

Introduction

1. The Applicant was a Senior Protection Officer with the United Nations High Commissioner for Refugees (UNHCR). He served at the P-4 level and was temporarily assigned to serve at the UNHCR Office in Lilongwe, Malawi

2. On 9 August 2022, he filed an application before the Dispute Tribunal asking for the Tribunal to dismiss him from service of the Organization pursuant to staff rule 10.2(a)(ix). The

8. On 13 September 2021, the Applicant received a memorandum from the Director of the Division of Human Resources (DFJ Tö) indicating that she had received information which is tantamount to committing serious misconduct. The alleged fraud was an offence, which if established, would warrant separation from service or dismissal, she also decided that the Applicant be placed on administrative leave without pay.

9. A separate investigation into unrelated allegations of fraud by another staff member, Davies Ndambuki, revealed that the Applicant may have colluded with him and other staff members to obtain rental subsidy.

10. The Applicant has owned an apartment in Sub-City Woreda Addis Ababa, Ethiopia since February 2008.

11. The investigators found emails indicating that the Applicant had rented out his flat in Addis Ababa to Mr. Ndambuki and Ms. Murun. The lease indicated an amount which was used to claim rental subsidy, but the amount actually paid to the Applicant was substantially less.

12. On 15 September 2021, the Applicant received a Notice of Investigation which informed him that a formal investigation into his conduct had been opened and that the Office of the Inspector General (OIG) would be seeking to interview him.

13. The Applicant was interviewed on 2 November 2021 and also submitted written comments on 15 December 2021.

14. On 14 January 2022, the Applicant was served with a memorandum containing Allegations of Misconduct. The Applicant was invited to respond to the charges therein. Attached to the memorandum was the Investigation Report.

¹ Cr r necpvu Cppgz 5.

² Cr r necpvu Cppgz 9.

³ Cr r necpvu Cppgz 32.

15. The Applicant responded to the charges on 5 February 2022.

16. On 11 May 2022,⁴ the DHR wrote to the Applicant to inform him that after a careful review of the evidence gathered by IGO, including their interview with the Applicant and his written response to the interview and the charges, the High Commissioner of the IGO decided to impose a disciplinary measure of dismissal pursuant to staff rule 10.2(a)(x) as the Applicant was found to have:

- (i) Engaged in fraud by knowingly assisting Mr. Davies Ndambuki in submitting a fraudulent claim for rental subsidy in December 2017, in connection with the lease of [his] apartment in Addis Ababa, as a result of which Mr. Ndambuki received USD 44,219.26

o qpj uøcf xcpegf tgpv Qp 5 Cr tk423; , vj g{ alsodiscussed a ñmissed rent payment for the month of February 2019 in the amount of USD2,000.

25. By misrepresenting the amount of rent in his application for rental subsidy, Mr. Ndambuki obtained rental subsidy to which he was not entitled. At the time of his application for the subsidy, his gross income was WUF 8,222.76. The individual threshold amount was thus USD1,200.11. A monthly rent of USD3,500 meant that the excess amount was USD2,298.65 of which - USD1,839.91 was reimbursed to the Applicant.

26. Had Mr. Ndambuki applied for rental subsidy based on USD2,000 that he was clearly paying the Applicant, the excess amount would have been USD799.89, and he would have received USD699 in rental subsidy. He was not entitled to the USD1,839.91 that he was being paid. The record, the Respondent submits, is replete with evidence that the Applicant engaged in this transaction in the full knowledge that it was fraudulent.

27. There is no evidence that the Respondent submits that a further USD1,500 was paid to the Applicant or his family in cash, anywhere. The evidence adduced by the Applicant purporting to be a statement by Mr. Kshay dated 29 January 2022 reads as follows:

At the end of December Mr. Davies, departed Ethiopia, after his departure, again Ms. Stella, moved in January to ~~2020~~, with monthly rent \$3600, this time I was receiving between \$1500-1000. At Berhane, at different, when we were in Yemen, I was visiting Stella, at UNHCR to collect money from Stella, for our families in Tigray region.
(sic)

28. The Respondent submits that the statement is entirely incredible. The document is largely unintelligible, it is a haphazard collation of a power of attorney and factual statements prepared to address the allegations of misconduct. It is not clear who prepared the document. No proof of identity is attached to it, the name is not the same as in all other documents on record, including three leases and one rent receipt submitted by Ms. Murungi in 2015 and 2016, and the signature is entirely different.

