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U N I T E D N A T I O N S D I S P U T E T R I B U N A L

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**Before:** Judge Teresa B. A. O.

**Registry:** Geneva

**Registrar:** René M. A. Gas M.

BEDA

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Sètondj Ro and Adjo

**Counsel for Respondent:**

Maïsa Mac ennan, HCR  
Francisco A. A. O., HCR



7. On 6 June 2014, the Applicant was assigned to Bangu, Central African Republic ("CAR") as Senior Programme Officer. His personal grade was P-3 but he was serving in a position at the P-4 level. On 1 January 2015, he was promoted to P-4 and on 1 July 2017 he was appointed as Operations Coordinator in

en e ope. T e Sen o, P, og, amme Ass stant took t e money w t out p, o d ng a , ece pt to t e O Coo, d nato, .

14. T e Sen o, P, og, amme Ass stant t en b, oug t t e en e ope to t e App cant w o, w t out count ng t e money kept t n a d, awe, n s off ce.

15. n ate Ma, c 2017, t e O Coo, d nato, , equested add t ona funds. n

O Coordinated, it was further alleged that the Applicant, who was the Senior Programme Assistant's superior, at the time of the alleged facts, might also be involved in the fraud scheme.

20. The O opened an investigation and interviewed few witnesses, including the Applicant who was interviewed on 14 July 2017.

21. On 19 July 2017, the O satisfied the interview transcript with the Applicant and gave him the opportunity to review it. The Applicant sent his comments and additional information on 25 July 2017.

22. On 28 August 2017, the O satisfied that, after investigation findings with the Applicant and invited him to comment, which he did on 5 September, 2017. The Applicant asserted that the amount taken from the O Coordinated, was a performance guarantee, eta ned in case he did not fulfill his contractual obligations.

23. On 5 September, 2017, the O sent the findings of the investigation, report to the Division of Human Resources and Management ("DHRM")

26. By letter, dated 2 May 2018, the Director, DHRM, HCR, informed the Applicant of the High Commissioner's decision to discontinue the process. The







- a. While, the facts on which the disciplinary measure was based have been established according to the applicable standards;
- b. While, the established facts together amount to misconduct under the Staff Regulations and Rules;
- c. While, the disciplinary measure applied is proportionate to the offence, and
- d.

38. The Applicant was dismissed for requesting and receiving, as a subordinate (the Senior Programme Assistant), a bribe of XAF2,000,000 from the O

onage, keep t e sec, et. T e O Coo, d nato, fo, wa, ded t s ema to a F e d

The Applicant's non-implementation project

42. The Applicant claims that the Program Section had authority to issue, see HCR implementation guidelines. However, the evidence on record shows that the Yaloke project was carried out under the modality of direct implementation on the basis of a field operational advance. The O Coordinator was not an implementation guideline, but merely a supplier of construction services.
43. The Senior Registration Office testified that the reason that the office of the Program Section on the project was only to approve the budget and c





59.           en t at ne t e, t e App cant no, t e Sen o, P,og, amme Ass stant we, e  
n o ed n t e mp ementat on of t e p, oject, t e T, buna f nds no og c n t e

to, etu, n t e money o, e se “ e wou d denounce t e matte, as e cou d no onge, keep t e sec, et”. T e T, buna notes t at ne t e, t e App cant no, t e Sen o, P, og, amme Ass stant, ep ed to t e O Coo, d nato, ’s st, ong accusat ons.

65. Fu, t e, mo, e, w e t e a m of a pe, fo, mance gua, antee s p, ec se y to ensu, e t t a cont, acto, fu f s cont, actua ob gat ons, ne t e, t e App cant no, t e Sen o, P, og, amme Ass stant nfo, med o, consu ted t e Sen o, Re nteg, at on Off ce, o, t e F e d Assoc ate (S e te, C uste,) about t e p, og, ess of t e wo, k befo, e, etu, n ng t e a eged gua, antee.

66. nde, suc c, cumstances, t e T, buna s of t e ew t at by, etu, n ng t e a eged pe, fo, mance gua, antee, t e, ea ntent on of t e App cant and t e Sen o, P, og, amme Ass stant was to a o d t at t e O Coo, d nato, denounce t e matte, to t e Adm n st, at on. ndeed, t e e dence s ows t at on 26 Ap, 2017, w en t e Sen o, P, og, amme Ass stant, etu, ned t e money to t e O Coo, d nato, t e App cant and t e Sen o, P, og, amme Ass stant gno, ed t at t e O Coo, d nato, ad a, eady fo, wa, ded s accusato, y ema to t e F e d Assoc ate (S e te, C uste,).

T e, et, act on of t e O Coo, d nato, ’s n t a test mony

67. T e T, buna, eca s t at t e O Coo, d nato, was nte, ewed du, ng t e n est gat on. T e O Coo, d nato, test fed, unde, oat, on 7 Ju y 2017. H s test mony, eads n ts, e e ant pa, t as fo ows:

was ct m of f, aud ... w en t was not ced t at t e wo, ks a, d y p, og, essed, ad to d sc ose w at ad occu,, ed to t e F e d Assoc ate (S e te, C uste,). to d m t at t e Sen o, P, og, amme Ass stant ad taken t e money. t en, equested t e Sen o, P, og, amme Ass stant to, e mbu, se me. t was at t at moment t at e, e mbu, sed me.

68. Acco, d ng to t e test mony of t e O n est gato, at t e ea, ng, t e O Coo, d nato, ’s account of t e e ents was a ways cea, and object e. T e O n est gato, test fed t at e exp a ned to t e O Coo, d nato, w y e was be ng nte, ewed and nfo, med m t at s test mony was be ng, eco, ded.



