



IN THE MATTER OF:

S. G., Applicant

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: Alibhai F. Hassan, Esq.
FOR RESPONDENT: Namira Negm, Legal Counsel, African Union Commission
BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE
HEARD ON: 14, 21 August 2020

JUDGMENT

Procedural and Factual History

1. On 2 September 2016, Applicant, a former Procurement Officer with the African Union Mission in Somalia (AMISOM) filed an application challenging the decision to summarily dismiss him for misconduct.
2. The application was served on Respondent on 25 October 2016. Respondent did not file an Answer.
3. On 31 July 2018, Counsel for Applicant requested that Applicant's surviving spouse be substituted for the applicant in this matter following the death of Applicant. Accordingly, his surviving spouse (Mrs. M.G.) was substituted as Applicant in this matter on 2 April 2019.
4. On 16 March 2020, the Tribunal ordered both Applicant and Respondent to submit briefs and evidence pertaining to the issue of damages. Respondent did not file any argument or evidence relating to this aspect of the case.
5. On 14 August 2020, Applicant's Counsel submitted a brief in which he reiterated arguments previously advanced in the original application as itemized in paragraph 17 below, and revised aspects of Applicant's prayers for relief.
6. On 14 August 2020, the Tribunal invited Applicant to substantiate his original prayers for relief, and requested Respondent to provide the Tribunal with evidence when Applicant was last paid by the Organization and to submit Applicant's most recent earnings statements. Respondent filed copies of Applicant's last three pay statements on 19 August 2020, which revealed that at the time of dismissal, Applicant earned a gross monthly salary of \$9,345. No additional information was received from Applicant.
7. The Tribunal believes the facts and issues have been presented adequately in the pleadings and the Tribunal determines this matter without the need to invite the parties for oral hearing. The facts of the case are summarized as follows.
8. Applicant joined the Organization as a Procurement Officer (P-3) on 4 July 2011 on a short-term appointment, which was successively extended on four separate occasions. At the time of separation, Applicant was the acting head of Procurement at AMISOM (P-3/Step 9).

9. On 19 November 2015, Applicant met with and was interviewed on bribery allegations by investigators dispatched from the Office of Internal Audit of the African Union Commission.
10. Following this meeting, on 27 November 2015, the Office of Internal Audit wrote to formally notify Applicant that the office had initiated an investigation into alleged corrupt practices involving Applicant.
11. On 3 February 2016, the Director of Administration and Human Resources Management (AHRM) wrote Applicant informing him that the Office of Internal Audit had concluded its investigation. In the same memorandum, AHRM raised two allegations of misconduct against Applicant: (a) engaging in corrupt practices by receiving a bribe in the amount of \$9,800 from a contractor/vendor; and (b) engaging in the disclosure of confidential bidding information to contractors/vendors. Applicant's comments were due within forty-eight (48) hours.
12. On 17 February 2016, Applicant responded in writing denying both charges. It is not clear if Applicant had received extension of the forty-eight-hour response period.
13. On 22 February 2016, without commenting on or acknowledging Applicant's written response, the Director of AHRM sent Applicant a memorandum titled "*Suspension from Duty with Pay on Prima Facie Evidence on Taking or Giving Bribes or Any Illegal Gratification.*" The material portion of that memorandum is reproduced below:

... due to the seriousness of these allegations and in conformation with the [sic] Rule 61.3(j) of the Staff Regulations and Rules, you are hereby officially suspended from your duty with pay for a period of one calendar month in a first instance effective February 19th 2016 *and make yourself available to the Disciplinary Board as and when required.* [Our emphasis]

Please note that during the suspension period and you are residing in the AU-AMISOM Camp, you shall not be given access into the Office premises, and therefore, you should immediately leave the duty station and travel back to your home country...

14. On 11 April 2016, Counsel for Applicant wrote to AHRM inquiring of the timeframe for a disciplinary hearing. Counsel complained that Applicant "has not received any communication from your office regarding the status of this matter since his suspension." Applicant does not appear to have received any response from AHRM, and he pressed a second inquiry on 29 April 2016, requesting an opportunity to appear before a disciplinary hearing.
15. While awaiting an invitation for a hearing, on 4 May 2016, AHRM Director sent Applicant a memorandum dated 26 January 2016 under the title "*Dismissal.*" The memorandum stated:

Following the Disciplinary Board [sic] recommendations regarding the charges made against you, this is to inform you that the AUC Chairperson has decided to summarily dismiss you and separate you from the services [sic] of the Commission as per the AU Staff Regulations and Rules.