45. On 17 June 2019, the Applicant sent Ms. Murungi the receipt for rent and deposit dated 29 May 2019 (which Ms. Murungi submitted with her application for the subsidy). The Applicant wrote to Ms. Murungi, "I will send you my citi bank account number (sic) for you to deposit the money into. Tomorrow I will send you my citi bank account number (sic) for you to deposit the money into."

46. On 16 January 2020, the Applicant wrote to Ms. Murungi, "I have received the money from the bank. The amount is \$3972, which is the amount you requested. Please let me know when you can receive the money."

47. If Ms. Murungi submitted the lease agreement between herself and the Applicant to the Organization as proof of payment of rent for the alternative housing, the Applicant had nothing to do with it and should not be held responsible for what Ms. Murungi submitted or for the subsidy she received.

48. The Applicant further submits as follows:

There was clearly a language barrier and the communications upon were filled with errors and did not always express what they were meant to. The witness interviews were conducted in English, and none of the witnesses are English speaking natives. A reading of the IGO Report shows that it was difficult for the witnesses to communicate their thoughts, and questions were often unanswered or the answers were simply confusing, but that does not necessarily result in a finding of fraud by default, and certainly falls short of a finding of clear and convincing evidence.

49. The Applicant vehemently denies having asked for or received any benefit from the subsidy claims submitted by Mr. Ndambuki and Ms. Murungi as his tenants. The Applicant argues that even if Mr. Ndambuki was only paying USD2,000/month rent, his subsidy was USD1,840.92/month, less than the amount stated on the lease agreement, therefore the Organization was not defrauded. The broker subsidy was a legitimate claim for services rendered by three brokers. The alleged kickback to Ms. Murungi had nothing to do with the apartment rental but was payment for money owed to her for another personal matter. And the Applicant had no hand in submitting for the subsidy.

field-services position in Addis Ababa between June 2017 and December 2019. On 21 December 2017, he applied for rental subsidy, specifying that monthly rent was WUF 5,722 per month in rental subsidy from UNHCR between March 2018 and January 2020.

55. However, it results from the records that Mr. Ndambuki did not pay USD3,500 in monthly rent and that the Applicant had knowingly provided a false lease and a false rent receipt to Mr. Ndambuki so that he could claim and obtain a higher rental subsidy from UNHCR to which he was not entitled.

56. Indeed, it results from the record that on 26 March 2018, Mr. Ndambuki wrote to the Applicant:

Dear [Applicant], I have transferred 8k. Allow me to put the balance next month since if I do the full amount, I will be left without food. I used the bank routing number below; Routing number: 021000089. I believe it is the correct bank routing number as seen online for Citibank. Thank you. [Signature]

57. And the Applicant replied:

Thank you for help. I will put the balance next month since if I do the full amount, I will be left without food.. I will see you on Friday (11/03/2018) and I will give you a call. Again thank you so much. Berhanie

58. On 4 December 2017, in the same email where the Applicant shared the lease with Mr. Ndambuki for his signature, the Applicant wrote:

Regarding my rental subsidize application to mention that, you paid the real estate one month rent for the cost of \$5722.. My name is [Name]. Ask your sister she will give you the name of the person..

59. During his interview, Mr. Ndambuki stated that he did not recall the Applicant's name and that he did not recall the Applicant's signature.

60. Two days later, on 6 December 2017, the Applicant sent an email to Mr. Ndambuki with the rental subsidy application form. In his email, the Applicant wrote:

Davies, Attached please find the rental Subsidize application. I fill the part that ask you if you did you pay a fee to a licensed agent or broker to obtain the accommodation,, you will say yes amount \$3500SD.. divided by three $3500/3$ +\$1160 .. each.. Thanks

61. The email exchange

withdrew USD1,500 per month in Kenya and flew back into Ethiopia with the money
notes that the Applicant did not offer any evidence on these additional payments.

66. While for the receipt dated 4 February 2018, not signed by the apparent author, the Applicant and Mr. Ndambuki provided wholly inconsistent and contradictory accounts (highlighted in detail in para. 40-41 and 44 of the reply), also for the receipt dated 4 February 2018, not signed by the Applicant and Mr. Ndambuki, the Applicant provided an account which was highly equivocal in content and form raised many doubts (well highlighted by the Respondent in para. 46 of the

Applicant would have had almost half of the rent (USD1000 instead of USD3,500) and the tenant would have paid more from his pocket (about USD1609 instead of USD160).

70. In other terms, the parties to the rental agreement unlawfully profited by misconceiving the real amount of the rent, from the mechanism of partial reimbursement in force at UNHCR, where the more rent a staff member pays above the individual threshold, the greater the rental subsidy to the maximum amounts provided in the AI) he/she receive

71. The communications between the Applicant and Mr. Ndambuki on 26 March 2018 show that the Applicant was fully cognizant of the fraud and of the fact that they shared the advantages of the fraudulent scheme.

72. In addition, the email exchange on record shows that the three staff members among themselves.

73. On 19 March 2018, after Mr. Ndambuki had shared with the Applicant an email amounted to USD1,839.91, the Applicant wrote to Mr. Ndambuki and Ms. Murungi:

According to the rule you should be full agent fee when receiving the
please divided between the two of you. each will get USD 920. just
deposit the rent amount into my account.

74. The emails from the Applicant to Mr. Ndambuki and Ms. Murungi are manifest

hcevu cuugtvgf ku j ki j n(r tqdcdrg.ö (Molari 2011-UNAT-164, para. 30). The Appeals
Vtdwpcnj cu cnuq ur gellkf vj cvðergctö o gcpu vj cv, ðgxkf gpeg qh o kueqpf wevo wuv dg
manifaavcu qr r qugf vq uwr r qukkpccrö cpf vj cvðeqpxkpekpi ö tgs wktgu, ðvj cv vj ku erget
gxkf gpeg dg r gtuwculxg vq c j ki j ucpf ctf.ö D{ vj g uco g vqngp, ð[e]vidence, which is
required to be clear and convincing, can be direct evidence of events, or may be of
evidenknkphgtpegu vj cvecp dg r tqr gtn(ftcy p hqo qvj gt f kgev xkf gpeg.ö (Negussie
2020-UNAT-1033, para. 45).

83. In this case, the Tribunal is of the view that the documents on record
demonstrate by clear and convincing evidence that the Applicant had rented out his
flat in Addis Ababa to Mr. Ndambuki and Ms. Murungu based on a lease with an
inflated rent (cpf y kj qww

Forging of documents, preparing false entries in UNHCR systems or making false statements to obtain a financial or other benefit to which a person is not entitled.

86. Therefore, the established facts constitute misconduct.

c) whether the disciplinary measure is proportionate to the offence.

87. Considering previous practice and the jurisprudence of the Tribunals, each of the allegations for which the Applicant was sanctioned would thus individually warrant dismissal.

88. UNHCR applies a zero tolerance approach to fraud and corruption pursuant to the Strategic Framework. This means that there is no place for fraud or corruption in UNHCR and that, where established, such misconduct attracts severe disciplinary sanctions.

89. The Appeals Tribunal has held in *Mayenda* 2021-UNAT-1156, at para. 38 that

As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal

(d) whether due process was respected

90. It is not disputed that the investigation and disciplinary process fully complied with the requirements set out in UNHCR/AI/2019/15 Administrative Instruction on Conducting Investigations in UNHCR and UNHCR/AI/2018/18. Indeed, the

Conclusion

91. In light of the foregoing, the application is dismissed.

