



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/48

Judgment No.: UNDT/2010/046

Date: 24 March 2010

Original: French

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar:

Application

1. In an application filed on 18 July 2007 and recorded on 15 August 2007 with the New York Joint Appeals Board (JAB), then transferred to the United Nations Dispute Tribunal (UNDT/Tribunal) on 1 July 2009,¹ the applicant challenges the decision to summarily dismiss him for serious misconduct with no termination benefit. That decision was made on 18 May 2007 by the Director of the Division of Human Resources Management (DHRM) of the United Nations High Commissioner for Refugees (UNHCR) and received by the applicant on 31 May 2007.
2. The applicant requests, firstly, the annulment of the decision and, secondly, reinstatement within UNHCR and damages which the Administration would be ordered to pay.

The facts behind the dispute

3. The applicant joined the UNHCR Abidjan Representation Office in Côte d'Ivoire on 4 July 1991 as a Chauffeur, at level GL-2. His initial short-term contract was extended several times and converted to an indefinite contract on 1 January 2000.
4. In December 2005, the applicant presented five applications under the Medical Insurance Plan, all dated 2 December 2005, for reimbursement of

¹ Under the Secretary-General's Bulletin SGB/2009/11 "Transitional Measures Related to the Introduction of the New System of Administration of Justice."

medical fees. The medical fees at issue dated from March, May, July, August and October 2005 and totalled FCFA 367,100.²

5. Most of the documents attached to applications for reimbursement under the Medical Insurance Plan for the year 2005 were invoices and receipts issued on behalf of Groupe Médical Azur (GMA) for care for the applicant's children, as follows:
 - i) Invoice No. 978, dated 3 March 2005, for consultation, treatment of typhoid fever, and three days' infusion, in the amount of FCFA 104,600;
 - ii) Invoice No. 170, dated 3 March 2005, and receipt 170 dated 3 May 2005, for two days' observation and infusion, totalling FCFA 60,000;
 - iii) Invoice No. 11, dated 12 July 2005, and receipt No. 31 date 11 July 2005, for six days' hospitalization in a semi-private room, treatment and consultation, totalling FCFA 107,000;
 - iv) Invoice No. 1080 dated 16 August 2005, receipt No. 27 of 15 August 2005, and receipt No. 1080 of 16 August 2005, for consultation, three days' hospitalization and infusion, totalling FCFA 77,000;
 - v) Unnumbered invoice dated 28 October 2005 and receipt No. 16 of 27 October 2005 for consultation, hospitalization and treatment, in the amount of FCFA 25,565.

² Equivalent to around USD 800.

6. Having reviewed the above-mentioned invoices and receipts, the former Director of the UNHCR delegation in Abidjan noted, in a memorandum dated 8 December 2005, that the headers of two of the invoices, for FCFA 60,000 and 72,000, had given him pause, as he had noticed a number of inconsistencies in the invoices of the five claims for reimbursement—invoices were illogically numbered, some handwritten, while some lacked receipts; the two invoices' headers seemed wrong; and in addition, the applicant's children were said to have been hospitalized several times in the course of the year. He then asked the UNHCR Security Assistant to go to the GMA Clinic to check the authenticity of the invoices with the competent GMA authorities. The Security Assistant did visit the Clinic and met with four of the physicians in charge, who told him that they did not recognize the invoices, which had never been entered in their records.

7. Back at the Delegation, the Security Assistant wrote a report for the attention of the Administrative Officer reporting the disavowal of the invoices by the GMA Clinic. UNHCR administration then sent a letter from the Delegation Representative to GMA management seeking confirmation of the authenticity of invoices Nos. 170 (3 May 2005) and 1080 (16 August 2005), which had been submitted to UNHCR for reimbursement. On 12 December 2005, a GMA physician replied that the names of the above-mentioned alleged patients were nowhere to be found in their consultation and hospitalization records. She added that Groupe Médico-Chirurgical Azur did not recognize any of these invoices and receipts as having been properly issued by the Groupe. That same day the Representative sent a complaint to UNHCR's Inspector General's Office (IGO) alleging fraud in the five claims submitted by the staff member under the Medical Insurance Plan (MIP) dated 2 December 2005 and totalling CFA 367,100.

8. Between March and August 2006, an investigation was carried out in Abidjan by the IGO. The investigators in charge of the mission spoke to five individuals:

- i) The applicant;
- ii) The Administrator of the UNHCR Delegation in Abidjan;
- iii) Dr. Germain Krapa, Director of the GMA Clinic;
- iv) Dr. Brahim Kone, of the GMA Clinic;
- v) Dr. Hien Dosso, of the GMA Clinic;
- vi) Mr. Kouassi Kra, of the GMA Clinic.

The IGO likewise obtained a copy of the receipt forms in use at the GMA Clinic since 2006 and of the statements made by the Security Assistant and the chair of the Abidjan Delegation's personnel council.

9. On the basis of the information obtained from the clinic officials, UNHCR declined payment of the invoices, which were deemed fraudulent. In a letter to the UNHCR Representative dated 2 March 2006, the applicant inquired about the non-reimbursement of the invoices he had submitted under the Medical Insurance Plan in December 2005, noting that he had heard an investigation thereof was under way.

