

Case No. UNDT/NY/2022/020

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... On 6 September 2018, the [name of Member State redacted] Permanent Mission wired US\$ 15,000 to the UNAC bank account. The money only arrived in the UNAC account on 10 September 2018.

... The Applicant did not report this donation to the Treasurers or [MR] at the time. [MA], [KD] and [BS] stated that the Applicant had informed them that the Permanent Mission was making a donation during a meeting on an unspecified date, but that they were not informed of the amount or the method of payment. The UNAC account's co-signatories were not informed that the sum would be deposited into the UNAC account.

... On 7 September 2018, Staff Day 2018 took place. The Staff Day Programme began from 7:30 a.m. to 11:30 p.m. with a full day of events including: coffee time, a memorial ceremony, Parade of Nations, statements by the Secretary-General and President of the Staff Union, Staff talent show, sports tournaments, jazz programme, a grand ball, raffle drawing and happy hour.

... On 10 September 2018, [MR] sent an email to *inter alia* the Applicant and [KD], stating that she had heard that the Permanent Mission had donated for Staff Day and asking for details.

... On 10 September 2018, the Applicant withdrew US\$ 14,000 from the UNAC bank account and deposited US\$ 7,000 into the UNSU bank account.

... On 12 September 2018, [KD] circulated a draft response to [MR], indicating that “[a] donation of \$7,000.00 was received in support of sports and placed in the Staff Union account”.

...

Whether the established facts amount to misconduct

7. The dispute between the parties primarily concerns whether, in the given circumstances, the Applicant's handling of the relevant contributions to the 2017 and 2018 Staff Days amounted to misconduct for, as held by the Administration, fraud and misuse of authority.

8. In this regard, the Tribunal notes that, in the 11 January 2022 letter, the Administration decided to abandon the charges against the Applicant for having breached her "fiduciary obligations as a co-signatory to UNAC's bank account in mismanaging funds and failing to keep records of UNAC's bank account" as these allegations "did not constitute official [United Nations] functions". Although the Applicant has not challenged that her acts in connection with the 2017 and 2018 Staff Days were undertaken as part of her official functions as a United Nations staff member, for the sake of completeness, the Tribunal observes that, with reference to the agreed facts, the Staff Day is an official, and not a private, United Nations event, which is held at its New York Headquarters every year. Even if the Applicant's participation in organizing the event was voluntary, her acts in connection with the 2017 and 2018 Staff Days are therefore to be considered part of her official functions.

The legal definitions of fraud and misuse of authority

9. In the Applicant's closing statement, she challenges "the legal value" of the Information Circular on the Anti-Fraud and Anti-Corruption Framework of the United Nations Secretariat (ST/IC/2016/25) from which the definition of fraud on which the misconduct finding thereon is based in accordance with the 11 January 2022 letter. In this Information Circular, the notion of "fraud" is defined as "any act or omission whereby an individual or entity knowingly misrepresents or conceals a material fact in order to obtain an undue benefit or advantage for himself, herself, itself or a third party, or to cause another to act to his or her detriment" (see para 5).

10. In the application, the Applicant further submits that (emphasis omitted and referring to "Encyclopedia Britannica" for quotations):

... However, the above definition used by the Respondent should be understood as containing the three constitutive elements of the legal notion of fraud which are cumulative, i.e., the intention to defraud, causing prejudice to another party and obtain a personal gain.

that fraud consists of three cumulative elements, namely

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22. The Applicant further focuses on an alleged “toxic political context inside UNSU”, and her submissions may be summarised as follows:

a. In relation with MR (name redacted for privacy reasons), the Applicant and MR “had a hostile and contentious relationship and were not on speaking terms [reference to footnote omitted] which belongs to the political context within UNSU”. The Staff Day Committee members confirmed to MR that the Applicant “was in charge of soliciting donations from Permanent Missions as she was the designated Liaison and only authorized person to communicate with Permanent Missions regarding donations”.

b. On 10 September 2018, “on the same day that [MR] sent an email to *inter alia* the Applicant and [KD], stating that she had heard that [the Member State’s] Permanent Mission had donated for the Staff Day and asking for details, a serious incident took place”. MR, “Chair of the Raffle sub-committee for Staff Day 2018, invaded the Applicant’s office at the UNSU to take her files related to Staff Day 2018”. MR “trespassed into the Applicant’s office and attempted to take her belongings without her permission”. The Applicant filed a “report with [United Nations] security regarding the incident of the files in her office but no action was taken, security affirming that it was a Union affair”.

c. The person “who initiated all this case against the Applicant was [MR]. Further, it is “necessary to keep in mind that the Treasurers of the UNSU as well as the Chairperson of the Raffle Committee, [MR], were a major part of the political chaos occurring in the Staff Council at that time when [MR] passed a vote of no confidence against the President of the Staff Union”.

d. Consequently, the “political context is essential to understand this case”.

