

Case No. UNDT/GVA/2014/046

Judgment No. UNDT/2015/005

7. On 12 December 2014, the Respondent filed a motion to file additional documents, on an ex parte basis, and attached them to his submission.

Facts

8. The Applicant joined UNHCR in November 1999 as Administrative Clerk, on a short-term appointment. She was granted an indefinite appointment in April 2000 and, in January 2002, she was promoted to the G-5 level, as Senior Administrative Clerk. In January 2007, the Applicant was promoted to the G-6 level, as Administrative Assistant. Her fact sheet shows that she was in charge, inter alia, of establishing documentation on Government regulations, including timely processing of duty free passbooks and vehicle registration.

Purchase and use of car

9. From 2006 to 2009, Mr. P., an Administrative and Finance Officer at UNHCR, Dhaka, was the Applicant's supervisor. When he left Bangladesh in 2009 for a new assignment, he "sold" his car—which he had previously "bought" from Mr. M., former Deputy Representative in 2005—to the Applicant. While the Applicant paid Mr. P. in cash, the evidence shows that in fact, Mr. P. never did the required paper work to register the car in his name and, as such, Mr. M. remained its legal owner. When the Applicant "bought" the car from Mr. P., the latter issued and signed a note dated 16 June 2009, entitled "Permission to drive the vehicle No. AJN 20018", by which he authorized the Applicant "to use his personal vehicle", which, according to the note, she could drive in his absence anywhere in Bangladesh as required.

10. A document on file entitled "Bill of Sale", on UNHCR letterhead, dated 6 June 2010, contains a signature from the Applicant, as buyer, and a forged signature from Mr. M., as seller of the car. The Bill of Sale states that "the office of the Representative of the UNHCR in Bangladesh [(the Representative)] intends to sell a vehicle ... to [the Applicant]". The Applicant admits that this document was established for the purpose of regularizing the ownership of the car. While during the interview with the Inspector General's Office ("IGO/UNHCR") she admitted having forged Mr. M.'s signature, in her application to the Tribunal she

states that she contracted an agent who forged it, as well as her signature, on the Bill of Sale, without her knowledge. On the basis of the Bill of Sale, the Government of Bangladesh, National Board of Revenue (“NBR”), established a document dated 1 July 2010, entitled “Subject: Regarding the permission of selling/handover of vehicle of UNHCR Deputy Representative ... purchased as duty free”, providing that said vehicle could be sold/transferred to the Applicant. The Applicant drove the car with its diplomatic plates from when she received the document from NBR until September 2012, when the UNHCR Branch Office, Dhaka, requested her to surrender the diplomatic plates; as of that moment, the car remained parked in a garage, and since the Applicant could not pay a considerable amount of taxes related to the car, she was informed in January 2013 that the Government had ultimately sold it at an auction.

Purchase of air tickets

11. By email dated 6 February 2011, entitled “personal request” the Applicant ordered the booking of air tickets for her and her relatives with a UN contracted travel agent. It appears that between October 2010 and October 2011, the Applicant bought several private air tickets with this travel agent for a total amount of USD12,800. At each instance, she received the tickets without immediately paying the invoice, and settled the outstanding invoices only on 3 June 2012.

Use of passbooks

12. Documents on file show that on 7 February 2012, a considerable quantity of Whisky was bought at a Duty free warehouse, with the passbook of Ms.

Procedure

13. The case came to light at the level of the country office, where an initial fact-finding was conducted before the IGO/UNHCR initiated an investigation.

Fact finding by Representative

14. In September/October 2012, the Representative, assisted by the Applicant's first reporting officer ("FRO") and a Senior Protection Officer, started a fact-finding into reports on possible misconduct by the Applicant through, inter alia, meetings with the Applicant on 16 and 18 October and 29 November 2012 and email communications with Mr. P. and Mr. M., as well as with two internationals staff members who had earlier permanently departed Bangladesh and whose Passbooks had subsequently been used by the Applicant to buy some duty-free items. While the initial concern was about the Applicant privately using a car with diplomatic plates and unreasonable delays in reimbursing private air travel, it later extended to the illegal use of passbooks for purchase of duty-free alcoholic items.

15. In

16. Mr. M., by emails of 16 and 17 October 2012 to the Representative,

21. By email of 14 February 2013, the IGO/UNHCR informed the Applicant that she was the subject of an investigation. She was interviewed by the IGO/UNHCR on 18 February 2013.

