

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

L. L.

v.

ILO

130th Session

Judgment No. 4311

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr B. B. L. L. against the International Labour Organization (ILO) on 14 August 2017 and corrected on 21 September, the ILO's reply of 27 October, the complainant's rejoinder of 12 December 2017 and the ILO's surrejoinder of 12 January 2018;

Considering Articles II, paragraph 1, 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 the decision to apply the sanction of summary dismissal to him.

At the material time, the complainant, who held an appointment without limit of time, was Officer in Charge of the ILO Country Office for Côte d'Ivoire in Abidjan. An audit of the Country Office's administrative and financial operations for the period January 2010 to November 2012 conducted by the Office of Internal Audit and Oversight (IAO) indicated potential misconduct by the complainant. The IAO therefore conducted an investigation into five allegations against him between October and November 2014.

In its report, which it submitted to the Director-General of the International Labour Office, the ILO's secretariat, on 17 June 2015, the IAO concluded that three of the five allegations were well founded.

The IAO found that the complainant had not managed the purchase of petrol for official vehicles in an effective manner as no satisfactory explanation could be provided for excessive purchases, that he had made excessive use of office vehicles for personal purposes and that he had exerted undue influence over local procurement. In addition, the IAO found that the Country Office for Côte d'Ivoire had not been able to supply a number of documents that it had requested, even though the complainant, as Officer in Charge of that office, was responsible for maintaining a robust system of record keeping. The case was referred to the Committee on Accountability on 26 June 2015, of which the complainant was notified by an e-mail of 7 August inviting him to submit his observations on the IAO report, which he did on 28 October. In its report of 16 December 2015, the Committee upheld the IAO's findings with respect to the allegations of financial misconduct against the complainant. The Committee considered that the complainant had been grossly negligent in the discharge of his duties and that both his actions in relation to the purchase of petrol for official vehicles and his interference in local procurement were presumed to be fraudulent. It added that the complainant's improper use of official vehicles for personal purposes constituted a serious breach of the Standards of Conduct for the International Civil Service. Accordingly, the Committee referred the matter to the Human Resources Development Department for a suitable disciplinary sanction to be imposed.

By letter of 25 February 2016, the complainant was informed that, in the light of the reports of the IAO and the Committee on Accountability, the Director-General had decided, in line with his policy of zero tolerance of fraud, to suspend him without salary with immediate effect and proposed that the sanction of summary dismissal be applied to him.

On 22 April 2016 the complainant lodged a grievance with the Joint Advisory Appeals Board (JAAB) challenging the decision of 25 February 2016. In its report of 10 April 2017, the JAAB stated that the IAO investigation report did not prove beyond reasonable doubt that the complainant was responsible for the excessive petrol purchases or that he had exerted undue influence on local procurement. Considering that only the allegation concerning the excessive use of official vehicles was substantiated, the JAAB considered that the severity of the proposed sanction should be "reviewed".

By letter of 22 May 2017, the complainant was informed that the Director-General considered that the fraudulent conduct of which he was accused was sufficiently established, that it constituted a serious breach of the Standards of Conduct for the International Civil Service and that the proposed sanction was the most proportionate to the gravity of the matter. That is the impugned decision.

The complainant requests the Tribunal to set aside that decision, as well as the decision of 25 February 2016 suspending him without salary, and to order that he be paid a sum – with interest – corresponding to all the salary, allowances, pension contributions and other emoluments which should have been paid since the date of his suspension. In addition, he claims 50,000 Swiss francs in compensation for the moral injury he considers he has suffered and exemplary damages, as well as an award of costs. Finally, he asks the Tribunal to order the production of a number of documents and such other relief as it may deem fit.

The ILO submits that the complaint should be dismissed as unfounded. It states that it provided the complainant with the available documents on 27 October 2017.

CONSIDERATIONS

1. The complainant, who was Officer in Charge of the ILO's Country Office for Côte d'Ivoire in Abidjan, seeks the setting aside of the decision of the Director-General of 25 February 2016 suspending him without salary and that of 22 May 2017 dismissing him summarily.

2. The complainant alleges that the first decision involves a breach of Article 12.9 of the Staff Regulations in that the suspension was not applied "pending consideration of the matter", but at the end of the audit and investigation procedure and after the Committee on Accountability had examined his case.

Article 12.9(1) states:

"If the Director-General considers, in circumstances which appear to call for the application of a sanction, that the continuance in service of the official concerned pending consideration of the matter may prejudice the service, the Director-General may suspend the official from his duties pending such consideration, the suspension being without prejudice to the rights of the official."

Common sense dictates that the phrase “pending consideration of the matter” must be understood as covering not only the period of the investigation itself, but also the period during which the internal appeal bodies and, ultimately, the Director-General examine the matter.

This plea must be rejected.

3. The complainant puts forward various pleas against the decision of 22 May 2017 dismissing him summarily, some of which relate to flaws which, in his view, affected the procedure before the Committee on Accountability.

4. He criticises the Committee on Accountability for not having assessed the facts for itself but having relied solely on the IAO investigation report, in breach of the Committee’s Rules of Procedure and mandate, thereby unlawfully subdelegating the administrative authority delegated to it by the Director-General to another body. Next, he contends that his submissions and observations were not given due consideration. Finally, he asserts that the Committee made a fundamental error of law in concluding that the allegations were substantiated whereas it found only gross negligence in the discharge of his duties and a strong presumption of fraud.

Since the IAO report resulted from a thorough investigation and provided all the necessary information, there was no need for the Committee on Accountability to conduct a fresh investigation. In assessing the facts set out in the IAO report and drawing the conclusions it considered warranted, the Committee complied with its mandate under the Rules of Procedure. As the Tribunal has previously held, when an organisation initiates proceedings in the light of a report on an internal investigation, it is not obliged to repeat all the investigative steps recorded in the report, but must simply ensure that the person concerned is given the opportunity to reply to the findings it contains so as to respect the rights of defence (see Judgments 2773, under 9, and 3640, under 16).

Contrary to what the complainant maintains, his observations were taken into account by the Committee. In fact, the Committee’s report explicitly states that it examined the observations submitted by the complainant in response to the IAO report, which had been communicated to him.

The question of whether the allegations made against the complainant were well founded will be considered below in considerations 6 *et seq.*

5. The complainant further alleges a conflict of interest insofar as two officials of the Human Resources Development Department (HRD) are involved in the work of the Committee on Accountability, one as a member and the other as secretary, with the result that HRD acts as “judge and party”.

In this regard, it should be borne in mind that, pursuant to paragraph 7 of Office Directive concerning the Committee on Accountability, IGDS No. 43 (Version 1), and paragraph 2 of the Committee’s Rules of Procedure applicable at the time, cases are referred to the Committee by the Treasurer and Financial Comptroller. It is authorised to examine cases of fraud, presumption of fraud and attempted fraud referred to it, as well as cases of dishonesty, negligence or disregard of procedures that have resulted or may result in financial or other loss to the ILO (paragraph 3 of the Committee’s Rules of Procedure).

The Committee’s mandate is to establish the facts and determine the cause of, and responsibility for, any loss to the ILO. It makes appropriate recommendations relating to reimbursement, referral to the unit responsible for disciplinary action and authorising the writing-off of losses (paragraph 4 of the Committee’s Rules of Procedure).

Under paragraph 5 of the Office Directive and paragraph 5 of the Rules of Procedure, the Committee on Accountability consists of four members, namely a Chairperson nominated by the Director-General, a representative of the Office of the Legal Adviser, a representative of the Financial Services Department and a representative of HRD. The Committee Secretary is an HRD legal officer.

The Committee’s composition allows it access to expertise in law, finance and human resources. The participation of an HRD representative is particularly useful because of her or his knowledge of the Staff Regulations, which ensures that the applicable rules are implemented consistently. The abovementioned texts provide that the Secretary is not a member of the Committee. She or he is by definition independent of Committee members.

Since it has not been established that the HRD officials on the Committee received instructions from their Department or that they were subsequently involved in the process by which HRD proposed a sanction, there can be no question of a conflict of interest.