23. At the outset, the Tribunal notes that the present case concerns the Applicant’s handling of the various donations from the Member State and UNFCU, which, in the 11 January 2022 letter, was found to amount to fraud and misuse of authority, respectively, and therefore also two separate misconduct findings. No reference was made in the 11 January 2022 letter to the alleged toxic environment within UNSU, which in and by itself, is therefore a different matter and, as

such, not relevant to the question of the propriety of the misconduct findings, as also submitted by the Respondent.

24. Specifically regarding whether a finding of fraud amounts to misconduct, the Tribunal notes that in *Asghar*, the Appeals Tribunal held that a “finding of fraud against a staff member of the Organization is a serious matter” and that such “a finding will have grave implications for the staff member’s reputation, standing and future employment prospects”.

25. In the following sections, as the judicial review only concerns the two misconduct findings made in the 11 January 2022 letter, the Tribunal will separately review each one of them on their own terms as presented by the Administration:

“The donation of the Permanent Mission of [name of Member State redacted] to Staff Day 2018—fraud and misuse of authority”.

26. The Administration based its misconduct findings concerning the Applicant’s handling of the USD15,000 donation of a Member State to Staff Day 2018 on the Applicant committing four specific alleged offences. These were the Applicant’s “[f]ailure to report the Permanent Mission’s donation, “[f]unneling the donation to the UNAC account”, “[u]nder-reporting the amount of the donation”, and “[r]etaining part of the donation for [her] own benefit”.

27. The Tribunal notes that the only aspect that the Applicant essentially contests is the question of whether she kept USD3,000 of the Member State’s donation for her “own benefit” (she also refers to the reply, where the Respondent additionally notes that the Applicant’s actions were undertaken “

Applicant had committed fraud. Accordingly, as per *Asghar*: (a) the Applicant misrepresented the amount of the donation of the Member State to the Staff Day Committee for Staff Day 2018, (b) she intentionally deceived its Sports Programme regarding the full amount of the donation, and (c) this caused prejudice to this Sports Programme in that it never received all the relevant money. Considering the seriousness of the offence of fraud pursuant to *Asghar*, the Tribunal further finds that the Administration acted within its scope of authority when finding that the Applicant's fraudulent actions amounted to misconduct.

37. As to the allegation on misuse of office, the Tribunal finds that the Administration acted within the scope of its authority when determining that the Applicant had misused her office on the Staff Day Committee for the 2018 Staff Day in accordance with staff regulation 1.2(b) and (g). As the liaison person for donations to 2018 Staff Day and contrary to the financial ground rules, the Applicant facilitated the transfer of USD15,000 from a Permanent Mission into UNAC's bank account instead of UNSU's bank account, and then subsequently failed to re-transfer the entire amount but only USD12,000 to UNSU. USD3,000 was therefore kept out of range of UNSU and instead remained with the UNAC bank account over which, unlike the UNSU bank account, the Applicant had drawing rights. Taking into account the gravity of the breach of trust, the Tribunal finds that when concluding that the Applicant's misuse of office constituted misconduct, the Administration acted within its scope of authority.

“The UNFCU's donation for Staff Day 2018—Fraud and misuse of authority”

38. The Tribunal observes that it follows from the agreed facts that as the liaison person for donations to the 2018 Staff Day, the Applicant solicited a donation from UNFCU, which then donated USD5,000 to the event. This donation was therefore intended to fund activities of the 2018 Staff Day and not to UNAC. According to the financial ground rules, the Applicant requested UNFCU to transfer USD2,000 to the UNSU's bank account, but contrary thereto, asked for the remaining USD3,000 to be deposited into UNAC's bank account. UNFCU followed the Applicant's requests, who subsequently never re-transferred the money from UNAC to UNSU.

39. Similar considerations as those stated in the above regarding the Member State's donation apply here. Accordingly, by failing to transfer the USD3,000 donation from UNFCU to UNSU from the UNAC bank account, the Administration acted within the scope of its

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