



UNITED NATIONS DISPUTE TRIBUNAL

Case No: UNDT/NBI/2009/23
Judgment n° : UNDT/2009/091
Date : 17 December 2009
Original : French

Devant : Juge Vinod Boolell

Greffe : Nairobi

Greffier : Jean-Pelé Fomété

COULIBALY

v

SECRETARY-GENERAL
OF THE UNITED
NATIONS

JUDGMENT CONCERNING A SUMMARY DISMISSAL FOR SERIOUS MISCONDUCT

Counsel for applicant:

Mr. Francis Kouamé Koffi, called to the Bar of Abidjan, Côte d'Ivoire

Counsel for respondent:

Elizabeth Brown, Office of the United Nations High Commissioner for Refugees (UNHCR)

Application

1. In his appeal to the New York Joint Appeals Board, submitted on 29 January 2008, registered on 13 February 2008, and transferred to the United Nations Dispute Tribunal on 1 July 2009, the applicant contested his dismissal for serious misconduct without notice or compensation by decision of the Director of the Division of Human Resources Management of the Office of the United Nations High Commissioner for Refugees (UNHCR) on 21 November 2007 (the impugned decision), and requested it to recommend that:

- (i) The decision by which he was summarily dismissed should be rescinded and that he should be reinstated to his post at UNHCR, with the same grade and salary as prior to his dismissal, and with back pay for the period since his dismissal;
- (ii) Failing that, he should be awarded compensation in lieu of the notice period, and all the rights related to his post and grade.

Facts

2. The applicant joined the UNHCR Representation Office in Abidjan on 5 February 2001 as a Finance Clerk (G-4). Between January 2003 and the end of 2006, his contract was extended several times on the basis of fixed-term appointments, following which the applicant was promoted to the post of Administrative Assistant (G-6). On 1 January 2007, his fixed-term contract was extended for an additional year.

3. At the time of his appointment, section 24, entitled "Education", of the P.11 form completed by the staff member and signed on 5 February 2001, following his entrance on duty at UNHCR, referred to the following academic qualifications:

- (i) Pigier school, Abidjan, Côte d'Ivoire, October 1995 to June 1998, level of studies equivalent to a Brevet Technicien Supérieur (BTS) (higher technician's certificate) in accounting;
- (ii) National Institute of Higher Technical Education (INSET), Abidjan, Côte d'Ivoire, October 1985 to June 1988, UV 4 of the Diplôme Préparatoire aux Etudes Comptables et Financières (DPECF) (course No. 4 of a first degree in accounting and financial studies), specializing in accounting.

4. Similarly, in the curriculum vitae submitted in June 2002 as part of his application for the post of Administrative Assistant at UNHCR, the applicant referred to the same training, namely BTS courses in

accounting, from 1995 to 1998, without specifying the name of the educational institution. He also referred to the following training: DPECF at the National Institute of Higher Technical Education from 1985 to 1988. On 11 September 2006, the staff member submitted a new P.11 form, again listing the aforementioned qualifications in section 24 of the form.

5. The applicant passed the United Nations Finance Examination on 4 September 2006. On 11 September 2006, the Division of Human Resources Management sent the applicant a standard e-mail informing him that his name would automatically be included in the International Professional Roster and that he would be considered for Professional posts corresponding to his profile and experience. In order to identify a post commensurate with the applicant's qualifications and experience, the Division asked the applicant to provide copies of his qualifications and diplomas, as well as a new P.11 form. On 12 September 2006, the applicant submitted the following documents via e-mail:

(i) Electronic P.11 personal history form, signed on 11 September 2006;

(ii) Transcript from the Pigier school in Abidjan, dated 7 June 1999. According to the transcript, the applicant attended classes at the Pigier school from 2 October 1995 to 15 May 1998 and obtained grades higher than 10/20 over three years of study;

(iii) Transcript from the Academy of Nice, DPECF, dated 20 November 1990.

6. In accordance with United Nations practice, the Division of Human Resources Management at UNHCR wrote to the Pigier school in Abidjan on 8 November 2006 to obtain confirmation of the authenticity of the documents submitted by the applicant. On 4 December 2006, the Director of Studies of the Pigier school informed the Division that the school had no record of a student by the applicant's name for the period in question and that the transcript provided by the applicant was a forgery.

7. On 18 December 2006, the Division sent the applicant an e-mail requesting his comments on the negative response received by the Pigier school. The applicant replied the same day that he was "shocked" and that he would pay a visit to the establishment.

8. On 22 December 2006, the applicant wrote to the Division to explain that the transcript he had provided had been drawn up originally to enable him to register as an outside candidate for the BTS examination in accounting. He stated that he had not been aware that

the school had not kept a copy of the transcript. He also mentioned that he had received computer science training (internship in computer studies) at the same institution in 1991 and attached a receipt and a certificate. He had had no doubts as to the authenticity of the documents provided at the time of his appointment and had had no intention of cheating.

9. After receiving this information, the Division asked the Representation Office in Abidjan to conduct an investigation. To that end, the Deputy Representative of UNHCR in Abidjan met the Director of Studies of the Pigier school on 23 January 2007 and obtained confirmation that the subject codes used in the transcript provided by the applicant did not match the codes normally used by the Pigier school. Moreover, the Director of Studies asserted that the signature on the transcript submitted by the staff member was not his own, even though, as the Director since 1984, he had signed virtually all the diplomas conferred by the Pigier school. The Director had met the applicant and informed him directly of these findings.

10. By letter of 7 February 2007, the head of the Vacancy Management Group wrote to the Director of Studies of the Pigier school in order to obtain confirmation of attendance and the delivery of a certificate for an internship in computer studies for the academic year 1990/91. A similar letter, along with a reminder dated 13 March 2007, was sent to the Academy of Nice concerning course No. 4 in accounting, which the applicant included in his P.11 form and curriculum vitae.

11. On 13 July 2007, the Office of the Inspector General contacted the applicant by phone. In response to the inspectors' questions, the applicant explained that he needed proof of enrolment in order to take the Ivorian BTS training in accounting in June 1999. According to the applicant, the transcript was delivered at the Pigier school.¹ The applicant allegedly obtained the disputed transcript at that time in exchange for CFAF 200,000 (approximately USD 460.09)² from an unnamed individual. During the hearing, the applicant stated that this is an established practice. Later, the applicant realized that the Ivorian BTS curriculum was different. He had studied the French, not the Ivorian, tax system. Consequently, the applicant returned to the Pigier school in 2006³ and learned that the transcript had been forged and that the person who had given it to him had been dismissed.

¹ Hearing.

² Exchange rate applicable on 3 December 2009.

³ Hearing.

12. The applicant asserted that he did not take the examination because the Ivorian tax system curriculum is different from that which he had studied at INSET in France, not because of a transcript issue. The respondent highlighted the apparent contradiction between the applicant's statements to the Office of the Inspector General, in which he initially said that he had realized the transcript was a forgery in December 2006, but then, in his July 2007 conversation with the Office, said he had realized it in 2001. The applicant stated that there was no contradiction and that he had realized it in December 2006.

13. During the hearing, the applicant also stated that he had never obtained a BTS and that he had never attended classes at the Pigier school. He had acquired the transcript in order to obtain an equivalent rating of his qualifications in his country of origin, on the basis of a course in accounting taken in France and of his transcript from INSET. When asked by the respondent whether he considered that one course together with a school transcript from INSET constituted the equivalent of a BTS in accounting, the applicant replied affirmatively.

14. When the Office of the Inspector General asked the applicant why he had referred to studies at the Pigier school on his P.11 form, the applicant replied that he wished to make the P.11 form consistent with the curriculum vitae he had submitted when applying for his initial post at the Representation Office in Abidjan. When he was recruited in 2001, the applicant felt it necessary to include in the P.11 form the same information contained in his curriculum vitae and submitted the copy of the transcript in question. In subsequent years, and up until his appointment to a Professional post, he continued this practice so as to avoid any obvious discrepancy between the curriculum vitae and P.11 forms.

15. By memorandum of 13 November 2007, the Head of the Legal Affairs Section informed the Director of the Division of Human Resources Management that the applicant had committed an act of serious misconduct and recommended summary dismissal. The recommendation was approved by the Division management.

16. By letter of 21 November 2007, the applicant was notified of the Division's decision to summarily dismiss him for serious misconduct, namely, the submission of false information about his education and of a forged transcript. The applicant was informed of his summary dismissal on 8 December 2007. That same day, the applicant's colleagues wrote to the UNHCR Representative on his behalf.

17. On 21 January 2008, the applicant submitted his initial statement of appeal to the Joint Appeals Board in New York. In accordance with

the Secretary-General's Bulletin ST/SGB/2009/11 on transitional measures related to the introduction of the new system of administration of justice, the appeal was transferred to the United Nations Dispute Tribunal's New York Registry on 1 July 2009. By order of Judge Coral Shaw, the case was then assigned to the Nairobi Registry for reasons of geographical proximity.

