

**I.**  
**v.**  
**OPCW**

**124th Session**

**Judgment No. 3852**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs B. E. I. against the Organisation for the Prohibition of Chemical Weapons (OPCW) on 21 November 2014 and corrected on 19 December 2014, the OPCW's reply of 14 April 2015, the complainant's rejoinder of 6 July and the OPCW's surrejoinder of 11 September 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal;  
Having examined the written submissions;

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

The complainant impugns the decision to summarily dismiss her for serious misconduct.

At a meeting with the Head of the Human Resources Branch (HRB) on 15 November 2012, the complainant was handed a memorandum of the same date from the Director-General, in which he informed her that he had ordered an investigation to determine if there was a basis for a finding of unsatisfactory conduct on her part in respect of: (i) the issuance and signing of a letter supporting the provision of a diplomatic passport to a former staff member of the Organisation; and (ii) her request for the reimbursement of medical claims. The Director-General also informed her that pending the investigation, he had decided to suspend her from duty with immediate effect.

On 20 November 2012 the complainant wrote to the Director-General to defend herself and to protest against the decision to suspend her from duty and the manner in which this had been executed. She contended in particular that following the meeting of 15 November 2012 she had been escorted out of the OPCW premises in a humiliating manner without being allowed to take from her desk any personal documents, which would have enabled her to defend herself, and that she had been denied the presence of a witness, both of which had violated her due process rights and her dignity. The Director-General responded on 30 November 2012 that the Administration was carrying out the investigation in strict compliance with the relevant rules and the requirements of due process.

The complainant wrote again to the Director-General on that same day (30 November 2012) to request that the Administration ensure respect for her due process rights, including by allowing her to be assisted in her defence by another person. In his reply of 13 December 2012, the Director of Administration took note of her request to be assisted by another staff member which, he noted, was a right “in accordance with the Staff Rules”. He assured her that she would be given the opportunity to respond to the evidence collected in the course of the investigation and he invited her to familiarise herself with Administrative Directive AD/PER/25 on “Disciplinary Measures and Procedures”.

By a memorandum of 6 December 2012, the Director-General informed the complainant that further evidence had emerged which could potentially give rise to two additional charges of unsatisfactory conduct on her part in connection with: (i) her claims for dependency allowances and education grant benefits; and (ii) a letter addressed to the Immigration Services in Nairobi, Kenya, requesting the issuance of passports to, inter alia, her sister. He indicated that he had authorised a further investigation into these potential charges.

In December 2012 the complainant was provided with evidence pertaining to the ongoing investigation and she was invited to attend an interview with members of the Investigation Team on 14 January 2013. She was advised that an observer could accompany her to the interview but that she or he would not be allowed to speak. On 8 January 2013

the complainant protested in writing to this course of action, arguing that it amounted to a violation of her due process rights. The Director of Administration replied on 9 January 2013. He indicated that the scheduled interview was not an adversarial or disciplinary process but rather part of a fact-finding process, and that therefore Administrative Directive AD/ADM/26 on “Uniform Guidelines for Investigations” applied, which stipulated the right to be accompanied by an observer. He added that, if at a later stage the complainant was formally charged with unsatisfactory conduct or serious misconduct, she would be entitled to seek the assistance in her defence of another person pursuant to Interim Staff Rule 10.2.03.

On 14 January the complainant showed up for the interview but then decided to withdraw midway in protest for not being granted due process. She subsequently declined another invitation to an interview on the grounds that her due process rights had been violated. She was then asked to provide her responses in writing, which she did on 28 January and 1 February 2013.

The Investigation Team submitted its report on 21 February 2013. It found that the complainant had engaged in fraudulent activity in respect of all matters under investigation except for her claims for dependency allowances, for which the Investigation Team was not able to conclude beyond doubt that she had committed fraud. The fraudulent activity in respect of all other matters consisted in the production of fraudulent documents for the purpose of either obtaining a financial benefit from the OPCW and its health insurance provider or providing favours to others, such as obtaining official travel documents from the Kenyan authorities.

By a letter of 28 February 2013, the complainant was informed that on the basis of the investigation report’s conclusions, the Director-General had determined that she had knowingly made false claims for payments under the OPCW’s medical insurance policy and for education grant benefits in breach of the Code of Conduct. The Director-General had also determined that these actions constituted serious misconduct and he had decided to summarily dismiss her with immediate effect pursuant to Regulation 10.3 of the Staff Regulations and Interim Staff

Rules and Article 8(c) of Administrative Directive AD/PER/25, and to request her to reimburse the payments she had received from the Organisation for education grant benefits in the value of 31,526 euros.

Further to the complainant's request, the Director-General's decision of 28 February was referred to the Joint Disciplinary Committee (JDC). In its report of 16 May 2013, the JDC concluded that the complainant's actions clearly constituted serious misconduct and, in view of the serious nature of her offences, it concurred with the Director-General's decision to impose upon her the disciplinary measure of termination of appointment without notice. After reviewing the JDC report, the Director-General decided to confirm his initial decision to summarily dismiss the complainant. The latter was relevantly informed by a letter of 29 May 2013.

On 17 July 2013 the complainant filed an appeal against this decision and the matter was referred to the Appeals Council. The Appeals Council issued its report on 12 August 2014 recommending that the Director-General dismiss the appeal in its entirety, as the OPCW had complied with the relevant internal legislation and the disciplinary sanction imposed by the Director-General was appropriate. By a letter of 26 August 2014, the complainant was notified of the Director-General's decision to dismiss her appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to draw all legal consequences from such a rescission, i.e.: (i) to reinstate her as from 1 March 2013 and to grant her a contract renewal until 9 January 2017 (end of the seven-year maximum period of service); and (ii) to cancel her obligation to return to the OPCW the amount of 31,526 euros, which was paid to her in education grant benefits. She claims costs.

The OPCW invites the Tribunal to dismiss the complaint.

## CONSIDERATIONS

1. The complainant was notified, by a memorandum of 15 November 2012, that a formal investigation into her alleged unsatisfactory conduct would be undertaken and that she would be

suspended from duty with pay pending the outcome of the investigation. The memorandum noted that the investigation was based on two specific allegations. She was informed on 6 December 2012 that the investigation had been expanded to include additional allegations against her. The fact-finding investigation covered the following seven issues:

- i. A letter to the Kenyan Immigration Services, signed by the complainant, for the purpose of obtaining a diplomatic passport for former OPCW employee, Mr F.A.
- ii. A claim made by the complainant for the reimbursement of medical expenses by the OPCW's health insurance provider in relation to alleged medical treatment at the Karen Hospital.
- iii. A claim made by the complainant for the reimbursement of medical expenses by the OPCW's health insurance provider in relation to the alleged medical treatment of Ms V.A., who was registered at the OPCW as the complainant's dependent adopted daughter.
- iv. A claim made by the complainant for the reimbursement of medical expenses by the OPCW's health insurance provider in relation to the alleged medical treatment of Ms T.T., who was registered at the OPCW as the complainant's dependent adopted daughter.
- v. A letter to the Kenyan Immigration Services requesting passports for the complainant's sister and other members of her family.
- vi. Payments made by the OPCW to the complainant in connection with the education grants for Ms V.A. and Ms T.T.
- vii. Payments made by the OPCW to the complainant in connection with the dependency allowances for Ms V.A. and Ms T.T.

2. The Investigation Team submitted its report on 21 February 2013. It found with regard to the payments made by the OPCW to the complainant in connection with the dependency allowances for Ms V.A. and Ms T.T. that, although the evidence collected tended to show that the documentation in relation to the adopted children had been falsified, it was not able to conclude beyond doubt that the

complainant was not entitled to receive dependency allowances for them without confirmation by the High Court of Kenya, which it did not request given the difficulties, further costs to the OPCW, and delays in reporting that would have ensued. With regard to all other issues mentioned above, it concluded that the complainant had perpetrated fraudulent activity.

3. By a letter dated 28 February 2013, the complainant was notified of the Director-General's conclusion, based on the investigation report and the supporting evidence, that the complainant had engaged in serious misconduct and would be summarily dismissed with immediate effect, in accordance with Regulation 10.3 of the Staff Regulations and Interim Staff Rules and pursuant to paragraph 8(c) of AD/PER/25 on "Disciplinary Measures and Procedures". The complainant requested review of this decision on 11 April 2013. In accordance with the relevant rules, the OPCW forwarded her request and accompanying dossiers to the JDC.

