



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D APPEL DES NATIONS UNIES

Judgment No. 2016-UNAT-702

Siciliano
(Appellant)

v.

Secretary General

of the International Civil Aviation Organization



Counsel for Mr. Siciliano:

Edward Patrick Flaherty

Counsel for Secretary General:

Christopher M. Petras

JUDGE DEBORAH THOMAS

5. On 22 December 2014, the ICAO Secretary General sent Mr. Siciliano a letter, informing him that he was to be suspended without pay with immediate effect from 22 December for a period of one month, until 20 January 2015, pending investigation of [his] alleged misconduct in relation to [his] recent detention by US authorities,² in accordance with ICAO Staff Regulations 10.1 and 10.2 as well as Staff Rule 110.1(f). The letter further informed him that, in accordance with Staff Rule 110.1, during this period of suspension his building pass would be deactivated and he would only be able to access the ICAO headquarters building with prior permission.

6. The same day, the ICAO Secretary General approved the Terms of Reference for an investigation under Staff Rule 109.5, paragraph 4, into allegations of misconduct by Mr. Siciliano. ICAO also blocked Mr. Siciliano's e-mail access and sequestered all historic mail information available on servers controlled or used by ICAO.

7. On 23 December 2014, Mr. Siciliano was informed by e-mail of the internal investigation and interviewed via telephone conference on 30 December 2014. The interview was recorded at the request of Mr. Siciliano. On 31 December 2014, Mr. Siciliano was provided with a written interview record with a request for comments, if any, by 5 January 2015. On 4 January 2015, Mr. Siciliano provided his edits of the written record.

8. On 8 January 2015, the investigation report entitled Report on the case of Mauricio Siciliano was submitted to the ICAO Secretary General. The report concluded that Mr. Siciliano had violated fundamental obligations under the ICAO Service Code: in particular he had used his position as staff member with the MRTD program to elicit funds from a private company in order to assist with the growth of that company in an area of business that was directly relevant to the MRTD program[] [and] did so in the expectation of potential further employment by the company.³

9. On 12 January 2015, the ICAO Secretary General provided the investigation report to Mr. Siciliano, inviting him to submit comments by 28 January 2015.

² *Ibid.*, para. 2.10.

³ *Ibid.*, para. 2.22, quoting the investigation report.

10. On 19 January 2015, the ICAO Secretary General informed Mr. Siciliano that the investigation into his alleged misconduct was still ongoing and that he was suspended, with pay, with effect from 21 January 2015.

11. On 28 January 2015, having been denied an extension, Mr. Siciliano submitted his comments rebutting the report's findings.

12. On 5 February 2015, the ICAO Secretary General informed Mr. Siciliano of his conclusion that Mr. Siciliano's conduct was in violation of the ICAO Staff Regulations and Standards of Conduct and of his provisional decision to summarily dismiss Mr. Siciliano from ICAO employment. He gave Mr. Siciliano until 13 February 2015 to submit a written statement in response.

13. On 13 February 2015, Mr. Siciliano submitted his response to the provisional decision.

14. On 17 February 2015, the ICAO Secretary General confirmed his provisional decision and

namely, that ICAO had initiated an investigation on 22 December 2014 without first producing a written report and seeking comments from Mr. Siciliano with the resultant implication that the rules may have not been properly followed

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35. Mr. Siciliano fails to show on appeal how it was unreasonable for the AJAB to accept his

41. Mr. Siciliano did not have access, either during the internal procedure or for the purpose of the appeal, to all the files and e-mails stored in the ICAO system allowing him to search for any document that would have supported his defence internally and provided stronger evidence for his appeal, in particular his argument that he never received the amount, mentioned by ICAO and found in one of his e-mails, for alleged external activities and that instead, his son received this amount from EDAPS as compensation for its failure to fulfill contractual obligations.

42. Since Mr. Siciliano was unable to continue his search throughout his personal ICAO files to find evidence on these matters, he, and subsequently his counsel, wrote to the *Banque Royale du Canada* where his son used to maintain an account on which the amount referred to by ICAO was transferred and requested information on that transfer in order to demonstrate that this amount was never received by him. Following his counsel's request, the *Banque Royale* ~~003601-that and~~

50. ICAO's Staff Rule 111.1(5) provides, *inter alia*, that:

... A staff member who wishes to appeal the decision referred to in Regulation 11.1 shall, as a first step, address a letter to the Secretary General requesting that the decision be reviewed. Such a letter shall be sent within 30 calendar days of the time the staff member received notification of the decision in writing.

51. ICAO's Staff Rule 111.1(7) provides that a staff member who fails to observe the time limits indicated shall lose the right to appeal, unless an application is made for the delay to be waived. Mr. Siciliano, like any staff member who wishes to appeal a decision, had to complete the first step of making a formal request for a review of the decision to suspend him without pay. He has not done so and has thus waived his right to appeal that decision.

52. In the circumstances, that aspect of Mr. Siciliano's appeal is not receivable.

Receivability of Mr. Siciliano's 23 May 2016 letter (submitted on appeal) requesting the ICAO Secretary General to reconsider the summary dismissal decision "on the basis of ... facts which [he] was not at liberty to expose" to the AJAB

53. Mr. Siciliano contends that both, the payments received and the allegedly incriminating correspondence, were based on false statements which he made under duress. He further contends that the truth about those payments and his correspondence are set forth in his 23 May 2016 letter to the ICAO Secretary General requesting reconsideration of the decision to summarily dismiss him; they are also attached to his appeal to the Appeals Tribunal. These contentions and correspondence were known to him when he presented his case at the AJAB, yet they were not presented.

54. Article 2(5) of the Appeals Tribunal's Statute provides that in exceptional circumstances, where it is determined that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence on appeal. However, the Appeals Tribunal will not admit evidence which has been known to

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Original and Authoritative Version: English

Dated this 28th day of October 2016 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Murphy

Entered in the Register on this 20th day of December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar