



JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Brian Streb (Streb) was summarily dismissed for serious misconduct for accepting lavish hospitality from a vendor's representative. He appeals from a Judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) which affirms the decision of the Secretary-General of the United Nations.
2. We find that the UNDT applied the appropriate principles in considering whether or not a case of serious misconduct was established and if so, whether the sanction of summary dismissal was appropriate.
3. Though the misconduct was based on a single incident, it would have been inappropriate for the Secretary General to take the view that, as long as there was no evidence that Streb's impartiality had actually been compromised, he did not commit misconduct or serious misconduct. Any such view would ignore the importance that must be attached to ensuring public confidence in the integrity of the United Nations Procurement Division.
4. Streb has not been able to satisfy this Tribunal of the existence of any mitigating factors for us to conclude that the summary dismissal was disproportionate to the offence.
5. In view of the serious nature of the misconduct established, we find that the sanction of summary dismissal imposed on Streb by the Secretary-General was proportionate to the offence.
6. We find no merit in the appeal. The appeal is dismissed.

Facts and Procedure

7. Streb entered the service of the United Nations on 5 October 1981 as a security officer at the S-1 level. By 1 April 2004, he had progressed to the P-4 level in the Procurement Division. At the time of the incident leading to his dismissal, Streb was the Team Leader of the Communications and Information Technology Support Team within the Field Procurement Section. Streb directly supervised Walter Cabrera (Cabrera) who was a

Submissions

Streb's Appeal

19. Streb submits that the UNDT erred in law in considering and making a pronouncement on the alleged "failure to report". Streb observes that the charges of misconduct do not include the allegation that Streb "failed to report" the alleged lavish hospitality.

20. Streb further claims that the UNDT erred in fact in concluding that evidence as to the vendors' representative's motive was elicited during the criminal trial. The trial record solely reflects, without any significant details, the sequence of events that transpired during the material evening. The trial record does not include any reference to the vendors' representative's motive.

21. Streb alleges that the UNDT erred in fact and law in arriving at its finding of a potential or actual conflict of interest. The record does not include evidence that Streb did not feel "comfortable" disclosing the event to any other person, nor was Streb cross-examined on this matter by counsel for the Secretary-General during the proceedings before the JDC Panel, which was part of the record considered by the UNDT.

22. The UNDT further erred in concluding and taking into consideration that Streb did not cooperate with the PTF investigation. The finding that Streb did not "volunteer" particular information does not warrant a finding that Streb did not "respond fully" to a request for information. In addition, Staff Regulation 1.2(r) requires that staff members respond fully to requests for information regarding "the possible misuse of funds, waste or abuse". There is no such allegation made in the instant proceedings. In paragraph 33 of the Judgment, the UNDT finds that "[the applicants] had a duty at the time to make the PTF aware of the events in question so as to enable the PTF to obtain further information regarding the vendors' representative's activities". The UNDT failed to stipulate the legal basis for this "duty".

23. The UNDT erred in fact in concluding that there could be no doubt in the mind of any reasonable observer that the vendors' representative was interested in trying to secure

relevant time and therefore no potential to influence any procurement of contracts in favor of any of the represented vendors. Furthermore, the evening encounter was not pre-arranged.

24. The UNDT failed to properly take into consideration the permissive culture at the material time. It is in evidence and not in dispute that at the material time there was a permissive culture of receiving hospitality albeit within boundaries.

25. The UNDT erred in law in failing to adequately motivate its conclusion that the contested decision was disproportionate. Similarly, the UNDT erred in fact and law in determining that the sanction was proportionate.

26. The UNDT erred in fact and law in accepting without evidentiary basis that the Secretary-General had taken into consideration the mitigating circumstances.

27.

29. The Secretary-General further submits that Streb has not identified any error of law or fact made by the UNDT that would require a reversal of its decision to uphold his summary dismissal.

30. Contrary to Streb's assertion, the charges of misconduct did include an allegation that he had failed to report to the Organization his acceptance of "lavish hospitality" from Kohli, and he did have an opportunity to respond to such an allegation. Streb was aware that one of the charges of misconduct against him related to his failure to report his acceptance of "lavish hospitality" from Kohli to the Organization, and he responded at length to this issue

visited Bahel. This was so in spite of the fact that specific questions regarding such contacts and visits had not been posed to Streb.

34. The Judgment shows that the UNDT considered the permissive culture at the time

Judgment

46. The appeal is dismissed. The Judgment of the UNDT is affirmed.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Boyko

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar