

Introduction

1. By an application dated 12 December 2022, the Applicant is contesting the disciplinary measure imposed on him of separation from service with compensation *in lieu* of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii) (contested decision).

2. The Respondent filed a reply on 10 January 2023 urging the Tribunal to reject the _____ and dismiss the application in its entirety.

Facts

3. Between 22 June 2011 and 30 June 2014, the Applicant served with the United Nations Volunteer (UNV) at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).¹

4. In September 2011, he started working as a United Nations Secretariat staff member in the former United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA), now the United Nations Multidimensional Integrated Stabilizations Mission in the Central African Republic (MINUSCA).²

5. From 12 October 2015 to 14 May 2018, the Applicant was recruited and served at the P-3 level with MONUSCO as an Engineer. He was laterally transferred to the United Nations Support Mission in Libya (UNSMIL) on 15 May 2018, where he served until his separation on 28 November 2022.³

6. On 31 July 2017, the MONUSCO Conduct and Discipline Team (CDT), Goma, requested the MONUSCO Special Investigations Unit (SIU) to initiate investigations into allegations of misconduct regarding a possible misrepresentation involving the Applicant when he created his Profile and Application Form (PAF) in

¹ Applicat7(c)15(a)619n10(-)1691(p4()940.08 raa)-7. p4Vpl'

2015. This was when the Applicant applied for the international post of an Engineer with MONUSCO.⁴

7. SIU investigated the matter, and, on 19 March 2018, an SIU Mission Security Officer transmitted the findings and recommendations to the Chief Security Officer of MONUSCO in Goma.⁵ SIU concluded that the Applicant knowingly made a false statement when he established his PAF which led to the creation of an erroneous contract and recommended for appropriate actions to be taken against the Applicant for misrepresentation.⁶ The SIU found that in 2015 when applying for a position in MONUSCO, the Applicant submitted a Personal History Profile (PHP) form without indicating that he had a family relative employed by the United Nations.

8. By memorandum dated 15 September 2022, the Director, Administrative Law Division (ALD) transmitted to the Applicant a Code Cable, dated 23 February 2021, from the Deputy Special Representative in MONUSCO and United Nations Resident Coordinator, to the Department of Management Strategy, Policy and Compliance (DMSPC), and through it to the Office of Human Resources (OHR), referring his case for appropriate action. The referral was based on the SIU investigation report dated 19 March 2018.⁷ The Applicant was requested to provide his response to the memorandum.

9. The Applicant provided the required response on 7 November 2022.⁸

10. Following a review of the entire dossier, on 28 November 2022, the Under-Secretary-General (USG)/DMSPC concluded that the allegations against the Applicant had been established by clear and convincing evidence. The USG/DMSPC further concluded that the Applicant's actions constituted serious misconduct in violation of staff regulations 1.2(b) and staff rule 1.5(a) and decided to impose on him

⁴ Application, annex 3.1 (SIU Investigation Report), at paras. 1 and 2.

⁵ *Ibid.*

⁶ *Ibid.*, at page 6, paras. 13(a) and (b).

⁷ Application, annex 3.3; reply, annex R/5.

⁸ Application, annex 3.4; reply, annex R/6.

the contested decision.⁹

Submissions

The Applicant s case

11. The case is summarized below.
 - a. He is the biological half-brother of SRB. They have the same biological father but different biological mothers. SRB joined BINUCA in 2012.
 - b. The Applicant admits that he failed to disclose in his PHP that SRB was a relative for the 2015 and 2018 job openings he applied for.
 - c. The relevant issue for determination is whether the Applicant

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brother. Nepalese society did not consider the Applicant as brother to the five other children of his putative biological father.

l. Whilst family members are generally aware of the careers of their siblings, this was not the case of the Applicant and any of his biological half-brothers or half-sisters. In fact, the Applicant was not aware of the careers or employment of any of these people, not having had anything resembling a family relationship. There have been no meetings of the half-siblings over their entire lifetimes, except in the context of the 2010 funeral ceremony. This was 12 months before SRB was employed by the United Nations, and one year before the Applicant was engaged as a UNV.

m. The half-siblings did not engage in any communication during the time they were engaged by the United Nations, and the investigators have not uncovered any such exchanges.

n. During exchanges with United Nations investigators and officers from OHR, the Applicant was not assisted by legal counsel. This placed him in a highly prejudicial position vis-à-vis experienced legal officers of the Organization tasked with building a disciplinary case against him. Much of the exchanges seen were clearly intended to entrap him into extracting contradictions. The Applicant submits that OHR officers do not operate with a mandate to obtain a balanced and objective outcome but, on the contrary, seek to obtain basis for disciplinary action. Their enquiries were inquisitorial.

o. Regardless of whether the Applicant and SRB consider themselves as brothers under the United Nations Staff Regulations and Rules, the issue arises whether in fact the Staff Regulations and Rules provide or require the disclosure of half-siblings, and assuming that there is awareness of actual United Nations employment. There is no definition or clarification as to what is meant to be a brother. This is the case both in the applicable Staff Regulations and Rules, or in the PHP form itself. When applicants seek to

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Administration alleges that the Applicant tried to avoid disciplinary measures by quickly seeking and obtaining recruitment with UNSMIL. It is unbecoming of the investigators to seek to link a regular recruitment process let alone the timing being in any way within the control of a staff member. Processes that in any case are not known for their fast pace, and which in any case can not in any way avoid

both his 2015 and 2018 PHP forms and acknowledged that false or inaccurate information can lead to the termination of his appointment.

d. The fact that SRB commenced employment as a Secretariat staff member before the Applicant is also undisputed. Consequently, the any of your relatives employed by the Uni In his 2015 and 2018 PHP forms were objectively inaccurate, and the corresponding certification incorrect.

e. Where there is undisputed evidence that a staff member has responded untruthfully to a screening question in the PHP and then certified the truthfulness of the PHP, then the evidentiary standard of clear and convincing evidence is met and serious misconduct is established.

