

## EIGHTY-EIGHTH SESSION

### *In re Schubert*

Judgment 1925

The Administrative Tribunal,

Considering the complaint filed against the International Atomic Energy Agency (IAEA) by Mr Thomas Oskar Schubert on 8 February 1999 and corrected on 17 March, the Agency's reply of 25 May, the complainant's rejoinder of 17 June and the IAEA's surrejoinder of 31 August 1999;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Austrian national born in 1961, joined the IAEA in 1984. At the material time he was employed as a video technician, grade G.7, in the Section for Equipment Development Support, Division of Technical Services, of the Department of Safeguards. As the Agency acknowledged, the complainant's work was highly appreciated by his superiors.

In March 1998 the Chief of the United Nations Security and Safety Section of the Vienna International Centre informed the Head of the IAEA's Office of Internal Audit and Evaluation Support (hereinafter the chief auditor) of allegations made by a former friend and colleague of the complainant that the latter had removed property belonging to the Agency. An investigation was launched. On 30 March the chief auditor interrogated the complainant, who immediately admitted that he had taken, between 1993 and 1996, without permission, some items of equipment no longer needed by the Department of Safeguards. At his own invitation, his two homes were searched and he identified some of the items, which he returned the next day. During another interview on 7 April 1998, the complainant said that he had sold some items, particularly some shipping boxes, for an amount ranging between 7,000 and 10,000 Austrian schillings and that other items were in his country home. He offered to go with the investigators to identify the equipment, which he did. His wife brought some of the items back to the Agency on 9 April, as he had been admitted to the hospital with a nervous breakdown. He stayed there for about seven weeks.

By a memorandum of 15 June 1998, the chief auditor presented the findings of the investigation and asked the complainant to explain himself. The complainant confirmed the findings on 22 June. He said he had started taking equipment when he realized that the Agency stored certain goods before discarding them, even though they were still in working order. He had taken other items out of curiosity or because they were never used. On 24 June the chief auditor sent his final report to the Deputy Director General in charge of the Safeguards Department and to the Director of the Division of Personnel, in which he pointed out that both the Head of the Section and the Acting Director of the Division, to which the complainant was assigned, had indicated that the Department of Safeguards no longer needed the stolen items, but that no authorisation had been given to take them. This report was delivered to the complainant on 1 July. The next day he admitted that he had made "a big mistake", not for his personal gain but to avoid "excessive waste of items which the Agency would never use".

In consultation with the Deputy Director General in charge of the Department of Administration and the Director of the Legal Division, the Director of Personnel recommended on 3 July that the Director General summarily dismiss the complainant for serious misconduct according to Staff Rule 11.01.1(A), because there were no mitigating circumstances. By a letter of 7 July, the Director of Personnel informed him, on the Director General's behalf, that he had been summarily dismissed without compensation. Further, an undetermined amount equal to the damages suffered by the Agency because of his actions would be deducted from the sum due to him. On 9 July the chief auditor indicated that, according to the Department of Safeguards, the items which the complainant brought back to the Agency were no longer of any value to it. As for the other items, especially those which the complainant had sold, the chief auditor estimated their

value at 8,800 Austrian schillings based on the selling price quoted by the complainant.

By a letter of 16 July to the Director General the complainant appealed against the decision of dismissal. In its report sent to the Director General on 19 October, the Joint Appeals Board pointed out that the challenged decision had been "taken on the basis of a number of significant factual errors and omissions". The Board considered that there were mitigating circumstances, in particular the fact that the complainant had fully cooperated from the outset, failing which the Agency would have been incapable of supplying evidence since there was no inventory list for most of the items and that they were no longer of value to the IAEA. For this reason it advised the Director General to reduce the disciplinary sanction to a suspension without pay for a fixed period. By a letter of 11 November 1998, the impugned decision, the Director General informed the complainant that he had taken into account the Board's report, but nevertheless his decision was final.

**B.** In reference to the report of the Joint Appeals Board, the complainant points out that the Director of Personnel, the Deputy Director General in charge of the Department of Administration, and the Director of the Legal Division thought he had continued to commit the acts until he was "caught", whereas he had stopped two years ago. He said they believed that the removed items could have been sold at an auction, although according to the Department of Safeguards they were no longer of any value to the Agency, which would have had to pay to get rid of them. He also submits that none of the items was new, contrary to what the chief auditor's report suggested, and that his cooperation had not been deemed a mitigating circumstance, in particular because the three aforementioned persons were of the impression that the Agency already had proof against him, which was wrong. The decision of 7 July to dismiss him is therefore flawed.

The complainant contends that the mention of the Board's report in the Director General's final decision is not sufficient to cover the initial flaw because the Director General does not take it into account and does not refute its conclusions. Staff members are entitled to a reasoned explanation for administrative decisions concerning them.

The complainant seeks the quashing of the challenged decision, his reinstatement as recommended by the Joint Appeals Board, payment of moral damages and 35,000 Austrian schillings in costs.

**C.** In its reply the IAEA states that the complainant's actions constituted theft and demonstrate a glaring lack of integrity, which is a required standard of conduct for working in the Department of Safeguards, and that therefore it could not keep him in its employ.

The Agency argues that the Board's report was "seriously flawed with regard to the facts and conclusions reached therefrom". It denies that the initial dismissal decision was made on the basis of errors and omissions. The Director of Personnel, the Deputy Director General in charge of the Department of Administration and the Director of the Legal Division knew that the acts of which the complainant was accused had been committed between 1993 and 1996. The stolen items were still usable and of value, since he had sold some of them. The Agency points out that an outside business had estimated the value of the equipment at 69,070 Austrian schillings in 1994-1995. Lastly, it had been necessary to launch an investigation before the complainant would acknowledge the thefts and agree to return some of the items.

The Agency contends that the complainant had been fully informed about the reasons for his summary dismissal and that he had had ample opportunity to defend himself.

**D.** The complainant, in his rejoinder, points out that the recommendation for dismissal of 3 July 1998 indicated that his actions "extended over five years" which proves that the authors of the recommendation wrongfully believed that he had not stopped until the investigation began. He argues that without his cooperation the Agency would not have been able to identify the items he had removed because there were no records of them. He adds that the Director General had not indicated that he had rejected the recommendation of the Joint Appeals Board on the grounds that its report was flawed. The grounds of the challenged decision were shaky and that affected his ability to defend himself. Furthermore, there is no evidence to suggest that the report was flawed. He considers it serious that the Director General can, without explanation, reject a unanimous, well-documented recommendation of such an appeals body, especially since he did not benefit from a disciplinary procedure before the Joint Disciplinary Board, a point which the Joint

Appeals Board raised in its report.

**E. In its surrejoinder the IAEA points out that the Director General is free to endorse or reject the Joint Appeals Board's recommendations. The complainant's cooperation during the investigation was indeed taken into account, but his actions were sufficient to warrant his dismissal, of which he was clearly informed.**

## **CONSIDERATIONS**

**1. The complainant, a former staff member of the International Atomic Energy Agency (IAEA), challenges a decision by which the Director General rejected the recommendations of the Joint Appeals Board and confirmed an earlier decision to dismiss him summarily for serious misconduct.**

**2. On the complainant's own admission, he removed from the Agency various items of equipment without authorisation. Those items had outlived their usefulness for the Agency but were still usable, and after taking them, the complainant either gave them away or sold them.**

**3. The Joint Appeals Board recommended that the decision to dismiss summarily the complainant be replaced by a less serious sanction, and expressed the view that the decision had been "taken on the basis of a number of significant factual errors and omissions". These were identified by the Board as follows:**

**(a) although the complainant had been removing Agency equipment over a three-year period (1993-1996), he had stopped doing so two years before he was investigated and "caught";**

**(b) although the complainant had used, given away or sold the stolen items of equipment, the Board preferred the view that they were of no value to the Agency and were in fact "junk";**

**(c) none of the items taken was new or any longer of use to the Agency;**

**(d) the complainant had cooperated fully with the investigation into the thefts.**

**4. While the complainant recognises that the Director General was in no way bound to follow the recommendation of the Board, he says he was obliged at least to consider it and alleges that he failed to do so. He also alleges that the Director General failed to give proper reasons for the decision to summarily dismiss him.**

**5. Neither of these allegations resists examination. It is clear from a reading of the Director General's final decision that he had carefully read and considered the Board's recommendation and had decided to reject it. He was certainly entitled to treat the so-called "factual errors" and "omissions" identified by the Board as being of little significance. There is no doubt that the equipment taken had ceased to be useful to the Agency but the Board's finding that it was "junk" is simply incompatible with the complainant's admission that he had sold some of the items. As for the assertions that the complainant had ceased his depredations by the time he was caught and had cooperated with the investigation, their weight as mitigating factors was for the Director General alone to appreciate. The Tribunal sees no reason in the circumstances to interfere in the exercise of that discretion.**

**6. There can be no doubt that theft by an official of an international organisation of goods belonging to that organisation constitutes serious misconduct which may warrant summary dismissal. As the Tribunal said in Judgment 1828 (*in re Kalla*):**

**"Even though the amount at stake was not large, an intent to defraud the Organization is a most serious offence. The Organization may expect the highest standards of integrity from its staff; it could not possibly just overlook the fraud; and there was nothing disproportionate about dismissing her for the misconduct she had committed."**

**7. Finally, it is simply untrue to assert, as the complainant does, that the Agency did not explain its reasons for his summary dismissal. It is sufficient to read the letter of the Director General rejecting the recommendation of the Joint Appeals Board and confirming the complainant's summary dismissal to see that there is no substance in his allegation.**

## **DECISION**

**For the above reasons,**

**The complaint is dismissed.**

**In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.**

**Delivered in public in Geneva on 3 February 2000.**

**Michel Gentot  
Mella Carroll  
James K. Hugessen**

**Catherine Comtet**

Updated by PFR. Approved by CC. Last update: 7 July 2000.