6. On the merits, the complainant contends that the three allegations on which the sanction was based have not been established beyond reasonable doubt. Those allegations are, in essence, the excessive purchase of petrol for official vehicles, the improper use of official vehicles for personal purposes and undue influence on local procurement.

7. On the basis of the evidence that the IAO gathered and reviewed, it concluded, first, that the complainant was responsible for not having managed the purchase of petrol for official vehicles in an effective manner and for not having provided a satisfactory explanation for those excessive purchases and, second, that he made excessive personal use of official vehicles. In addition, the IAO stated that the complainant exerted undue influence over local procurement, which in one instance resulted in the cheapest offer being rejected.

The Committee on Accountability noted a highly unusual absence of written records and documents, which supports a strong presumption of fraud with respect to the excessive petrol purchases and undue influence over local procurement. It also considered that the improper use of official vehicles for personal reasons was totally unacceptable and constituted a serious breach of the Standards of Conduct for the International Civil Service.

In his proposal for the sanction of summary dismissal, the Director-General endorsed the findings of the IAO and the Committee on Accountability.

The Joint Advisory Appeals Board found that the IAO investigation report did not prove beyond reasonable doubt that the complainant was responsible for the excessive petrol purchases or that he had exerted undue influence over local procurement. However, it upheld the allegation regarding improper use of official vehicles.

8. With regard to the excessive purchase of petrol for official vehicles, the complainant submits, first, that he was not responsible for managing petrol cards, but that his secretary – who was not interviewed by the IAO – was.

Second, he points out that the Joint Advisory Appeals Board noted that the IAO had not been able to reconcile the petrol consumption report provided by the petrol supplier with the vehicle logbooks which recorded the name of the driver and the date and time of entry and exit of each vehicle.

Third, the complainant, referring to the report of the Committee on Accountability, finds it incomprehensible that the IAO should have regarded the excessive purchase of petrol as established, when it was the mismanagement of those purchases which was established. In the complainant's view, that mismanagement constitutes an administrative failing, which should not lead to disciplinary action.

9. It should be noted, first of all that, as her line manager, the complainant was responsible for the tasks which he had entrusted to his subordinate and that, accordingly, he was responsible for supervising the management of petrol cards.

The complainant himself stated that he, with his driver, was the only person who used the official vehicles belonging to the ILO Country Office for Côte d'Ivoire. It is not disputed that between January and November 2012 those vehicles consumed 15,536 litres of petrol, averaging about 1,400 litres per month. Taking into account the age of the vehicles, the IAO calculated that this consumption corresponded to approximately 200,000 km travelled over an 11-month period, during which the vehicles were refuelled 266 times, which is to say, more than once per working day. The complainant has failed to provide a credible explanation for that excessive consumption.

The IAO emphasised poor record keeping in respect of vehicle and security guard logbooks, for which the complainant was responsible, although he was required to maintain "a robust system of records to demonstrate the proper use of ILO resources and that activities had taken place in a transparent manner".

It is true, however, that the IAO did not formally accept the allegation of fraud, but considered that the complainant "was [...] responsible for not managing the purchase of petrol for the official vehicles in an effective manner, as no satisfactory explanation could be provided for excessive purchases".

The Tribunal has recently ruled that “where there is an investigation by an investigative body in disciplinary proceedings, the Tribunal’s role is not to reweigh the evidence collected by it, as reserve must be exercised before calling into question the findings of such a body and reviewing its assessment of the evidence. The Tribunal will interfere only in the case of manifest error” (see Judgments 3757, under 6, and 3872, under 2).

In this case, the Tribunal finds that, although the complainant was guilty of serious failures in record keeping in respect of the vehicle and security logbooks, the allegation of fraud as regards the excessive purchase of petrol was not established beyond reasonable doubt.

10. With regard to the allegation of improper use of official vehicles for personal purposes, the complainant states, and the Organization does not dispute, that he had obtained his line manager’s authorisation to use an official vehicle, including at the weekend, owing to the security situation in Abidjan. He argues that in the absence of reliable records, particularly logbooks, it cannot be shown beyond reasonable doubt that he made excessive personal use of official vehicles, especially since the investigation did not prove that other members of his family used them.

