



International Civil Aviation Organization

APPEALS BOARD

Case No.: ICAO Appeal No.
2021-003
Decision No: ICAO/2023/002
Date: 22 February 2023
Original: English

Before: Judge Rowan Downing KC, President
Ms. Alessandra Andrade, Member
Mr. Ciaran Carolan, Member

Registrar: Mr. Arie Jakob

CATALIN GHEORGHE RADU

v.

SECRETARY-GENERAL
OF THE INTERNATIONAL CIVIL
AVIATION ORGANIZATION

DECISION

Counsel for Applicant: Self-represented

Counsel for Respondent: Christopher Petras

Introduction

1. On 11 November 2021 the Applicant filed an appeal against a decision of the Respondent to restrict his access to the ICAO building by having his access card deactivated and having the Applicant escorted by security while at work. The issue before the Appeals Board is essentially whether the decision complained of by the Applicant in this case was a final and operative one in the context of disciplinary processes being taken against the Applicant. A final decision in respect of the disciplinary process, with the imposition of sanctions, was notified to the Applicant on 8 November 2021, in respect of which the Applicant filed a separate and later application for review. This later application, being Case No. 2022-001, is the subject of a separate decision by the Appeals Board.
2. The application was made in a timely manner, with the precondition for its filing being complied with.

Facts asserted by the Applicant

3. On 28 September 2021, the Applicant tried to access the ICAO building. His access card did not work and he was informed by the security supervisor that he would need to be escorted to his office and would have a security officer with him at all times when in the building. The Applicant had been given no prior notice of the decision. He was advised to contact his direct supervisor, which he did by email, receiving no reply.
4. Later on 28 September 2021 the Applicant received an email on behalf of the Respondent advising that “special measures for ... access to the building [had been] put in place” and the Applicant was “only authorized to enter the ICAO building during normal working hours from Monday to Friday from 0900 to 1700 hours” subject to clearance by his supervisor.
5. A mission the Applicant was to go was cancelled, causing embarrassment and humiliation.
6. On 28 September 2021, the Applicant filed a Form 177 Staff member request for Administrative Review by the Secretary General. On 8 November 2021, the Secretary General advised of his refusal to reverse his decision. The basis given for restricting access that it was pursuant to Staff Regulation 10.1 and 10.2, Staff Rule 110.1, paragraph f) and paragraph 53 of the ICAO Framework on Ethics.
7. The Applicant asserts that he was not provided with the details of his suspension as required. He was also not required to surrender his building pass. In fact, his building pass worked, with unlimited access to the building during his attendance at the High-Level Conference on COVID-19 held from 12 to 22 October 2021.
8. Notwithstanding that the Applicant asserts that he was prevented by the Registrar from filing his appeal on the basis of the retrospective application of law, it was filed on 11 November 2021.
9. The grounds of review are expressed to be as follows:
 - a) A denial of natural justice.
 - b) The action was discriminatory and a violation of human rights.
 - c) The action taken prevented the Applicant from freely accessing his place of work in violation under the provisions of the ICAO Service Code, the ICAO Staff Rules, the ICAO Personnel Instructions and all the other legal provisions.
 - d) The disciplinary system is unfair, stating that Secretary’s General “provisional”

decision to dismiss me was in fact final, effectively depriving me of my right of response by making it redundant.

- e) The Applicant was intimidated, harassed, threatened and humiliated by the actions of security personnel having to escort him in the ICAO premises.
- f) The obstruction of his appeal submission was a violation of the principal of non-retroactivity of laws and in this context shows one more time how the Organization is constantly blocking my right to justice and due process.

10. The Applicant complained:

- 1) There was a constant harassment and a breach of procedural fairness in the manner in which the Organization (ICAO) has so far dealt with me;
- 2) I have not been charged with any administrative decision that should lead to such abuse of authority and further damage to my reputation;
- 3) ICAO has deliberately abused and misused its authority by preventing my access to the ICAO building, to my office and affecting my ability to carry out my functions;
- 4) ICAO failed to inform me about the decision it had taken to suspend me and to remove my badge;
- 5) ICAO has deliberately abused and misused its authority by cancelling my WFP mission and affecting my ability to carry out my functions;
- 6) I felt intimidated, harassed, threatened and humiliated by the actions taken by the security to escort me during my presence in the building and the cancellation of my mission hampering my access to work;
- 7) ICAO has deliberately prevented me to submit an Appeal to the Appeals Board.

11. The relief sought by the Applicant is:

- 1) An order asking the Administration to provide all the facts and documents that led to their decision;
- 2) A finding that the Organization has deliberately harassed me and committed misconduct by violating the appropriate ICAO rules and procedures.