18. On 20 November 2009, the parties were called to a meeting in preparation for the hearing; the applicant's counsel submitted a statement of case dated 11 December 2009. The respondent submitted three additional documents for the case file. The first was a memorandum entitled "Loss of IT equipment (19 laptop computers)", dated 28 September 2007 and issued by the Head of Investigation of the Office of the Inspector General. The other two documents were legal: "Update on disciplinary measures — 2007 Report", published by UNHCR, and an information circular on the practice of the Secretary-General in disciplinary matters and cases of criminal behaviour between 1 July 2006 and 30 June 2007.

Testimony

19. A hearing was held on 15 December 2009, in which the parties participated via teleconference from Abidjan and Geneva.

20. Two witnesses were called to testify before the Tribunal: Mr. Moussa Coulibaly, the applicant, and Mr. Nicaise Zocli, Director of Studies at the Pigier school, called by the respondent to testify. In accordance with established procedure, the witnesses were examined, then cross-examined, by the legal counsel of the respective parties.

21. The applicant's testimony is reflected in the preceding "Facts" section.

22. It came to light from the testimony that the Director of Studies of the Pigier school, who has held that post since 1984, contested:

- (i) the letterhead of the transcript, which he claimed was a forgery;
- (ii) the signature on said transcript, which he said was not his own, despite his authority to sign all transcripts and diplomas issued by the Pigier school;
- (iii) the night classes, which did not exist during the years of study covered by the transcript;
- (iv) the transcript's value as an equivalent rating of foreign academic qualifications: an accounting diploma is recognized as a

State diploma, and the Pigier school is not authorized to establish equivalent ratings;

(v) the practice according to which it is supposedly possible to obtain a transcript in exchange for a fee: all transcripts are provided free of charge and only after the completion of studies, once a student has left the institution;

(vi) the applicant's enrolment in the school between 1995 and 1998.

23. The Director did not challenge the fact that the applicant had obtained a certificate in basic computer studies from the Pigier school.

24. The Director furthermore confirmed that he had met the applicant in 2006 and had informed him that the document was a forgery. When asked how he had obtained the transcript, the applicant had replied that he had made an arrangement with a member of the school's personnel. In fact, no personnel had been dismissed for issuing false certificates, contrary to what the applicant claimed.

Applicant's submissions

25. The applicant is contesting the decision of his summary dismissal for serious misconduct, which he considers ill-founded, unjustified, disproportionate and, indeed, partial.

26. He explains that when he was recruited for the post of Finance Clerk (G-4) at UNHCR, he had completed secondary school, which was sufficient to fully satisfy the terms of appointment to the post. In other words, the applicant was recruited on the basis of his secondary school diploma, rather than his BTS level of studies in accounting.

27. The Pigier school transcript was issued to the applicant on the basis of documents he submitted and the authenticity of those documents has been confirmed by the Academy of Nice in France. His objective was to obtain an equivalent rating for his academic qualifications in accounting in his country of origin in order to qualify for the finance exam in Côte d'Ivoire. The significance of the transcript must therefore be put into perspective. It is established practice for outside candidates to request from a school that prepares students for the BTS examination the necessary transcript in exchange for a fee. In addition, the applicant submitted school reports from INSET and from the Academy of Nice in France as documentary evidence of his BTS level of studies.

28. The applicant could not have imagined that the Pigier school would have no record of having issued the transcript, or of the references pertaining to it. Therefore, based on the fact that the transcript from the Pigier school had been issued after he had demonstrated the BTS level of competency he had acquired in France, the applicant had used the transcript to prepare his curriculum vitae and P.11 form and was convinced that a copy of the transcript must have been kept by the Pigier school. The applicant was therefore acting in good faith. Otherwise, why would he have used the Pigier school's transcript instead of the documents from INSET and the Academy of Nice to prove that he had a BTS level of studies? Moreover, the applicant never claimed to have passed the BTS examination. He simply wished to demonstrate that he was at the BTS level.

29. Furthermore, it has not been proven that the transcript later declared to be false by the Pigier school was in fact forged by the applicant, nor has it been proven that the signature on the transcript is his own. The Pigier school has not challenged the authenticity of the document, but has merely stated that it has nothing on the applicant in its records. During the hearing, the applicant added that it was not possible for him to have obtained the transcript fraudulently.