4. The JDC, in its report dated 16 May 2013, unanimously concluded that except for the issues raised in connection with her claim for dependency allowances, the complainant's acts in respect of all other matters under review had been proven beyond a reasonable doubt and clearly constituted serious misconduct. It specified the following:

7.1.1. The JDC agrees that submitting fraudulent claims for education grants was a disciplinary offence which cannot be attributed to lack of awareness or to innocence since [the complainant] was aware of the Staff Rules and Regulations 3.3.01 Education Grant, and chose to ignore them.

7.1.2. In relation to forged medical claims to the [OPCW's health insurance provider], the JDC considers it clearly a breach of OPCW's Code of Conduct -ADM/PER/1.

7.1.3. The JDC agrees that writing unauthorized official letters to State Parties representatives is a breach of the Staff Rule 1.11.01 Loyalty. [The complainant] placed external interests before her obligations to the [Director-General] of the OPCW.

7.1.4. In addition, it is clearly stated in the Code of Conduct that the use of OPCW property in an inappropriate manner is a breach of the Code of Conduct. The evidence of fabricated receipts and invoices recovered from [the complainant's] work computer leaves no doubt that the OPCW Code of Conduct was violated."

The JDC unanimously recommended that, as serious misconduct had occurred, disciplinary measures applied. It noted that one of the measures applicable was “termination of appointment, with or without notice or compensation in lieu thereof, notwithstanding Staff Rule 9.3.01”. The JDC concurred with the Director-General’s decision on the complainant’s termination of appointment. The complainant was informed by a letter dated 29 May 2013 that, further to his review of the JDC report, the Director-General had decided to maintain his previous decision of 28 February 2013.

5. The complainant filed an appeal with the Appeals Council on 17 July 2013. The Council, in its report dated 12 August 2014, unanimously concluded that the complainant had failed to substantiate her allegations. It found that no due process rights were violated; that the investigation was conducted with discretion and respect for due process and her right to test evidence; that there was no flaw in the investigation report or the JDC report; and that all aspects of the disciplinary proceedings and the termination of the complainant’s contract were conducted in accordance with the Staff Regulations and Interim Staff Rules. The Appeals Council found no evidence of bias on the part of the Investigation Team or the JDC, and noted that there was no foundation for the claim that the Director-General’s decision was illegal. The Appeals Council unanimously recommended that the Director-General dismiss the appeal in its entirety, that he maintain the disciplinary sanction imposed and do not consider the complainant’s claims for a reduced sanction and a reduction of the amounts to be reimbursed for education grant benefits. In a letter dated 26 August 2014, the complainant was notified of the Director-General’s decision endorsing the Appeals Council’s recommendations and confirming the original decision dated 28 February 2013.

6. In her complaint, dated 21 November 2014, the complainant asks the Tribunal to set aside the Director-General’s final decision dated 26 August 2014, to reinstate her with effect from 1 March 2013, to grant her a contract renewal until 9 January 2017, to cancel the OPCW’s request for reimbursement of the 31,526 euros, which she received

in education grant benefits, and to award her costs. She bases her complaint on the claims that she never admitted guilt of misconduct; that information was illegally collected from her electronic devices; that the decision to summarily dismiss her lacked legal basis; that there was bias on the part of the Investigation Team as well as the JDC; and that her due process rights were violated.