Reply by the Respondent

12. The Respondent replied by essentially agreeing with the events as set out by the Applicant, but not with the grounds of review or the relief claimed.

13. The Respondent submits:

“ICAO Regulations, Rules and Administrative issuances do not bestow any rights on the staff member with respect to physical access to ICAO premises and none of the factual allegations in the Applicant’s appeal serves to establish how his 28 September 2021 request for review related to any final decision having a direct impact on the terms of his

appointment or contract of employment; therefore, his request for administrative review did not identify an administrative decision within the meaning of Staff Regulation 11.1.”

14. In other words, the Respondent questions the receivability of the Application, as the decision to impose an interim measure it is not a final decision.

15. The Secretary General had the power under the ICAO Service Code and Staff Rules to restrict the access of the Appellant to the ICAO headquarters pending the outcome of the disciplinary process.

Receivability

16. For a matter to be receivable by the Appeals Board, it must be a decision, not merely an interim decision of a sub-decision along the way, leading to the making of a final and operative decision. In order to consider this question it is necessary to consider the basis of the decision complained of and then to consider whether it has the indicia of an appealable decision.

17. The Respondent asserts that the suspension decision was based upon a consideration of the following regulations:

11.1 Each staff member shall have the right to a review in accordance with the rules established pursuant to this Article in the following cases:

- a) any disciplinary measure imposed under Article X as well as summary dismissal under Regulation 9.17;
- b) an order of discharge under Article IX, Regulation 9.5 or 9.7;
- c) any administrative decision which it is alleged constitutes non-observance of a contract of employment, or of the terms of the ICAO Service Code, or non-observance of established administrative practices in such a way as adversely to affect the individual.

Article X DISCIPLINARY MEASURES

10.1 In accordance with the procedures set out in the Staff Rules, the Secretary General may impose disciplinary measures on any staff member engaged in misconduct. The Secretary General may summarily dismiss a staff member for serious misconduct. In order of severity, disciplinary measures may take one or more of the following forms only:

- a) admonition;
- b) written censure;
- c) deferment of eligibility for salary increment for a specific period;
- d) reduction to a lower step within the same grade;
- e) demotion;
- f) suspension without pay for a specific period;
- g) discharge; and
- h) summary dismissal.

10.2 If the Secretary General considers that there is prima facie evidence of serious misconduct by a staff member, and that the staff member’s continuance in service while an inquiry is in progress and pending a decision by the Secretary General would prejudice the interests of the Organization, the Secretary General may suspend the staff member with pay, or, in exceptional cases, without pay. Suspension without pay shall not exceed 30 days. Any suspension shall not otherwise affect the rights of the staff member under these Regulations.

ICAO FRAMEWORK ON ETHICS

Interim measures

53. Notwithstanding the provisions of paragraph 52 above, the Secretary General may take interim measures to safeguard the interests of the complainant or preserve the interests of the Organization pending the completion of investigations by the investigative entity. Such interim measures shall include, but shall not be limited to, the measures prescribed in Staff Regulation 10.2.

18. The key characteristic of an administrative decision subject to judicial review is that it must produce direct legal consequences affecting a staff member's terms of appointment. See *Ngokeng* 2014-UNAT-460, paras. 26-27; *Wasserstrom* 2014-UNAT-457, paras. 34-35. It is also to be noted that "[C]ertain administrative processes [...] are preparatory decisions or one of a series of steps leading to an administrative decision. Such steps are preliminary in nature and may only be challenged in the context of an appeal against a final decision of the Administration that has direct legal consequences." See *Nguyen-Kropp & Postica* 2015-UNAT-509, paragraph 33.

19. The Appeals Board must examine whether the possible adverse impact of an administrative decision on a staff member's terms and conditions of appointment, as this is one of the requisite key characteristics of an appealable administrative decision (*force exécutoire*) and, therefore, goes to the receivability *ratione materiae* context.". See also, *Handy* 2020-UNAT-1044, paragraph 34.

20. The Appeals Board has determined that the decision complained of by the Applicant is not a final or operable decision and therefore it cannot be the subject of consideration by the Appeals Board. There is nowhere demonstrated by the Applicant that the decision to limit his access to the ICAO premises had an impact upon his terms and conditions of appointment. He still received his salary and benefits. He was permitted to enter the premises, on conditions, and in fact for some period the conditions were clearly waived between 12 and 22 October 2021. The action taken was not determinative of the disciplinary case against the Applicant. The fact that the details of the interim measures were not initially provided in writing is of no legal concern, as there is no stipulation that the advice be in writing, although it is clearly desirable.

Order

Case 2021-003 is dismissed as it is not receivable.

Dated this 22nd day of February 2023



Judge Rowan Downing KC
President

Entered in the Register on this 22nd February 2023



Arie Jakob
Registrar