69. The evidence, taken from the Tribunal's point of view, with respect to the transcript of the O'Connell's interview was significant. What is essential is that the O'Connell knew that he was being interviewed in the context of a formal investigation, that he testified under oath and was aware that his testimony was being recorded.

70. The O'Connell's testimony is corroborated by at least three separate facts as mentioned in paragraph 49 above, and there is no evidence that his testimony was manipulated or influenced by bias or ulterior motives against the Applicant or the Senior Program Assistant.

71. However, the Tribunal notes that the O'Connell, wrote a letter, dated 20 August 2018 to the HCR Representative in Bangui in which he appeals to



c. To conduct business at a time in a manner, befitting its status as an international corporation and not to engage in any activity that is incompatible with the proper discharge of its duties with the intended patrons (staff, paragraph 1.2 (f)); and

d. To not use its office or knowledge gained from its official functions for private gain (staff, paragraph 1.2 (g)).

80. The Applicant further obligated its obligations under staff, paragraph 1.2 as mentioned above, BM

84. In its letter, dated 2 May 2018, imposing the contested disciplinary measure on the Applicant, the High Commission indicated that its assessment of the proportionality of the disciplinary measure, the considered mitigation and aggravating circumstances of the case as well as the Secretary-General's proportionate disciplinary matters.

85. As a mitigation circumstance, the High Commission considered that the Applicant had a long service with HCR working in several administrative positions.

86. As aggravating circumstances, the High Commission considered:

a. The fact that the Applicant had a previous record of misconduct, as he had been sanctioned for sexual harassment and assault against two women in 2009, and

b. That his actions had a detrimental effect on an important project for persons of concern in the Central African Republic. The High Commission noted that the contractor's inability to complete the project was negligible, but due to the fact that he had to pay a substantial part of the sum received from HCR.

87. The Applicant claims that there is no connection between the 2009 disciplinary sanction and the alleged misconduct in 2017. He further submitted that the relevance to his past misconduct was unjustified and that the unfair assessment related to the disciplinary sanction.

88. The Tribunal is not persuaded by the Applicant's argument. The record shows that the High Commission properly considered the Applicant's previous disciplinary record in its assessment of the proportionality of the disciplinary measure. The fact that there is no link between the disciplinary sanction imposed on the Applicant in 2009 and his misconduct in 2017 is irrelevant and shows a misunderstanding of the High Commission's assessment.



also said with the Appellant for his comments, which were taken into account in the final decision of the Tribunal.

96. During the disciplinary process, the Tribunal notes that the Appellant was informed of the charges against him and of his right to be assisted by Counsel. He was also given the opportunity to provide his comments on the allegations of misconduct, which were considered in the decision of the Tribunal of 2 May 2018.

97. The Appellant claims that the investigation was tainted by procedural flaws

100. The O n est gato, a so exp a ned t at e dec ded not to nte, ew t e two w tnesses p, oposed by t e App cant because e cons de, ed t at t e, test mony was not, e e ant fo, t e n est gat on. T e App cant ad p, oposed t ese w tnesses nd cat ng t at t ey wou d be ab e to test fy about t e poo, qua ty of t e O Coo, d nato, 's wo, k n a p, e ous p, oject and s m ted capac ty to comp ete t e p, esent p, oject co,, ect y. Howe e,, t e O Coo, d nato, 's capac ty o, qua ty of wo, k was not contested as nd cated n pa, a. 44 of t e n est gat on, epo, t.

101. T e T, buna cons de, s t at t e engt of t e O Coo, d nato, 's test mony s,, e e ant. Fu, t e, mo, e, t e fact t at e d d not s gn t e t, ansc, pt of s nte, ew does not amount to a p, ocedu, a,, egu a, ty fo, t e, easons exp a ned n pa, a. 69 abo e. n t s, espect, t e O n est gato, c a, f ed at t e ea, ng t at t s no, ma p, act ce not to, equ, e w tnesses ot e, t an staff membe, s to s gn t e t, ansc, pt of t e, aud o, eco, ded nte, ew s because, n most cases, t ey a e m ted access to nte, net, a compute, and a scan to be ab e to do so. n suc c, cumstances, t e t, ansc, pt of t e nte, ew s no, ma y s gned by t e n est gato, .

102. T e T, buna notes t at w e t e Sen o, Re nteg, at on Off ce, and t e F e d Assoc ate (S e te, C uste,) may a e taken steps to e, fy facts p, o, to mak ng a, epo, t to t e O, t s s not a p, ocedu, a,, egu a, ty as t e n est gat on was p, ope, y conducted by t e O. n fact, t s, easonab e t at one wou d t, y to m n ma y e, fy facts befo, e b, ng ng t em to t e attent on of t e O, t e, e s not ng ega n suc act ons.

103. T e T, buna a so f nds t at t e, e a, e no g, ounds to cons de, t at t e n est gato, was b ased aga nst peop e f, om Af, ca, as a eged by t e App cant. T e T, buna, eca s t at, du, ng t e ea, ng, t e O n est gato, nd cated t at n s p, ofessa expe, ence, one can eas y b, be peop e n Af, ca w t a sma amount of money due to t e ow ncomes n t at, eg on. T s was n, esponse to a spec f c quest on of t e T, buna but does not se, e to p, o e b as aga nst t e App cant n t e n est gat on.

104. For the above-mentioned reasons, the Tribunal finds that the Applicant's allegations on procedural, legal, and substantive grounds and that its due process rights were respected during the investigation and the disciplinary process.

**Conclusion**

105. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

*(Signed)*

Judge Teresa B. A. O.

Dated this 21<sup>st</sup> day of May 2021

Entered in the Register on this 21<sup>st</sup> day of May 2021

*(Signed)*

René M. Magas M., Registrar, in person