



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

IRYUMUGABO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Susan Maddox, ALS/OHRM
Jerôme Blanchard, UNOG

6. On 6 October 2009, the Office of Human Rights and Justice of Bujumbura received a complaint from a relative of the CEO of Up Beat Marketing. It was alleged that the latter had been arrested and detained following a criminal complaint lodged by the Applicant.

7. On 14 October 2009, the Conduct and Discipline Officer, contacted by the

11. On 10 November 2010, the Applicant submitted his comments on the charges. He denied any conflict of interest resulting from the contract signed on behalf of Iryumugabo Production and his position as a BINUB staff member providing services in preparation for the same event.

12. Prior to the completion of the disciplinary process, the Applicant was separated from service on 31 March 2011 due to the downsizing of BINUB. The disciplinary proceeding was left pending. On 1 July 2011, the Applicant was re-appointed to BINUB and the disciplinary process resumed.

13. By letter dated 3 November 2011, the Applicant was informed that the Under-Secretary-General for Management (USG/DM) had decided to impose upon him the

were: *“J’ai supervisé les travaux du BINUB et j’ai facilité la construction de tous les stands à titre privé”*.

30. The Applicant’s suppliers filed a complaint against him asserting that he approached them under the auspices of BINUB, a “trustworthy organization”

35. Section 3.2 of ST/AI/2000/13, which reads:

In accordance with staff regulation 1.2(p), approval of an outside occupation or employment shall be subject to all the following requirements:

(a) The outside occupation or employment does not conflict with the staff member's official functions or the status of an international civil servant. In determining whether this requirement is met, special attention shall be paid to the need to ensure that the outside occupation or employment would not in any way interfere with the staff member's ability to perform all of his or her official duties, or call into question the impartiality and independence of the staff member as an international civil servant.

36. Staff regulation 1.2(m)³, which provides that:

Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations.

37. Staff rule 1.2(p)⁴, which reads:

A staff member who has occasion to deal in his or her official capacity with any matter involving a profit-making business or other concern, including a concern in which he or she holds a financial interest, directly or indirectly, shall disclose that interest to the Secretary-General and, except as otherwise authorized by the Secretary-General, either dispose of that financial interest or formally excuse himself or herself from participating with regard to any involvement in that matter which might give rise to the conflict of interest situation.

38. The nature and extent of the actions of the Applicant when he was engaged in the work of his private company clearly amounted to an outside activity as specified in staff regulation 1.2(o) and section 3.1 of the Administrative Instruction ST/AI/2000/13.

39. In regard to the contract he entered into with Up Beat Marketing while being a BINUB staff member, the Applicant stated during the investigation that he did not

³ ST/SGB/2009/7.

⁴ Ibid.

seek any approval from his supervisor because he did not see any conflict of interest when he signed the contract on behalf of his company for the construction stands since he did not construct the stands in his capacity as a BINUB staff member and did not use the BINUB name in performing the job. The BINUB CCPO confirmed that there was nothing in the Applicant's file to indicate that he requested authorization to engage in outside activities.

40. The Tribunal finds that the Applicant was aware of the organizers' needs in relation to the construction of the stands as a result of his position with the United Nations. The fact that the Applicant sought to obtain a remunerated contract for his company to undertake the construction of the stands rather than advise the organizers to seek an independent contractor demonstrates the existence of a real conflict of

the response of the Applicant and came to a considered conclusion in both law and fact.

43. The Applicant contended that he had mentioned in his PHP that he owned a company and that this shows that the Secretary-General was aware of his outside activity and still did not request any information related to that fact. After carefully reviewing the Applicant's PHP, the Tribunal notes however that there is no reference to "Iryumugabo Production" in the document. In fact, in one of the job title boxes, the Applicant indicated that he was "*coordinateur des activités*" for the "*société de construction aménagement et décor*". The name of his supervisor was indicated as "*conseil d'administration*". He indicated that the reason for leaving that company was due to "*chômage technique*" ("redundancy").

44. In addition, the Applicant indicated in his PHP that he was "*coordinateur des activités*" of the company from "January 2002 to March 2005". Yet, in his pleadings he indicated he was the owner since 2003 and he signed a contract on behalf of his company in 2009. All these discrepancies in the dates show that the Applicant has been extremely economical with the truth.

45. Nowhere in the Applicant's PHP is it mentioned that he was the owner of a company from 2003 to 2009. Accordingly, the Administration could not have been put on notice that he owned a private company. Even on the assumption that the Organization was aware of such a fact this would not have operated as a waiver for the Applicant not to seek the prior approval of the Secretary-General before embarking on outside activities. An approval requires a formal procedure by the submission of a request and an authoritative confirmation, in response to a prior request. This was not so in the present matter.

46. The Applicant further contended that he was not aware of the United Nations rules, for they were not properly notified

Ignorance may be bliss in many circumstances but unfortunately for the Applicant ignorance of the relevant rules and regulations of the Organization, even if it were established, cannot shield him from sanction. Ignorance of rules and regulations in an employment relationship or even of the law is not a defense to non-compliance with the employment rules and regulations under which a person is recruited. In *Diagne et al.*⁵ the United Nations Appeals Tribunal (UNAT) held that “ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the staff rules”.

47. The Tribunal holds however that the Applicant was aware or deemed to be aware of the staff rules and regulations by the very fact of the letter of appointment that he signed where he acknowledged that he had become familiar with these rules and regulations. At any rate even if he was not fully aware of the rules and regulations that he had breached, as a prudent employee he should have sought advice or guidance instead of allowing himself to be guided solely by monetary gain. Accordingly, the Applicant’s alleged unfamiliarity with the United Nations rules and regulations does not provide a justification for his actions.

Was the sanction proportionate to the offence?

48. The Respondent stated that in determining the sanction to be imposed, the Secretary-General took into account an aggravating circumstance such as the effect that the Applicant’s wrongful conduct had on the reputation of the United Nations. According to the Respondent, when the Applicant entered into a contract with Up Beat Marketing, his conduct reflected adversely on the Organization, as shown by the complaint lodged by his suppliers who referred to the Applicant as “a BINUB employee”. They could have reasonably believed that the Applicant was acting in his capacity as a BINUB staff member and they provided him “without apprehension” (“*sans inquiétude*”) the materials that he required. Furthermore, the Tribunal notes that the Applicant did not pa