16. Applicant wrote back on 26 May 2016, asking the Chairperson to review the decision to summarily dismiss him, but received no response. This application followed.
17. Additional to the annulment of the decision to dismiss him, Applicant prays for: (a) damages for loss of earnings in the form of three months' salary totaling \$28,200; (b) one month salary in lieu of notice in the amount of \$9,400; (c) cash value of accrued leave days in the amount of \$18,800; (d) air ticket and other travel expenses to follow up this matter in the amount of \$5,000; (e) damages for loss of future earning until retirement at age 60 amounting to \$1,579,200; (f) damages for unlawful termination and professional harm in the amount of \$500,000; (g) cost of this action in the amount of \$5,000; (h) pension contributions paid by the Union and severance pay; and (i) any other relief deemed fit by the Tribunal.

Discussion

18. The Applicant challenges the lawfulness of the decision to dismiss him for misconduct in the main on procedural grounds. He first contends that the investigation against him was improperly commenced without first formally notifying him that he was the subject of an investigation. Applicant maintains that that by subjecting him to an investigative interview prior to formal notification, Respondent has violated Staff rule 59.1.
19. The Tribunal does not share Applicant's reading of Staff rule 59.1. The Organization is not enjoined from initiating an investigation without first formally notifying the staff member suspected of misconduct. The rule contemplates circumstances in which such formal notification may not be feasible depending on the nature of the misconduct. In any event, Applicant does not dispute that the investigators who interviewed him on 19 November 2015 did inform him, albeit verbally, that he was under investigation for suspected acts of bribery and other procurement related improprieties.
20. His second contention is that he was not afforded an opportunity to appear and be heard before a disciplinary board. The Tribunal agrees. Following his suspension with pay on 22 February 2016, Applicant was notified to make himself available to the disciplinary board "as and when called upon." He sent AHRM multiple requests for such opportunity, which were never addressed by the Organization.
21. The procedures set forth under Staff rule 59 are mandatory and confer due process rights on Applicant, including the right to be heard before a disciplinary board impaneled in accordance with Staff rule 57. Having been summarily dismissed without reasonable opportunity of defense before a disciplinary board, we find Applicant was denied this fundamental right in violation of Staff rule 59.
22. It is clear to the Tribunal from the record that the separation memorandum, puzzlingly dated 26 January 2016, is inconsistent with the two other memorandums received from AHRMD on 3 February 2016, and subsequently on 22 February 2016 – which implied to Applicant that he would be invited for a disciplinary hearing.
23. Without the benefit of a defense by Counsel for Respondent, these bizarre sequence of events reinforce the Tribunal's view that the Chairperson's decision to summarily dismiss Applicant was the product of the Chairperson's own pre-judgment of Applicant's guilt or that the decision was reached following defective disciplinary proceedings. Apart from referencing Staff rule 63(i), the dismissal memorandum communicating the Chairperson's decision is wholly unreasoned: it did not explain when a disciplinary board was constituted or when the board sat to consider Applicant's misconduct; contained no substantive reference to their supposed deliberations, findings and recommendations; it did not explain how gross misconduct was established against Applicant or why the ultimate sanction of summary dismissal had been imposed.
24. In the circumstances, we uphold the application and hold that the process employed to discipline Applicant was fundamentally defective, violated established procedures as well as generally accepted principles of fairness and due process. Therefore, the Chairperson's decision to summarily dismiss Applicant for gross misconduct should be set aside.
25. The Tribunal notes that at the time of dismissal, Applicant held a short-term appointment due to expire on 30 June 2016. To redress the material harms suffered by Applicant as the result of unlawful dismissal, the Tribunal should award him three-month gross salary until the end of his short-term appointment on 30 June 2016. Applicant's request for one-month salary in lieu of notice cannot be granted since the Tribunal is ordering the payment of salary as though he remained in service through the end of his appointment.
26. Applicant is entitled to compensation for damages to his professional reputation resulting from the unlawful dismissal. Given the fundamental nature of the violations observed in this case, the Tribunal should award him three-months' gross salary in moral damages.
27. To the extent Applicant had any accrued days on his leave balance at the time of dismissal, those leave days shall be commuted into cash, subject to Staff rule 38, and be paid to Applicant.
28. As Applicant succeeded in his claim, the Tribunal should award costs in the amount of \$5,000 and \$500 for related expenses.

Order

29. Accordingly, the Tribunal upholds the application and ORDERS as follows:

- a. The decision summarily dismissing Applicant without due process of the law is declared invalid and set aside;
- b. Respondent shall pay Applicant:
 - i. Three-months' salary in material damages (\$28,035);
 - ii. Three-months' salary in moral damages (\$28,035);
 - iii. Cash value of any accrued leave balance as of Applicant's dismissal subject to Staff rule 38;
 - iv. \$5,500 in costs and related expenses.
- c. The rest of the prayers sought by Applicant as itemized in paragraph 17 of this judgement are denied.

Date: 14 September 2020

/signed/

SYLVESTER MAINGA, PRESIDENT
JAMILA B. SEDQI
PAULO D. COMOANE

Secretary: _____