10. On 9 November 2006, IGO released its preliminary investigators' report, in which it concluded that sufficient evidence had been found to conclude that the staff member had submitted false invoices for reimbursement under the Medical Insurance Plan, in violation of Staff Regulation 1.2(b)³.
11. In a letter dated 24 November 2006, the DHRM Director informed the applicant of the allegations of misconduct on his part, viz. the submission of falsified invoices for reimbursement under the Medical Insurance Plan. The staff member was acquainted with the letter on 14 December 2006.
12. The applicant submitted his response to DHRM in a letter dated 12 January 2007 in which he categorically rejected all allegations of fraud against him, enclosing the following additional documents:
 - i) A photocopy of an identity document for Mr. Sehi Bi Sehi Justin;
 - ii) A termination certificate for Mr. Sehi Justin issued by "Polycline Medica"⁴ in Bouaké, dated 14 August 2001, stating that Mr. Sehi Justin had worked for five years as a nursing assistant at the said centre;
 - iii) A photocopy of a business card in the name of Mr. Sehi Bi Sehi Justin;
 - iv) A "Certificate of Recognition" from Mr. Sehi Bi Sehi Justin, dated 10 January 2006, in which Mr. Sehi Justin affirms that he was employed as a nurse at the GMA Clinic and that he received money from Mr.

³ Staff Regulation 1.2(b): "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."

⁴ As shown in the certificate header.

Bernard Tra-Bi, a UNHCR staff member, in several instalments, for care for the latter's family. Mr. Sehi also stated that he had known Mr Tra-Bi for a long time, and had most often been in charge of his family's care, and that on account of financial difficulties with the Clinic's management, he had spent the applicant's money on his own personal needs. He stated, finally, that he had acknowledged these facts on two occasions at UNHCR in the presence of his superiors.

13. On 24 April 2007, in light of the applicant's response, the head of UNHCR Legal Affairs recommended that the DHRM summarily dismiss the applicant.
14. In a letter dated 18 May 2007, UNHCR's DHRM informed the applicant of his summary dismissal for having acted in a manner unbecoming a UNHCR staff member by repeatedly submitting false invoices for reimbursement under the Medical Insurance Plan, such conduct constituting serious misconduct and grounds for his dismissal without prior notice or termination benefit immediately upon receipt of the letter. The staff member acknowledged receipt of that letter on 31 March 2007.
15. On 18 July 2007, the staff member filed an application for annulment of the decision with the Joint Appeals Board in New York. The application was entered into the records of the Board's Secretariat on 15 August 2007.
16. On 23 August 2007, it was forwarded to UNHCR Administration for comments. On 15 October 2007, UNHCR's comments were sent to the applicant, and additional information was sent on 19 October 2007.
17. On 27 July 2009, the application was transferred to the Nairobi registry.

18. On 30 November 2009, the Tribunal informed the parties of the guidelines to be followed in preparing for the hearing of the case. Because it was difficult to reach the applicant, who had left the organization at the end of May 2007, that letter was sent to the parties again on 11 January 2010. The parties submitted their responses to the Tribunal on 20 and 22 January 2010.

Hearing and evidence

19. A hearing was held on 2 February 2010 with the parties taking part by teleconference from Abidjan, as regards the applicant, and from Geneva in the case of UNHCR. Three witnesses were invited by the parties to give evidence before the Tribunal.
20. During the hearing, Mr. Sehi Bi Sehi Justin gave evidence for the applicant. The witness stated that he was a registered nurse and had provided care to the applicant's children at the GMA clinic. He said the applicant had paid all the invoices in instalments under a credit arrangement between them. The witness stated that he had used the money paid by the applicant to finance his own house. After the UNHCR Security Assistant's visit to the Clinic in December 2005, he had confessed his fraudulent act to his superiors and had resigned his position.
21. Two witnesses were called by the respondent. The physicians at the GMA Clinic stated that Mr. Sehi had worked at the clinic as an orderly and that all of the invoices and receipts were forgeries. Moreover, the applicant's children were absent from the clinic's records.

Applicant's argument

22. In his application of 18 July 2007, the applicant claimed that the allegations against him were baseless. According to him, the decision had been taken on the basis of an investigation from which all evidence tending to exonerate him had been systematically excluded, including the testimony of Mr. Justin Sehi, which could have established his innocence.

23. The applicant further stated that he had been unable to defend himself against the charges made against him. Having had no access to legal aid throughout this proceeding, he had not been able to defend himself. He claimed he had so informed the Administration but had been ignored.

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fraudulent, having been issued by the staff member's accomplice, Mr. Sehi Bi Sehi Justin, unbeknownst to the authorities of the Clinic.

