
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/036
Judgment No.: UNDT/2021/075
Date: 29 June 2021
Original: English

Before: Judge Francis Belle

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SIMIYU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

-represented

Counsel for Respondent:

Jonathan Croft, AAS/ALD, OHR, UN Secretariat

Jacob van de Velden, AAS/ALD, OHR, UN Secretariat

Introduction

1. At the time of the impugned decision, the Applicant held a continuing appointment at the P-3 level and was serving at the United Nations Support Office for Somalia (UNSOS).

2. On 19 May 2020, the Applicant was separated from service of the Organization pursuant to staff rule 10.2(a)(viii) with compensation *in lieu* of notice and termination indemnity for serious misconduct in violation of staff regulation 1.2(b) and staff rule 1.5(a). The Applicant filed her application to challenge this decision on 20 May 2020.

3. The Respondent filed his reply on 19 June 2020. The Respondent takes the position that all relevant circumstances were considered in making the disciplinary decision, and that rights to due process were respected throughout the disciplinary process.

4. On 21 May 2021, the Tribunal issued Order No. 106 (NBI/2021) setting this matter down for a case management discussion (CMD) with the parties. The discussion took place, as scheduled, on 28 May 2021.

5. On 2 June 2021, following the CMD, the Tribunal issued Order No. 110 (NBI/2021) stipulating timelines for the filing of further and final submissions.

6. In response, the Applicant informed the Registry that she had no further submissions to make.

Submissions

7.

She has served the Organisation for 14 years, with consistently good performance appraisals and in difficult duty stations. The fact that the Respondent failed to properly verify her credentials before her initial recruitment, and subsequent recruitments is an administrative error on their part which must not be held against her. She is in the process of completing a postgraduate degree, and is the sole breadwinner for the care of her children and her elderly mother.

8. The Respondent as to her qualifications are tantamount to serious misconduct. The Applicant violated staff regulation 1.2(b) and staff rule 1.5(a), which warranted the imposition of the disciplinary sanction of separation from service with compensation *in lieu* of notice and with termination indemnity under staff rule 10.2(a)(viii). All relevant circumstances were considered in making the disciplinary decision, and the

Considerations

The Charge

9. The factual matrix in this application can be divided into two parts. The first part of the case against the Applicant relates to the job opening Number 16-LOG-UNAMID 37889 -F-E1 Fasher for Logistics Officer at the P-3 level in El Fasher with UNAMID. The educational requirements for that opening were advanced university degree in business administration, engineering, law or other relevant field.) A first-level degree in combination with two additional years of qualifying experience which may be accepted *in lieu* of an advanced university degree.

10. In her Personal History Profile (PHP), as attached to the application, submitted in response to the job opening, the Applicant represented that she attended the University of Cambridge from 1 January 2008 until 18 December 2009, and that she had received a Bachelor s degree. She also represented that she had attended Morgan State University from 7 September 1988 until 4 September 1991 and that she had received a B

11. The second aspect of the charge relates to the application submitted by the Applicant dated 27 October 2017, for job opening 87477 where in her related PHP the Applicant indicated that she had attended the University of Cambridge from 9 January 2007 until 30 November 2008 and that she had received a Bachelor s degree and also represented that she had attended the University of Cambridge from 31 December 2008 until 17 November 2009 and that she had received a Bachelor s

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(Signed)
Judge Francis Belle

Dated this 29th day of June 2021

Entered in the Register on this 29th day of June 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi