

C.
v.
WHO

131st Session

Judgment No. 4351

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs J. C. against the World Health Organization (WHO) on 21 November 2018 and corrected on 22 February 2019, WHO's reply of 30 May, the complainant's rejoinder of 17 August and WHO's surrejoinder of 21 November 2019;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges her dismissal from service for misconduct.

At the material time, the complainant held a continuing appointment at grade P-5 as Regional Adviser within the WHO Regional Office for South-East Asia (SEARO) in New Delhi (India). On 4 May 2014, while returning to India from a personal trip, the complainant was detained at the airport by the Indian Customs Service for trying to import 1,832.4 grams of gold without paying customs duties. On 5 May, she was released after signing a bail bond.

By e-mail of 17 September 2014, the Director of Human Resources Management (HRM) informed the complainant that the Organization had received from the Deputy Commissioner of Customs a letter reporting that the complainant had been arrested on the night of 4 May 2014 for trying to smuggle gold concealed in her pockets while travelling under

a United Nations *Laissez-Passer* (UNLP). HRM asked the complainant to provide detailed information on the circumstances of the arrest and on the nature of her trip, as well as to produce evidence that she had reported the incident to the Organization in accordance with the rules and information on any legal proceedings that she might be involved in.

By an email of 24 September 2014 the complainant denied that she had been arrested and stated that it was only a matter of payment of duties on her personal belongings. The Organization subsequently received two documents respectively entitled “Arrest Memo” and “Bail bond”, both of which had been initialled by the complainant. The Arrest Memo contained a handwritten note signed by the complainant and confirming that she had been informed of the grounds of her arrest. In the light of these documents, the complainant was requested to provide additional explanations. In her response of 16 October, she provided further explanations and continued to deny the course of events as presented by the Indian authorities. She reiterated that it was a personal matter that she would resolve with the relevant authority of the country.

On 12 November 2014 the Deputy Commissioner of Customs informed the Organization that an investigation was being conducted and provided a copy of various documents including a “Show Cause Notice” detailing the course of events as well as the charges against the complainant put forth by the Indian authorities.

WHO started an investigation conducted by the Internal Oversight Services (IOS) during which the complainant was interviewed. In the course of the investigation, the complainant raised the fact that the IOS had failed to investigate a complaint of retaliation against the SEARO Regional Director that she had filed in August 2014. She contended that a close associate of the Regional Director had been contacting the Indian Custom Services to “spoil her case”.

In its report of 14 January 2015 the IOS found that the complainant failed to declare at the customs that she was in possession of gold, failed to inform the Organization of the arrest, misused her UNLP for her personal trips without prior authorisation from the Organization and breached the conditions of her bail when travelling outside India after the incident without the authorisation of the Indian authorities.

By a memorandum of 20 January 2015, the complainant was informed of the charges against her corresponding to the IOS findings and based on a series of violations of the standards of conduct expected from

WHO international civil servants. She was invited to reply, which she did on 13 February.

By a letter of 23 February 2015, the complainant was notified of the Director-General's decision to impose the disciplinary measure of dismissal with one month's notice, without the indemnity that may be granted pursuant to Staff Rule 1075.1. The complainant was immediately placed on special leave with full pay for the duration of the notice period and she separated from the Organization on 23 March 2015.

On 21 April, the complainant filed a statement of intent to appeal before the Regional Board of Appeal (RBA) and requested that her internal appeal be handled directly by the Headquarters Board of Appeal (HBA). The waiver of the RBA procedure was granted on 21 May 2015.

In its report transmitted to the Director-General on 26 June 2018, the HBA unanimously found that the charges of misconduct were proven beyond a reasonable doubt and that the disciplinary sanction of dismissal was proportionate to the gravity of the complainant's misconduct. The HBA recommended that the internal appeal be dismissed in its entirety.

By a letter of 22 August 2018, the Director-General decided to endorse the recommendations of the HBA and to dismiss the internal appeal. In particular, he agreed with the HBA's findings that the complainant had failed to report her arrest to the Organization, that she had misused her UNLP on multiple occasions to facilitate her private trips and that she had misled both the Administration and IOS when she was questioned about the circumstances of the arrest. That is the impugned decision.

The complainant asks the Tribunal to set aside the decision of 23 February 2015 and to order her reinstatement retroactively to the date of separation with all due entitlements. She seeks moral damages for the Organization's failure to investigate her retaliation complaint as well as costs.

WHO asks the Tribunal to dismiss the complaint as devoid of merit.

CONSIDERATIONS

1. The complainant impugns the WHO Director-General's 22 August 2018 decision to accept the recommendations of the HBA and to dismiss her appeal and all claims for redress. The complainant had appealed against the Director-General's 23 February 2015 decision,

taken pursuant to Staff Rules 1075.1 and 1110.1.6, to dismiss her for misconduct with one month's notice, without indemnity, and to place her on special leave with full pay for the duration of the notice period, with immediate effect. The Director-General based his decision on the conclusions that the complainant had: breached Staff Rule 490.4 for failing to inform the Organization of her arrest on 5 May 2014 and of the requirements of her bail bond (that she inform the Indian Customs Authorities of any travel outside the country); improperly used her United Nations *Laissez-Passer* (UNLP) for personal travel which was considered an improper use of her position as an official for her personal advantage; and misled the Organization and brought it into public discredit. The complainant was separated from service on 23 March 2015.

2. In its report dated 26 June 2018, the HBA unanimously deemed the appeal receivable despite its strong doubts as to whether the complainant had complied with the deadline to file her statement of appeal. The Board unanimously found that the complainant's misconduct was proven beyond a reasonable doubt, the investigation and disciplinary process fully respected her rights and was in accordance with the rules, and the sanction of dismissal was proportionate to the gravity of the complainant's misconduct. The Board noted that the complainant's signature on numerous documents, (including the Arrest Memo, Bail Bond, and her Statement) evidenced that she "was undoubtedly aware that she had been arrested". Regarding the complainant's submission that there was a practice in the region to use the UNLP for personal travel for "logistic convenience", the Board found that argument to be unsubstantiated and irrelevant, noting that "[i]t was of the view that a senior staff member at [a] P5 level should have held herself to the highest standards of conduct and not abused her privileges and immunities". It also noted that "[r]egrettably [...] her submissions to both the Director HRD and IOS provided ample evidence of instances in which [she] was misleading, dishonest and not forthcoming about matters relating to her arrest". With regard to the complainant's assertion that her customs case and the WHO disciplinary process were improperly motivated due to a complaint of retaliation that she had filed with IOS against the SEARO Regional Director in August 2014, the Board found the claim to be "without any foundation" and noted that the complaint had been closed by IOS after she had failed to make herself available to be interviewed. It recommended dismissing the complainant's appeal in its entirety.

3. The complainant contests the facts as presented in the HBA's report and in the Organization's submissions. She asserts that "she was never made aware at any point of time on 5th May 2014 that she was actually under arrest" and that she "had no reasons to believe that she was ever arrested on the night of 4/5 May". She also submits that it is a "general practice" of WHO officials to use the priority line for UN personnel at the airport in order to avoid standing in long lines (even for personal travel), that "use of UNLP for private visit was in keeping with a routine practice and not a willful misuse", and therefore, the sanction of dismissal for misuse of UNLP "seems highly disproportionate". She claims that she "had no definite knowledge of the condition in the bail bond" and that the charge of violating the condition of her bail bond has not been established. Finally, she insists that "there never was any attempt to mislead the organization".

4. The HBA found that the Administration had proven the complainant's misconduct beyond a reasonable doubt. It is clear from the evidence that the Indian Customs Service detained the complainant on 4-5 May 2014 for over ten hours for her failure to declare the importation of 1,832.4 grams of gold in violation of the Customs Act, 1962, arrested her at 6:30 a.m. on 5 May 2014, and released her on bail bond to her husband that same morning. The complainant signed the Arrest Memo which stated inter alia that she "has committed offences punishable under Section 132 and Section 135 of the Customs Act, 1962" and that she "is placed under arrest today on 05.05.2014 at 0630 hrs under Section 104 of the Customs Act, 1962 and she has been explained the grounds of her arrest". The Arrest Memo also contains a handwritten note signed by the complainant stating: "Copy received. I have been explained the grounds of my arrest. I have informed my husband [...] on his mobile no. [...] about my arrest." In the Bail Bond Form No. 45, dated 5 May 2014 and signed by the complainant and her husband, it is stated, in relevant part: "I, [the complainant] holder of United Nations LAISSEZ-PASSER passport no. [...] arrived from Bangkok [...] and was arrested in connection with the seizure of gold weighing 1832.4 grams [...] which was recovered from me and [I was] charged with the offences punishable under section[s] 132 and 135 of the Customs Act, 1962, and required to give surety for my attendance before such Officer or Court on condition that I shall appear before officer or Court on every day on which any investigation or trial is held with regard to such charge and

in case of making default there in I hereby bind myself to forfeit to Government the sum of [rupees] 200.000 [...] I undertake not to leave the country without prior written permission of the concerned officer or the court, as the case may be.” The complainant has not presented any credible exculpatory evidence that she was unaware that she had been arrested, nor has she submitted any plausible reason for not informing the Organization of her arrest and release on bail bond, and the terms of the bail bond regarding travel outside the country.

5. The Tribunal finds the charge of misuse of her UNLP to be proven. The complainant herself admits that she regularly used her UNLP for personal travel. As noted by the Organization in its submissions before the Tribunal, “[b]y using her UNLP on a series of private trips, which constitutes an abuse of privileges conferred to WHO officials by the Organization’s Member States, the Complainant used for her personal benefit some of the advantages conferred by this travel document, hence committing misconduct. The use of the UNLP for private use erodes the respect for the UNLP, and in turn to the UN Convention on Privileges and Immunities, by governments, particularly if used to violate national laws.”

6. In light of the number of officials and agencies who were aware of the complainant’s arrest prior to WHO’s notification, it is fair to say that the complainant’s failure to inform WHO of her arrest could be considered as potentially damaging to WHO’s reputation. This is particularly true when combined with the complainant’s habitual misuse of her UNLP. Moreover, the complainant’s attempts to deny the facts and downplay the seriousness of the situation violate the standards of conduct laid out in the WHO eManual as well as her obligation to act in a manner compatible with her status as an international civil servant. That she was a senior staff member who should have been setting a good example for others, can be considered an aggravating factor. The Tribunal finds that the disciplinary sanction imposed, was based on valid grounds and did not lack proportionality. The Tribunal has not identified any flaw in the proceedings leading to the final decision.

In light of the above considerations, the Tribunal finds that the complaint is unfounded in its entirety and must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 19 October 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