27. The respondent added that Mr. Sehi Justin had stolen four invoices used by one of the Clinic's physicians as well as Clinic seals that he then affixed to the invoices. GMA had disavowed those invoices and had confirmed that the patients' names were absent from the Clinic's records. The respondent said Mr. Justin Sehi had then given the invoices to the applicant, who had submitted them for reimbursement under the Medical Insurance Plan. Indeed, Mr. Sehi Justin had admitted falsifying the invoices to the directors of the GMA Clinic. The staff member had himself acknowledged, in the course of his contradictory statements and false accusations, that he was aware the invoices were false and had been drawn up by Mr. Justin Sehi unbeknownst to his own superiors and in violation of the Clinic's bylaws.
28. The respondent explained that the applicant's allegations and those of Mr. Sehi Justin with respect to the payment of the false invoices, even supposing them to be true, make no fundamental difference to this case inasmuch as the staff member's claims for reimbursement from the Medical Insurance Plan, being based on falsified proofs of payment, were themselves ipso facto fraudulent.
29. In his comments of 12 January 2007, the applicant added a new element by stating that, since UNHCR had refused to grant him an advance for the year 2005, he had had no resources to pay for treatment for his daughter, who had consequently lost her life while he was away on a mission. The respondent noted that the applicant had had nine dependents (his wife and eight children) enrolled in the Medical Insurance Plan. His late daughter was born on 20 May 2005 in the commune of Cocody in Côte d'Ivoire and enrolled at the Abidjan office. The causes of her death were unclear; there was no death certificate.

Neither had the applicant ever mentioned his daughter to the UNHCR Administration, either in his letter of 2 March 2006 to the UNHCR Representative regarding the non-reimbursement of the 2005 invoices or at any other time during the investigation. The respondent also noted that the staff member had not requested an advance, either from the Medical Insurance Plan or on his salary, and that he had insisted on consolidating the invoices for reimbursement once annually, whereas by regular submissions he could have obtained the money to treat all his children.

30. In its rejoinder, the respondent maintained that the physical evidence and the statements taken during the preliminary investigation and the hearing were quite sufficient as *prima facie* proof of the staff member's misconduct within the meaning of Staff Rule 101.1 and Administrative Instruction ST/AI/371.
31. UNHCR noted that the applicant had received all the documentation and had had the opportunity to defend himself, both orally and in writing. He had not adduced satisfactory evidence to refute the allegations of misconduct and/or to justify his behaviour. What is more, the applicant's allegations of corruption against other staff members (the Security Assistant), officials of the GMA Clinic, and the Organization itself, were not only unfounded but compounded his misconduct.
32. The respondent concluded that the submission of false proofs of payment was a violation of Rule 5.2 of Administrative Instruction ST/AI/343 (Rules governing the Medical Insurance Plan). It

Legal considerations

33. Having examined the evidence, the statements of the applicant and the witnesses during the investigation, which was carried out in accordance with Administrative Instruction ST/AI/371 on the application of the provisions of Chapter X of the Staff Rules then in force, and taken into account the results of the oral hearing requested by the parties;
34. As there is no need to consider the admissibility of the request as it concerned disciplinary matters, the Tribunal formulates the legal framework as follows:
35. In disciplinary matters, ST/AI/371 provides that “Where there is reason to believe that a staff member has engaged in unsatisfactory conduct for which a disciplinary measure may be imposed, the head of office or responsible officer shall undertake a preliminary investigation. Misconduct is defined in Staff Rule 110.1 as ‘failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other administrative issuances, or to observe the standards of conduct expected of an international civil servant.’” That fundamental principle was adopted in United Nations Staff Regulation 1.2(b).
36. Having reviewed Administrative Instruction ST/AI/343 on the Medical Insurance Plan for Locally Recruited Staff at Designated Duty Stations away from Headquarters, the Tribunal observes that under Article 5.2, the subslthat 5.465 -125dtterss of conduct .7258iTc.n s

headers of two of the bills submitted for reimbursement by the applicant. He therefore checked the invoices and receipts with the GMA Clinic. Clinic officials said they did not recognize the invoices and receipts in question, nor did they have copies thereof in their records.

37. Under Administrative Instruction ST/AI/371, the administration therefore undertook a preliminary investigation. At his interview with IGO, in his reply of 12 January 2007 and at the hearing, the applicant stated that for financial reasons he had had an arrangement with the doctor who took care of his family, and in particular his children, to pay for their care in instalments. He claimed he had paid the doctor's fees through Mr. Sehi Justin, who, he said, had issued the invoices and receipts in question. The applicant further stated:

“ [...] It is claimed that Mr Sehi Bi Sehi Justin falsified invoices and receipts in collusion with me, Tra-Bi. I deny it. As you know, patient care is seldom given on credit, and when it does happen, it shows great compassion. Mr. Sehi Bi Sehi Justin was very understanding on one occasion when I was on a mission and one of my children was ill; thereafter I always went to him for the other cases. All went well until I resolved to pay what I owed and asked for my invoices, to submit them to the UNHCR office for reimbursement by insurance. “

38. That statement was confirmed by Mr. Sehi Justin in a certificate of recognition dated 10 January 2006 as well as at the hearing of 2 February 2010. The witness stated that there had been an agreement between him and the applicant to facilitate the payment of invoices by having the latter pay in instalments.

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