measure imposed is not manifestly disproportionate to the misconduct, and that the application should therefore be dismissed.

Conclusion

21. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

(Signed)
Judge Jean-François Cousin

Dated this 31st day of December 2012

Entered in the Register on this 31st day of December 2012

(Signed)
René M. Vargas M., Registrar, Geneva