30. The punishment is therefore harsh and overlooks the fact that during the applicant's seven years of service at UNHCR, he consistently demonstrated responsibility, determination and integrity in carrying out the duties assigned to him. His career, initially as a Finance Clerk in 2001 and later as an Administrative and Financial Assistant, right up until he passed the United Nations finance examination in 2006, proves that the applicant demonstrated genuine professional skills. The applicant also submits as evidence his annual evaluations and appraisals, particularly, the top marks he received in the sections on integrity. Only his limited English skills had been noted by the various reporting officers.

31. In addition, his colleagues had met on 8 December 2007 in order to prepare a letter on the applicant's behalf, to be sent to the High Commissioner through his Representative, citing the qualities demonstrated by the applicant, namely, integrity, loyalty, dedication and observance of the administrative procedures in effect at UNHCR.

32. Furthermore, the UNHCR finance examination is more demanding than the degree offered by the Pigier school. He also had assumed higher responsibilities in his chief's absence from 2 October 2007 to 7 December 2007. Even after 21 August 2007, the date on which the Division of Human Resources Management had notified

him of the conclusions and recommendations of the Office of the Inspector General, the applicant states that he retained his financial responsibilities.

33. Consequently, the decision to dismiss the applicant for serious misconduct without notice or compensation on the basis of the Pigier school transcript is not valid. This administrative measure is overly harsh given that the applicant has had no history of misconduct during his seven years of service, neither in his annual evaluations nor in his dealings with supervisors or colleagues. He also has documentation from INSET and the Academy of Nice to support his BTS level of studies. He is aware of misconduct on the part of colleagues who should have been penalized, but upon which the Administration never acted. For example, following the disappearance of 18 laptop computers from a storeroom, the Administration did not penalize the staff member who was responsible for the computers and had the only keys to the storeroom. An audit was commissioned and conducted from 27 August 2007 to 7 September 2007.* The applicant was not found guilty of fraud, let alone oversight. As another example, some staff members are promoted to higher posts on the basis of their PASes even when such key documents are missing from their file for several years.

Respondent's submissions

34. The respondent maintains that the allegations of serious misconduct by the staff member are well founded. The applicant on several occasions submitted false information on his United Nations personal history form (P.11) and on his curriculum vitae, including during his recruitment for a Professional-grade post.

35. He also submitted false documentation from a university-level institution. The applicant never attended classes at the Pigier school and does not have a BTS level of studies. In his testimony, he made statements that conflicted with those made to the Office of the Inspector General concerning the date on which he had allegedly learned the transcript was a forgery.

36. Despite the applicant's satisfactory performance, the charges against him constitute serious misconduct in light of staff rule 104 (a)** and staff regulation 1.2 (b), thereby justifying his summary dismissal. The practice of the Secretary-General and of UNHCR with regard to fraud and forgery of documents indicate that the disciplinary measure is not disproportionate or biased against the applicant.

37. Furthermore, the applicant's due process rights were respected. The investigation into the allegations of fraud was conducted in accordance with the rules in effect. The applicant's comments were requested on several occasions during the investigation. He was also informed of the option to be assisted by counsel.

38. Lastly, the respondent highlights the fact that the counter-arguments of the applicant in his statement of appeal to the Joint Appeals Board in New York were insufficient because they did not provide compelling evidence to refute the allegations of misconduct against him.

Legal arguments

39. Upon examination of the written evidence, the oral evidence given by the applicant and by the Director of Studies at the Pigier school, and the oral proceedings requested by the parties,

40. And while there is no need to decide on the receivability of this application relating to disciplinary measures,

The Tribunal establishes the legal framework as follows:

41. With regard to the appointment of staff to United Nations service, the Charter of the United Nations provides that "[t]he paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity" (Article 101).

42. This basic principle was later incorporated into the United Nations Staff Regulations. Thus, staff regulation 1.2 (b) provides that:

"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."

43. After examination of the facts, the parties' written and oral submissions, and the written evidence contained in the case file, the Tribunal considers that the decisive issue in this dispute is whether the circumstances of the submission of the forged transcript justify the applicant's summary dismissal.

44. The first fundamental question in the dispute is whether the applicant, upon his appointment, intentionally provided false information in the P.11 form and later submitted a forged transcript to support the information in that form.

