

Case No.:

Introduction

1. Following an investigation related to fraud in the procurement activities of the United Nations Mission in the Democratic Republic of the Congo (MONUC), the Applicant, a Procurement Assistant, was informed by decision dated 11 January 2008, that he was being summarily dismissed for serious misconduct. The charges were based on the findings that he had solicited, received and accepted sums of money from a vendor who did business with MONUC, in violation of Staff Regulations 1.2 (b) (e) (f) (g) and (l) as well as the UN Financial Rules 5.12 and

6. As a Procurement Assistant in MONUC, the Applicant was in charge of the procurement process in relation to UAC, S.P.R.L. (UAC), a local Congolese electronic and furniture store that conducted business with the Mission. Between 2001 and December 2006, MONUC issued fourteen purchase orders to UAC, in the total sum of approximately USD 195,000. The Applicant was listed as the buyer on three of these orders for a total value of USD 36,380.

7. On 2 August 2004, the Applicant bought musical equipment from UAC on an interest-free loan, amounting to USD 1,600.

8. Several months later, on 9 December 2004, the Applicant requested another interest-free loan in the sum of USD 800 from Mr. "X", a Sales Manager of UAC, in order to pay a deposit on an apartment.

9. The Applicant paid both loans back in full by instalment on 1 June 2006, 6 July 2006 and 27 July 2006.

10. In February 2007, the Procurement Task Force (PTF) of the United Nations Office of Internal Oversight Services (OIOS) began an investigation into MONUC's procurement activities.

11. On 8 May 2007, Mr. "X" was interviewed by the PTF with regards to his experience with MONUC's procurement process and his knowledge of any procurement irregularities. He recalled the USD 800 loan to the Applicant and his subsequent repayments.

12. On 10 May 2007, the Applicant was interviewed by the PTF in relation to various irregularities in MONUC's procurement section. When asked about the loan of USD 800 from the UAC Sales Manager and the purchase of musical equipment with UAC, the Applicant replied that "he did not consider it as a loan from a MONUC vendor, as it would not have been work related but purely private." Specifically, he stated to the investigators that "he always bought his musical equipment at UAC and that he bought his last music center there which he traded for

his old one". As for the loan of USD 800, the Appli

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a significant vendor for MONUC. It was a store that conducted more business with individual MONUC staff members than with MONUC itse

tarnished and he has suffered prolonged and needless stress from the ordeal to which he has been subjected.

27. In light of the foregoing, the Applicant requests the Tribunal to:
- a. Rescind the decision by the Secretary-General that serious misconduct occurred;
 - b. Order that the JDC recommendations be upheld;
 - c. Make accountable those who improperly investigated the case;
 - d. Award the Applicant five years' net base pay as compensation for the actual, consequential and moral damages he suffered as a result of the Respondent's actions;
 - e. Award the Applicant costs in the sum of USD 6, 500 in fees for legal representation.

30. Contrary to the Applicant's claims, the JDC made a number of adverse findings against the Applicant and the latter has not disputed these findings in his application. Precisely, the JDC found that the Applicant's solicitation of the loan gave rise to a "perception of conflict of interest and impropriety, compromising the integrity of the United Nations procurement processes and practices, and the image of the Organisation in the very country it was there to assist". In addition, the Panel found that, in the circumstances, his friend, as a Sales Manager of UAC, "had no alternative but to oblige the loan request". In the light of their findings, the JDC partially concluded in favour of the Applicant recommending that the disciplinary measure of summary dismissal be rescinded and instead that the Applicant be issued a written censure and fined USD 1,000. However, the Secretary-General informed the Applicant on 19 May 2009 that he did not accept the JDC's findings and maintained his decision to summarily dismiss him on the ground that the evidence on the record shows that the terms of the transaction for the musical equipment were "out of the ordinary" and that he solicited USD 800 from Mr. "X" in his capacity as Sales Manager of UAC.

31. The Respondent maintains that the statement of the UAC Sales Manager shows that the loan of USD 800 was between UAC and the Applicant, and not the sales manager in his personal capacity. Moreover, the ledger account shows that the loan was brought forward on the UAC account and that it was repaid by the Applicant to UAC, not to the Sales Manager in his private capacity; it also shows that the Applicant failed to repay any sum on the musical equipment purchased during the period 2 August 2004 to 1 June 2006; finally the Applicant failed to repay any sum on the USD 800 loan during the period 9 December 2004 to 1 June 2006. Accordingly, the Applicant enjoyed interest free credit from UAC and made no repayments for a period of at least 17 months.

32. The Respondent further submits that the terms and conditions of the loans were highly irregular, having been given "without condition". Although the sums paid to

36. When the JDC reviewed the Applicant's disciplinary case to advise the Secretary-General, it found that

“[the Applicant's] solicitation of a loan from an individual, albeit a friend, associated with a vendor with whom MONUC (and specifically [the Applicant], as a procurement officer in his official functions) did business could give rise to the perception of conflict of interest and impropriety, thus potentially compromising the

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40. Staff rule 1.2 (1) provides that “No staff member shall accept any honour, decoration, favour, gift or remuneration from any non-governmental source without first obtaining the approval of the Secretary-General.”

41. The relevant provisions of the United Nations Procurement Manual read as follows:

- a. Section 4.2 (1) : “It is of overriding importance that the staff member acting in an official procurement capacity should not be placed in a position where their actions may constitute or could be reasonably perceived as reflecting favourable treatment to an individual or entity by accepting offers or gifts and hospitality or other similar considerations. The staff member should not have re

Manager in a company doing business with MONUC. It is further noted that the Applicant was in charge of UAC in the Procurement section.

44. The Applicant considers that his acts do not constitute misconduct as it has been done outside the purview of procurement. He also argues that he had repaid the loans in full before the investigations started. The Respondent submits that the Applicant did put himself in a situation of conflict of interest.

45. At the outset, the Tribunal observes that the Applicant gave evidence that he had contracted a loan with a person associated to UAC, a UN vendor working with MONUC and which was part of his portfolio of clients. In the light of the applicable

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sanction to be imposed on the staff member. In reviewing the discretion of the Secretary General in matters of sanction the following factors should be borne in mind: it is not for the Tribunal to decide or consider what sanction or punishment might have been fair and appropriate²; the Tribunal should decide whether the sanction as imposed by the Secretary General was a lawful and permissible exercise of the wide discretion entrusted to him³; whether the sanction was so disproportionate or unfair that it amounted to an abuse of the discretion of the Secretary General⁴.

54. Undoubtedly the Secretary-General considered the degree of “irresponsibility or recklessness”⁵ demonstrated by the acts of the Applicant; and the extent his “departure from common safeguards or practices”⁶ which the Organization was entitled to expect by reason of the fact that the Applicant occupied a post with particular financial responsibility. It is not disputed that the Applicant repaid the loans in full. The Tribunal nevertheless finds it strange and most disturbing that the Applicant had to wait 17 months to pay back a total sum of USD 2,400 for the musical equipment and the apartment deposit. The lender of the USD 800 loan stated that he had to “beg” the Applicant to collect the money back. The question may

vitiating the discretion of the Secretary-General. The Tribunal therefore holds that the disciplinary measure imposed on the Applicant was disproportionate”⁸.

Due Process

57. On the issue of due process under the relevant provisions of ST/AI/371, the Applicant was made aware of the charges and was given the opportunity to respond to them. There is nothing to indicate that the Applicant was not provided with all the relevant materials in the case to enable him to conduct his defence. The Tribunal concludes therefore that the acts of the Applicant did amount to misconduct but not to