The security guard logbooks show that in 2012 the complainant borrowed two vehicles concurrently for more than 100 days, and that he sometimes took three vehicles. Although the complainant was authorised to use an official vehicle, that authorisation, which could apply only to reasonable use of that vehicle, did not in any event *a fortiori* permit the concurrent use of two or even three vehicles.

It follows that the allegation against the complainant that was accepted by the Director-General is established beyond reasonable doubt, as indeed the Committee on Accountability found.

11. As regards the allegation of undue influence on local procurement, the complainant emphasises that the IAO acknowledged that it was not able to consult the files containing bids for local procurement contracts, with the exception of one relating to a contract for electrical work awarded to company S. According to him, since that file alone was examined, the general allegation of undue influence over local procurement was not substantiated. As for the specific contract

awarded to company S., the complainant denies that he exerted influence and states that it was proper for him to issue the instruction to award the contract to company S. in accordance with the recommendation from the Local Contracts Committee, which he chaired.

It should first be noted that, although it is true that the IAO did not have access to all the files containing bids, that is because the complainant, who chaired the Local Contracts Committee, was unable or unwilling to provide it with those documents, in particular those relating to other contracts for a total amount of 110,000 United States dollars with company S. for work that did not appear consistent with the description of its activities appearing on its website.

As for the contract for electrical work, the IAO investigation report includes the minutes of the meeting of the Local Contracts Committee on 25 March 2011, which set out the technical reasons why company S. was to be preferred to two competitors even though it did not submit the cheapest quote. The complainant denies that he wrote those minutes, although he sent them by e-mail to Ms E., who was also a member of the Local Contracts Committee and whom he asked to prepare the purchase order. She replied by e-mail that company S. had not been selected by the Committee, contrary to what was stated in the minutes, but rather by the complainant himself, because, in his words, “[he was] the boss, and it [was he] who [was] going to assume responsibility for that choice”. She therefore asked him to confirm his instructions for the purchase order, which he did shortly afterwards. In his submissions, the complainant expressly disputes Ms E.’s account of events. The IAO was unable to interview her or the other members of the Committee. The Tribunal is therefore faced with two contradictory versions. Admittedly, it is rather surprising that, in his reply to Ms E.’s e-mail, the complainant merely confirmed the choice of company S. without responding to the serious criticism levelled at him, but that finding alone does not establish with sufficient certainty that the minutes of the meeting of the Local Contracts Committee do not reflect what was decided and, consequently, that the complainant unduly interfered in the award of the contract.

The allegation of undue influence over local procurement is therefore not established beyond reasonable doubt either in general or in respect of the electrical works.

12. In conclusion, the complainant correctly contends that two of the three allegations of fraud against him are not proved beyond reasonable doubt.

It was hence wrong for the Director-General to open the impugned decision by asserting, in an overly general manner, that the fraudulent conduct of which the complainant was accused had been established. However, the Director-General went on to state that he had taken note of the Committee's observations that two of the three allegations against the complainant – excessive purchase of petrol and undue influence – had not been sufficiently substantiated. Nevertheless, he considered that the gravity of the fraudulent conduct that had been proven – that is, the numerous instances of misuse of official vehicles – justified the sanction.

13. A question thus arises as to whether that fraud alone was sufficient to warrant the sanction of summary dismissal. On this point, the complainant alleges that the principle of proportionality has been breached in that the sanction imposed is too severe in relation to the charges.

Regarding the severity of a sanction, the case law has it that “[t]he disciplinary authority within an international organisation has a discretion to choose the disciplinary measure imposed on an official for misconduct. However, its decision must always respect the principle of proportionality which applies in this area” (see, for example, Judgments 3640, under 29, 3944, under 12, 3953, under 14, 3971, under 17, and 4244, under 4).

The concurrent use of more than one official vehicle, which, as stated above, has been established, constitutes a serious breach of the Standards of Conduct for the International Civil Service. Article 12.7(1) of the Staff Regulations allows the sanction of summary dismissal to be applied to the staff member concerned in such a case.

The Tribunal hence finds that the sanction imposed on the complainant is not disproportionate in this case. The plea fails.

14. In light of the foregoing, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 22 June 2020, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