45. The case file includes the first P.11 form, which was signed by the applicant on 5 February 2001; section 24.A of this form, entitled “Education”, indicates that the applicant acquired a BTS level of studies at the Pigier school and took a course at INSET. This is already misleading with regard to the applicant’s academic qualifications. Indeed, section 24.A of the P.11 form clearly instructs applicants to list degrees and any academic distinctions obtained from universities or recognized equivalent institutions. Consequently, the BTS level of studies and the course should not have been included in this subsection, as the applicant has admitted to not having a higher education degree. Instead, references to a BTS level of studies and the course taken at INSET should have been included in section 24.B of the P.11 form.

46. Be that as it may, the applicant himself established a clear distinction between the degree in question, the BTS level of studies which he claims to have, his certificate and the Pigier school transcript. He clearly indicated that he did not hold a BTS degree, but had completed an equivalent level of studies. The Pigier school transcript simply certified that the accounting skills he had acquired at INSET and in France were equivalent to the Ivorian studies required. The applicant repeatedly maintained that he did not have a BTS degree in accounting.

47. Why did the applicant not specify on his P.11 form that his BTS level of studies had been attained through the course taken at INSET and the accounting course taken at the Academy of Nice instead of referring to the transcript? In this particular case, the applicant clearly indicated that he had attained a BTS level of studies through a three-year programme at the Pigier school, since he provided a transcript to support his statements, which describes his three years of schooling as having been successfully completed with above-average grades. The contents of the transcript could be interpreted to mean that he had regularly attended classes at that institution and had received grades sufficient to validate his level of study. However, the applicant states that he never studied at the Pigier school.

48. The second fundamental question is whether or not the false information proved decisive in the applicant’s appointment.

49. When did the applicant become aware that the document was a forgery? As it emerged from the hearing, the date on which the concerned party realized that the transcript dated 7 June 1999 was a forgery is contested by the respondent. The respondent alleges that the applicant realized it was a forged document in 2001, prior to his appointment, whereas the applicant asserts that he did not discover the

forgery until 2006. In light of the minutes of the applicant's conversation with the Office of the Inspector General on 20 July 2007 the Tribunal is not convinced that the applicant did not become aware of the forgery until 2006. Even if no date is referred to in the minutes of that meeting, the applicant told the inspectors that he realized the transcript was a forgery after receiving it and wishing to register for the Ivorian BTS examination. It is clear that five years did not elapse between the day the applicant obtained the forged transcript and the day he decided to register for the BTS examination. There is therefore a clear and patent contradiction between his statements to the Office of the Inspector General and to the Tribunal.

50. It is therefore surprising that the applicant, realizing that the transcript was a forgery, resubmitted the same information in his P.11 form in June 2006 for his appointment to a Professional-grade post at UNHCR. The applicant's submission that he did not modify his P.11 form in June 2006 because he had consistently referred to the BTS level of studies acquired at the Pigier school in order to avoid obvious discrepancies is not acceptable.

51. Making false statements is clearly in violation of the provisions of the Charter of the United Nations and the Staff Regulations. By signing his P.11, the applicant certified the truthfulness of his statements. The provisions of the P.11 read as follows:

"I certify that the statements made by me in answer to the foregoing questions are true, complete and correct to the best of my knowledge and belief. I understand that any misrepresentation or material omission made on a Personal History form or other document requested by the Organization renders a staff member of the United Nations liable to termination or dismissal."

52. Staff members must uphold the highest standards of integrity, which is a core value of the United Nations. The applicant provided false information in his P.11 form and then submitted a forged transcript in order to be appointed to a Professional post at UNHCR despite being aware of the fraud. He kept silent and did not contact the Division of Human Resources Management in order to modify his P.11 form. Only by acting thus could the applicant have demonstrated integrity. As it stands, the applicant cannot make a plea founded on an illegal act (*nemo auditur propriam turpitudinem allegans*).

53. In light of the foregoing, and without the need to establish whether the forged transcript was decisive in the appointment of the applicant, or whether he himself committed the forgery, UNHCR took a disciplinary measure that was not ill-founded, disproportionate or

partial, since the P.11 form clearly indicates that any misrepresentation or false documentation renders a staff member liable to termination or dismissal.

Judgment

54. For these reasons, the Tribunal decides that:
- a. **The decision of 21 November 2007 (impugned decision) taken by the Division of Human Resources Management of the Office of the United Nations High Commissioner for Refugees is well founded;**
 - b. **The appeal is rejected.**

(Signed)

Judge Vinod Boolell

Dated this 17th day of December 2009

Entered in the Register on this 17th day of December 2009

(Signed)

Jean-Pelé Fomété, Registrar, United Nations Dispute Tribunal, Nairobi