

Unofficial translation, the French text alone being authoritative.

UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2017/005

Judgment No.: UNDT/2017/082

Date: 20 October 2017

Original: French

Judge Teresa Bravo

Geneva

René M. Vargas M.

VEYRAT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Victor Rodriguez

Adrien Meubus, Administrative Law Section/OHRM, United Nations Secretariat

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- g. A staff member is entitled to be informed in writing of the formal allegations against him only when the investigation has concluded and the disciplinary procedure has commenced;
- h. Because he was informed of the purpose of the investigation, the Applicant had every opportunity to put forward his version of the events and to offer exonerating evidence; he was also in a position to submit comments and supplementary information following receipt of the charge letter, in accordance with Administrative Instruction ST/AI/371/Amend.1;
- i. Even if the Tribunal were to find that the Applicant's right to due process was violated, he nevertheless did not suffer prejudice and his requests should be rejected; he confessed immediately, as he was obliged to do under paragraph 1.2 (c) of the Staff Rules; his replies would not have been different from those which he gave to the investigators if he had been informed that he was the subject of the investigation;
- j. The applicable rules state that a staff member must be informed of the purpose of the investigation and that was done in this case; they do not state that the person must be specifically informed that he or she is a "subject"; and
- k. The decision constitutes a reasonable exercise of the Organization's discretionary power and was taken in accordance with the applicable rules.

24. First of all, it should be noted that the Tribunal's Statute gives it limited authority in disciplinary matters.

25. It has been the constant jurisprudence of the United Nations Appeals Tribunal that, in the case of an application contesting disciplinary sanctions, the Tribunal must answer the following questions (*Masri* 2010-UNAT-098, *Shahatit* 2012-UNAT-195, *Portillo Moya* 2015-UNAT-523):

- a. Have the alleged facts been established to the required standard of proof?
- b. Do the facts constitute misconduct or impropriety? and
- c. Is the disciplinary measure proportionate to the gravity of the offence?

26. The Tribunal must also consider whether due process was observed.

27. At the time of the contested decision, the texts applicable to disciplinary sanctions were Staff Regulation 10.1 (a) (ST/SGB/2016/1),¹

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(q) Staff members shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets.

31. In order to determine whether the removal of the four beehives by the Applicant constitutes a violation of the standard of integrity under Staff Regulation 1.2 (b), it is not necessary to evaluate whether, in his previous behaviour, the Applicant had *always* displayed integrity. In order to describe his behaviour as lacking in integrity, a single event suffices, which in this case was actually repeated four times. The fact that the Applicant had never previously displayed a lack of integrity can be considered subsequently in the context of extenuating circumstances.

32. The Tribunal notes that, at the hearing on the merits, the Applicant's Counsel himself described the acts committed by the Applicant as theft. While the Applicant stated in his application that he had thought the beehives were abandoned, he nevertheless affirmed that he had wanted to return them to the Palais des Nations but had been unable to do so because he could not go through the United Nations security check at the entrance to the Palais with the beehives in his car. The Tribunal is of the opinion that the removal of the beehives can only be described as a theft.

33. The Tribunal is therefore convinced that, by taking possession of the four beehives in question, the Applicant displayed a lack of integrity within the meaning of Staff Regulation 1.2 (b). The theft of the beehives also constitutes a lack of reasonable care when utilizing the property of the Organization, within the meaning of Staff Regulation 1.2 (q). Consequently, the Tribunal is of the opinion that the removal of the beehives constitutes misconduct within the meaning of Staff Regulation 10.1 (a).

Due process

34. The Tribunal asked the parties to comment on whether the fact that the Applicant had been summoned by the investigators on 16 and 17 March 2016 as a witness rather than as a subject could invalidate the procedure adopted and the disciplinary measure imposed on him.

and The Tribunal is of the opinion that the fact that the Applicant was summoned as a witness rather than as a subject could not invalidate the procedure adopted and the disciplinary measure imposed on him.

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60. This is also one of those cases where the so-called “no difference” principle