22. During her interview with the IGO/UNHCR, the Applicant admitted to have illegally used the passbook of two international staff members who had already left their assignment in Bangladesh, without their knowledge, for the purpose of buying duty-free alcoholic drinks and food at the Sabir Traders Ltd. warehouse, for a total of USD1,000. The Applicant further admitted that she had driven the car she had "bought" from Mr. P. with diplomatic plates since 2010 until 2012, and to have forged the signature of the former Deputy Representative on a memorandum dated 6 June 2010, to transfer the ownership of the car to her and to be able to pay the government taxes. She also admitted delays in reimbursing outstanding dues for private air tickets, which she had bought from the UNHCR designated travel agency, Saimon Overseas, LTD, but stressed that she clearly had notified the agency that the transaction was of a private nature. The interview record was signed by the Applicant on 7 April 2014.

23. The IGO/UNHCR draft investigation report was shared with the Applicant on 12 April 2013, for her comments; by email of 15 April 2013 the Applicant stated that she did not have any comments on it.

24. The IGO/UNHCR issued its report on 2 May 2013.

Charge letter and disciplinary measure

25. By memorandum of 24 June 2013, the Director, Division of Human Resources Management ("DHRM")/UNHCR, forwarded the IGO/UNHCR Investigation Report to the Applicant, and informed her that she faced allegations of misconduct, namely that she:

1. engaged in the unlawful use of the government-issued Customs Passbooks ... of two international staff members to purchase duty-free items;

2. failed to transfer the ownership of, and pay the government tax for, the duty-free car [she] purchased from an international staff member, and that [she] drove the car with the diplomatic license plates for at least three years;

3. falsified the signature of Mr. [M.], the former Deputy Representative, on a Bill of Sale on UNHCR letterhead dated 6 June 2010; and

4. acted improperly when, on six occasions, [she] purchased air tickets for personal use from a UN-contracted travel agency without settling the bills in a timely manner.

26.

sometime in early 2010 asking him to send her the relevant documentation to regularize the situation; she cannot provide such email because she does not have access to her email any longer; since Mr. P. did not respond to her, she found some documents in the Office and understood that the car was still registered to Mr. M., former Deputy Representative; she again wrote an email to Mr. P. who never replied to her; when they met at a workshop in Bangkok, Mr. P. said to her that he would send her the documents but he never did;

k. While in her interview with the IGO/UNHCR she admitted having forged the signature of Mr. M., in her application she stated that she contracted an agent to do the paper work to regularize the situation of the ownership of the car and provided him with the bill of entry, packing list, and a copy of Mr. M.'s passbook; he did all the paperwork for her and only once she received a letter from NBR dated 1 June 2010, she started using the car; she had not used it before the ownership had been transferred to her, and the failure to transfer the vehicle was not her fault; since 16 October 2012, the car was again parked in her garage until it was sold at an auction by the Government;

l. Her agent also processed the taxation matter, and the papers in this respect are in UNHCR Regional Office in Dhaka; the file is "confiscated by [her] immediate supervisor";

m. It appears that national authorities misplaced the file several times and the agent had to remind them to complete the process; NBR sent her another letter on 23 January 2013, asking her to pay Tk.967,182.34, which she told them she was unable to pay;

n. She would never have agreed to buy a car for Tk.170,000.00 if she had known that she would have to pay this amount of taxes; she was cheated since she had not been informed about the consequences of the purchase by Mr. P.;

- o. By letter of 30 September 2013, the national authorities advised her to opt for an auction of the car; copy of that letter is “confiscated by [her] supervisor”; the car was auctioned on 24 October 2013; all of this was never explained to the investigator(s), since her supervisor had told her “not to speak much”; it took five years to transfer the ownership of six cars of UNHCR Sub Office Cox’s Bazar;**
- p. Her agent falsified her signature and that of Mr. M. on the Bill of Sale,**

and did so only upon being required to so in writing—she was singled out; the late payment was an oversight since she bought the tickets for her relatives and did not ask them whether they had settled them;

Remedies

t. She requests the Tribunal to declare the contested decision null and void, to order the Office to reinstate her, and to issue any other orders it deems appropriate.

31. The Respondent's principal contentions are:

a. The investigation was fair and transparent, the misconduct by the Applicant was established and the sanction is proportionate;

b. the Applicant admitted to IGO/UNHCR that she misused the passbooks and, accepted the investigation report; however, in her application, she alleges that she did not use the passbooks for her personal use, but to buy duty-free items for international staff member who had exceeded their allowances, in accordance with common practice; such allegation and the argument that she did not explain this to IGO/UNHCR "to save senior colleagues from embarrassment" is not credible, even less so since the Applicant settled the outstanding amount from her own personal funds, without requesting to be reimbursed by these international staff members;

c. The allegation that her supervisor introduced a system where only the total quantity of duty free items with names was required, without mentioning who needed how much, is refuted; the Applicant's FRO arrived in Dhaka only in May 2012, after the Applicant purchased duty free items in an amount of USD1,024, by using the Passbooks of Ms. W. and Mr. v. N., in February 2012;