14.

a. The Applicant raises three principal arguments in defence: (i) that he and SRB are not recognized as relatives, despite their shared biological ties, either culturally or legally in their native Nepal; (ii) that staff rule 4.7(a) is not applicable in his case; and (iii) that there was no *mens rea* or *mala fides* in his actions.

b. As far as cultural recognition is concerned, the estrangement between the two half-brothers does not alter the fact that they are related. As far as the applicability of Nepalese law on the United Nations is concerned, it is common cause that the Organization is not bound by the domestic law of any of its Member States. This is a direct result of art. 105(1) of the United Nations Charter.

c. Throughout the investigation and the disciplinary process, the Applicant only referred to cultural reasons as to why he did not consider SRB as his relative, even though they are biological half-brothers. The issue of

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between themselves and the adopting parents. The Organization has not placed any distinction on the biological bonds required for a person to be considered a sibling, in the legal sense of the word, to another person.

f. In any event, whether staff rule 4.7(a) applies to the Applicant or not

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facts constitute serious misconduct, and the sanction imposed was proportionate. Since the imposition of the disciplinary measure was lawful, its rescission and the reversal of its consequent effects are not warranted. The Respondent requests the Tribunal to reject the [redacted] and dismiss the application in its entirety.

Considerations

19. In disciplinary cases, this Tribunal is called upon to examine the following: (i) whether the facts on which the disciplinary measure is based have been established (ii) whether the established facts amount to misconduct; (iii) whether the staff [redacted] process rights were respected and (iv) whether the sanction is proportionate to the offence. The Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred. Where termination is the possible outcome such as in this case, the standard of proof of clear and con

20. The Applicant argues that he should not have been separated from service for making a false declaration in his PHP form. He states that he has a brother, SRB, who joined the Organization with BINUCA in 2011. He claims that while this was going on he worked as a UNV in MONUSCO.

24. The Respondent in his response to the motion argued that the new evidence was irrelevant because the issue before the Tribunal was not Nepalese law but the United Nations law and regulations pursuant to which the Applicant would be seen as a relative and brother, even if he was a biological half-brother.

25. The Tribunal decided to allow the motion since it was found to be of some relevance to support the Applicant's argument that he would not have recognised SRB as his relative or half-brother. Having decided to allow this evidence, the Tribunal considers that it allowed the Applicant every opportunity to explain his behaviour which is being characterised as dishonest. It would therefore, have been inappropriate to disregard evidence which goes directly to his honesty when applied to his acceptance or rejection of SRB as his brother.

Whether the brothers knew that they were both employed by the United Nations.

32. This issue is of some importance. The Tribunal is called upon to consider whether the evidence is sufficient to lead to the conclusion that the two half-brothers would have known that they were both employed by the United Nations. To determine this the Tribunal would have to consider whether the brothers had any opportunity to exchange the information about their whereabouts and where they worked during the operative period when they were both employed by the United Nations.

33. The facts show that the Applicant became a UNV and SRB became a United Nations employee. Firstly, it was made clear by the evidence that the brother/half-brothers had every opportunity to be in contact with each other and were actually in contact with each other when SRB got married. At the time that SRB got married they were both in contact with each other and would have had every opportunity to speak about the location of their employment and the fact that they were both

Further evidence that gives rise to suspicion about the knowle

shifting the evidentiary burden to the maker of the false statement to adduce evidence of innocence.¹⁵

40. The imposed sanction is not disproportionate. The false declaration shows a lack of integrity, and disregard for the standards of conduct expected of an international civil servant by the Organization. It is, therefore, appropriate to treat the false declaration as a serious disciplinary breach which in turn requires a strict punishment from the Administration.

41. It is also important to note that the Applicant's rights were always respected. The Applicant was given a fair opportunity to explain his action. He was told of his rights at the time of the investigation and was informed of the charge against him. He was given his right to respond to the charges against him and when the investigation had an adverse result, he was given an opportunity to file the application before the Tribunal.

The Regulatory Framework

42. Staff regulation 1.2 (b) stipulates that staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

43. Staff rule 1.5 adds to the above. It is headed "Obligation to supply information".

- (a) Staff members shall supply the Secretary-General with relevant information, as required, both during the application process and on subsequent employment, for the purpose of determining their status under the Staff Regulations and Rules as well as for the purpose of completing administrative arrangements in connection with their employment. Staff members shall be held personally accountable for the accuracy and completeness of the information they provide.

¹⁵ 2022-UNAT-1301, para. 63.

44. In the latter context staff rule 4.7 states:

Family Relationships

An appointment shall not be granted to a person who is the father, mother, son, daughter, brother or sister of a staff member.

45. Finally, staff rule 10.1 states:

Misconduct.

(a). Failure by a staff member to comply with their obligation under the Charter of United Nations, the Staff Regulations and 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 imposition of disciplinary measures for misconduct.

Conclusion

46. In light of the facts emerging from the submissions of the parties and the applicable law, the Tribunal is unable to find a reason to deem the disciplinary measure imposed of dismissal unlawful. The dismissal was proportionate, fair and by no means irregular in the circumstances.

47. The Tribunal, therefore, decides to dismiss the application and no remedy is granted in the circumstances.