7. The Tribunal notes that the Investigation Team, the JDC, and the Appeals Council all concluded that the facts regarding fraudulent activity (with the exception of the allegation regarding the dependency allowance for the complainant's two adopted daughters, which was inconclusive) were proven beyond a reasonable doubt. As noted above, the Investigation Team investigated seven allegations against the complainant and found that with regard to the first issue, the complainant had used her work computer to fraudulently create a letter on OPCW letterhead, stamped it with OPCW official stamp number 8 (access to this stamp was restricted to a small number of staff at the External Relations Division, including the complainant), signed it as Acting Head of the Protocol and Visa Branch (a position which she did not occupy), scanned it on a work scanner, and e-mailed it to Mr A. With regard to the second, third and fourth issues, the Investigation Team independently confirmed the findings made by the OPCW's health insurance provider. Through communications with the medical facilities, it found that neither the complainant nor her two adopted daughters had ever been treated at the two medical facilities for which she had produced falsified receipts. The receipts were signed by names of people who were not employed by the medical facilities and did not match the template of receipts made by those facilities. Furthermore, the complainant was signed into the office (in The Hague) on the day of the alleged treatment (in Kenya). With regard to the fifth issue, it was found that the complainant had used her work computer to create a letter addressed to the Kenyan Immigration Services on OPCW letterhead with a false signature of Mr E. as Acting Director of the External Relations Division, requesting passports for five members of her family. Regarding the sixth issue, the complainant had falsified documents and receipts relating to education grants for her two adopted daughters. The school



listed on the receipts was found not to exist. The complainant's later submission of a letter from the Kenyan Embassy in The Hague confirming the content of an attached certificate from the Permanent Secretary of the Kenyan Ministry for Education stating that the "Greenacres School exists in Nairobi and is operational" was deemed highly questionable for several factors (such as a mistaken date and discrepancies in format). In any case, it was considered irrelevant, as her claim for reimbursement regarded the "Green Acres International Schools", purportedly a girls' boarding school, whereas the Greenacres School had closed around 2004/2005 and the Tumaini High School, a boys' high school, had taken over the building facilities in 2008. Moreover, it was noted that the contact phone numbers and signatures for both the education grant and medical receipts were by the same person, Mr C.M., who was not employed by either of the medical facilities, nor by the non-existent school. As regards the seventh issue, the Investigation Team found elements of evidence which led them to believe that the adoption documents for Ms V.A. and Ms T.T. were falsified, but this issue remained unproven beyond doubt due to the added expense, complications and delays associated with requesting confirmation from the High Court of Kenya, which the Investigation Team decided not to undertake. The Tribunal considers that the complainant did not submit any probative evidence to refute the findings of the Investigation Team, which were later analysed and confirmed by both the JDC and the Appeals Council.

8. The complainant submits that she never admitted guilt, referring to the OPCW's submission to the Appeals Council which stated "the [Organisation] observes that the [complainant] does not argue the merits of the case and she does not plea that she is not guilty of misconduct". She states that she implicitly denied the charges of fraudulent claims by submitting evidence to refute them. The Tribunal notes that the OPCW merely pointed out that the complainant did not enter an explicit plea of innocence and that she based her defence mainly on procedural elements. In any case, the Tribunal notes that the evidence against her has been proven beyond a reasonable doubt and no admission of guilt is necessary for a finding of guilt.

9. The Tribunal finds the claim that information was illegally collected from the complainant's electronic devices to be unfounded. The electronic devices, which were inspected, were her work computer and the work scanner for her department. These devices are the property of the OPCW and the complainant had to acknowledge a disclaimer prior to logging in to her work computer. The disclaimer stated in relevant part: “[b]y clicking the OK Button you confirm to have read and agreed to the following conditions of acceptable use: The use of this OPCW system is restricted to authorized users only. [...] By accessing or using this computer system, you are automatically agreeing to system monitoring. [...]” The complainant asserts that Judgment 2741, consideration 3(a), supports her argument that she should have been present when the Investigation Team conducted its forensic examination of her work computer. Judgment 2741 states in relevant part:

“Any worker has the right to be protected against arbitrary or unlawful interference by an employer in his or her private life or correspondence. Any interference in a worker's private life ordered exceptionally by an employer to safeguard the normal and secure functioning of a company's information technology system must be undertaken in the presence of the worker or his or her representatives. If that is not possible owing to the urgency of the situation, all reasonable precautions should be taken to ensure that the accessing of the worker's personal files remains within the bounds of what is required for company security, that any unjustified disclosure or dissemination of personal information is avoided and that any tampering with the computer equipment is prevented. In addition, the person concerned must be informed without delay of the investigations conducted and given all reasonable means to assert his or her rights. These basic principles are applicable to employment relations within international organisations.”

The Tribunal points out that the case leading to that judgment involved the seizure of a staff member's computer while they were away on sick leave. In the present case, the complainant was informed of the investigation that was being initiated, was given an opportunity to copy personal files from her work computer, and was informed that she would be given the opportunity to respond to the results of the forensic examination. The OPCW does not have any rule or regulation which requires that a staff member be present during a forensic examination of a work computer and the Tribunal is satisfied that the seizure of the complainant's work computer was done in accordance with the proper

procedures for an investigation, as detailed in AD/ADM/26, in respect for her dignity, and was not done arbitrarily.

10. The complainant claims that the investigation was a disciplinary investigation and as such, she should have been allowed to be assisted in her defence by another staff member, in accordance with the rules for disciplinary procedures. As she was instead only allowed to have a staff member who could bear silent witness to her interviews with the Investigation Team, she believes that the Director-General's decision was made on incorrect legal basis. This claim is unfounded. The Tribunal notes that AD/ADM/26 on the subject of "Uniform Guidelines for Investigations" under section IV "Procedural Guidelines", B. "Investigative Activity", paragraph 5, provides in relevant part: "[a] complainant, witness or subject can request to be accompanied in an interview by an observer who has no connection to the investigation and is readily available. The observer is not allowed to speak or to act as an interpreter during the interview." The Investigation Team was conducting a fact-finding investigation into the allegations of misconduct. It was not an adversarial process at that stage.

11. The complainant has submitted no convincing evidence of bias on the part of Investigation Team or the JDC. The Tribunal finds this claim unfounded.

12. The complainant's due process rights were not violated at any stage of the investigation, disciplinary proceeding, or review by the Appeals Council. The Director-General followed the provision of Rule 10.2.03(b) of the Staff Regulations and Interim Staff Rules regarding due process, which provides in relevant part: "No staff member shall be subject to disciplinary measures until the matter has been referred to the Joint Disciplinary Committee for advice as to what measures, if any, are appropriate, except that no such advice shall be required:

- (i) [...]
- (ii) in respect of summary dismissal imposed by the Director-General in cases where the seriousness of the misconduct warrants immediate separation from service."

The complainant was summarily dismissed in accordance with Regulation 10.3 and Rule 10.3.01, and pursuant to AD/PER/25 paragraph 8(c). Staff Regulation 10.3 provides that “[t]he Director-General may summarily dismiss staff for serious misconduct. In such cases no termination indemnity shall be payable.” Rule 10.3.01 on “Summary dismissal for serious misconduct” provides:

- “(a) A serious breach, as determined by the Director-General, of the OPCW Policy on Confidentiality, will be considered serious misconduct.
- (b) Summary dismissal of a staff member for serious misconduct does not prejudice such staff member’s right to due process as provided for in Staff Rule 10.2.03.
- (c) In cases of summary dismissal imposed without prior submission of the case to a Joint Disciplinary Committee in accordance with subparagraphs (b)(i) and (ii) of Staff Rule 10.2.03, the staff member or former staff member concerned may, within two months of having received written notification of the measure, request that the measure be reviewed by the Joint Disciplinary Committee. A request shall not have the effect of suspending the measure. After the advice of the Committee has been received, the Director-General shall decide as soon as possible what action to take in respect thereof.”

AD/PER/25 paragraph 8(c) on “Action on the investigation report” provides in relevant part:

“On the basis of the investigation report and the supporting evidence, the Director General shall decide:

[...] (c) whether the staff member shall be summarily dismissed for serious misconduct under Staff Rule 10.3.01. In such a case, the staff member or former staff member may request that the summary dismissal be reviewed by the JDC in accordance with Staff Rule 10.3.01(c).”

13. The Tribunal concludes that, based on the evidence, the Director-General could properly determine that the misconduct was proven beyond a reasonable doubt. He therefore properly exercised his discretion to dismiss the complainant summarily, as he did. The Tribunal finds that the complainant’s due process rights were not violated and that there were no other vitiating errors on which to set aside the impugned decision. In the premises, the complaint is unfounded and will be dismissed.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 17 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