d. The documentary evidence and the Applicant's admission show that she failed to take prompt administrative action to transfer the ownership of the car and that she failed to pay government taxes due on the vehicle,

warehouse; even if the Tribunal were to find otherwise, any defects of due process were subsequently cured by IGO/UNHCR investigation, and it was at the interview with IGO/UNHCR—duly signed by the Applicant—that she admitted the misconduct;

j. In determining the sanction, the Respondent took into account as mitigating factors the Applicant's long and satisfactory service and Mr. P.'s failure to regularize the ownership of the car; and

k. The three incidents together establish a lack of integrity, which is particularly serious in view of the Applicant's functions. The Applicant breached the trust and confidence of her employer; the sanction was proportionate and the application should be dismissed.

Consideration

32. Article X of the United Nations Staff Regulations provides in regulation 10.1(a) that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct".

33. Staff rule 10.1(a) under Chapter X provides that:

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 relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

and staff rule 10.1(c) reads:

The decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority.

under the Regulations and Rules of the United Nations; and (iii) whether the disciplinary measure applied was proportionate to the offence (see Mahdi 2010-UNAT-018; Abu Hamda 2010-UNAT-022; Haniya 2010-UNAT-024; Aqel 2010-UNAT-040; Maslamani 2010-UNAT-028; Nasrallah 2013-UNAT-310).

39. Moreover, with respect to the required standard of proof in cases involving termination, the Appeals Tribunal stressed in Molari 2011-UNAT-164 that:

Disciplinary cases are not criminal. Liberty is not at stake. But when termination might be the result, we should require sufficient proof. We hold that, when termination is a possible outcome,

42. The file also contains “order slips” of the same date, signed by the Applicant, confirming the use of Ms. W. and Mr. v. N. passbooks, respectively, on 7 February 2012 for said duty free alcoholic beverages and food items at said warehouse. The Tribunal cannot but find that the documents on file do not leave any doubts as to the Applicant’s use of Ms. W. and Mr. v. N.’s passbooks on 7 February 2012, for the purpose of buying duty free items at said warehouse.

43. Therefore, and in view of the Applicant’s clear admission during the interview with IGO/UNHCR and in her application to the Tribunal, it finds her latest submission, in which she expressed doubts as to which passbooks were used and when, not credible and irrelevant.

44. In view of the foregoing, the Tribunal concludes that there is clear and

47. While the Tribunal finds this new line of argumentation hardly credible, it also noted that even if it were true, the actions of the agent, who had been contracted by the Applicant to regularize the irregular situation of the ownership of the car, are necessarily imputable to the Applicant. Therefore, the forgery of Mr. M.'s signature on the Bill of Sale, if it was not undertaken by the Applicant herself, has to be attributed to her. Hence, there is clear and convincing evidence establishing that charge against the Applicant.

Acting improperly when purchasing air tickets for personal use

48. Finally, the Tribunal notes that the Applicant admits to have failed to settle the outstanding amounts for the air tickets purchased for personal use from a UN-contracted travel agency in a timely manner; hence, the facts on the basis of which this charge was made were not contested and are likewise established.

Whether the established facts legally amount to misconduct

49. The illegal use of the passbooks of two international staff members, the failure to transfer the ownership of the car and to pay taxes thereon, and the driving of the car with diplomatic plates constitute a clear breach of the obligation to comply with local laws, as per staff regulation 1.1(f) and the Standards of Conduct for the International Civil Service quoted above. The Tribunal notes that

51. Further, there is no element on file allowing to conclude that the Applicant acted under any kind of coercion—e.g. that she had been menaced with the non-renewal of her contract if she refused to use the passbooks—which would possibly have influenced the Tribunal’s assessment of her actions. Therefore, such

57. The Appeals Tribunal clarified in Aqel

satisfied that the mitigating factors described above were duly taken into account in the determination of the appropriate sanction.

63.

- Have the interview(s) schedules at a reasonable place and time and to be provided with the name and role of the individual(s) conducting the investigation interview;
- Be given an opportunity to be accompanied at the interview;
- ...
- Be given the opportunity to review the record of interview for correction before signing;
- ...

70. The Tribunal notes that the Representative, in his memorandum of 20 December 2012 to the Inspector General, stressed that he had informed the Senior Inspection Coordinator already on 16 October 2012, while the latter was conducting a standard inspection in Dhaka, that there was a possible case of misconduct “but that [the Representative] wished to better establish the facts before referral to [headquarters]”. Thereafter, and although he already had documentary evidence with respect to both the use of the passbooks and the Bill of Sale, he held a meeting with the Applicant on 29 November 2012 at which he asked her questions with respect to the various allegations that had come to light since September/October 2012.

71. The Tribunal notes that nothing on file shows that the Representative, who

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