



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-550

**Mizyed
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Sophia Adinyira
Judge Mary Faherty

Case No.: 2014-634

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Mr. Mizyed: Jean-Marc Lafrenière

Counsel for Secretary-General: Nathalie Defrasne

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Marwan Hussein Mizyed against Judgment No. UNDT/2014/060, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 11 June 2014 in the case of *Mizyed v. Secretary-General of the United Nations*. Mr. Mizyed appealed on 11 August 2014, and the Secretary-General answered on 13 October 2014.

Facts and Procedure

2. The facts as established by the Dispute Tribunal read as follows:¹

... The Applicant is a former staff member of the United Nations Truce Supervision Organization (UNTSO) having joined the Organization on 1 June 2000. Prior to his separation from service on 19 March 2013 he was serving as a Movement Control Assistant in the Movement and Control Unit (“MOVCON”) on a Fixed-Term Appointment at the G-5 level in Jerusalem, Israel.

... The decision to terminate his appointment was taken on the grounds that he stole and used a duty-free PAZOMAT Company fuel card, belonging to the Mission’s duty-free shop, to refuel his personal car. The said duty-free fuel card is reserved for the use of international staff members who purchase it.

...

... The UNTSO Service Institute (“the PX”) is an operation under the authority of the UNTSO Chief of Staff which sells duty-free goods to United Nations international staff members and military personnel.

... Duty-free fuel cards are cards which, once purchased from the PX, contain a credit of New Israeli Shekels 1000 for gasoline (the equivalent of approximately USD 258 in November 2011), redeemable at PAZOMAT Company fuel stations and dealers in Israel. In November 2011 these cards could be purchased from the PX for USD 158.

... One of the duties of MOVCON was to carry out an official mail run to the north of Israel, exchanging a mail pouch from the UNTSO office in Jerusalem at the border with Lebanon. There existed an informal arrangement for a staff member of MOVCON, while on the mail run, to pick up the fuel cards from the PAZOMAT Company office near Netanya on behalf of the PX.

¹ Impugned Judgment, paras. 1-27.

... On 16 November 2011, Mr. Zvika Pyankevich, a colleague of the Applicant in the MOVCON unit, went to collect new fuel cards issued by the PAZOMAT Company on behalf of the PX. The cards collected by Mr. Pyankevich were in an unsealed box which, when collected, contained 250 sequentially numbered cards.

... Mr. Pyankevich spent at least one evening in the north of Israel and having returned to the Jerusalem office in the morning of 18 November 2011, delivered the cards to the PX office later the same morning. They were subsequently counted by a member of the PX staff in the course of the same day and it was found that one card was missing [...] (“the missing card”).

... The PX office contacted the PAZOMAT Company over the matter and was informed that the missing card had been sent with the box.

... On 25 November 2011, the PX Coordinator reported the loss of the missing card to the UNTSO Special Investigations Unit (“SIU”).

... Following investigations into the report, the SIU established that the missing card had been used on 19 November 2011 at the Mendel Bon Gas Station in Jerusalem to purchase over 41 litres of fuel. A fake vehicle registration number 00-011-11 was entered by the purchaser into the vehicle-data-section during the purchase.

... There was an attempt to use the missing card once more on a subsequent date, by which time it had been disabled by the PAZOMAT Company.

... After making a report with the police, the SIU investigator was given access to Mendel Bon Gas Station’s [closed-circuit television (CCTV)] footage of 19 November at the time the missing card was used. The CCTV footage showed that the vehicle being filled carried the registration number 53-404-14 and after contacting the Israeli police, it was established that the said vehicle belonged to the Applicant.

... The investigator started by contacting and obtaining a voluntary statement from Mr. Pyankevich of the MOVCON office who collected the fuel cards from the PAZOMAT office on the afternoon of 16 November 2011 and delivered them to the PX on the morning of 18 November.

... The Applicant was first contacted by the investigator over the missing card on 15 December 2011. The Applicant, on 29 December 2011, emailed the investigator a voluntary statement, which he signed on 3 January 2012. The investigator first interviewed the Applicant on 5 January 2012.

... On 12 January 2012, she conducted a follow-up interview with the Applicant and at the conclusion of that interview requested that he hand over the missing card. Later the same day, the Applicant gave the SIU investigator a duty free PAZOMAT Company fuel card [...] (“the second fuel card”). It was not the missing card.

... During SIU investigations, the investigator also obtained voluntary statements with regard to the missing fuel card from Mr. Gaston Bamulanzeki,

Officer-in-Charge (OIC) of the MOVCON unit and Ms. Riva Ghoury also of the MOVCON office who was mentioned by the Applicant in his statements and interviews. Statements were also obtained from other witnesses.

... The Applicant eventually handed in the missing card on 16 February 2012.

... The SIU investigator forwarded her investigation report to Mr. Khaled Awar, Deputy Chief Security Officer, on 17 January 2012 recommending that the enquiries should be followed up by the UNTSO Administration and appropriate disciplinary measures taken. The report stated that:

a. The Applicant was in illegal possession of two duty free PAZOMAT Company fuel cards; one being the missing card and the other a second fuel card. National Staff cannot buy or use such duty-free fuel cards.

b. Evidence gathered, including video footage and witness statements, led to the conclusion that the Applicant took illegal possession of the missing fuel card.

c. The Applicant admitted that on 19 November 2011, he knowingly and unlawfully possessed and used a duty free fuel card to refuel his private vehicle. The investigation did not yield any evidence of a conspiracy or entrapment of the Applicant and therefore his possession of the missing fuel card could not be justified.

... On 10 July 2012, Major General Juha Kilpiä, Chief of Staff and Head of the UNTSO mission, having reviewed the SIU report forwarded the findings to the Department of Field Support (“DFS”) for appropriate action. The memorandum recommended that:

The allegations against [the Applicant] of theft or misappropriation of [missing] card and entitlement fraud by soliciting or obtaining through international staff members duty-free items from the PX to which he was not entitled be referred to the Office of Human Resources Management for appropriate disciplinary action.

... On 12 September 2012, DFS, having reviewed the recommendations of UNTSO as well as the SIU report, endorsed the conclusion therein and forwarded the report and allegations against the Applicant to the Office of Human Resources Management (“OHRM”).

... On 19 December 2012, Ms. Ruth de Miranda, Chief, Human Resources Policy Service, OHRM, charged the Applicant with misconduct and asked him to respond to the allegations made against him.

... On 6 February 2013, the Applicant responded to the allegations of misconduct. He claimed that he did not steal the missing card nor did he knowingly use it to refuel his private vehicle.

... By letter dated 19 March 2013, Ms. Catherine Pollard, Assistant Secretary-General, OHRM [ASG/OHRM], informed the Applicant that following a review of the SIU report and its supporting documentation, the Under-Secretary-General for Management acting on behalf of the Secretary-General concluded that there was sufficient evidence that he had engaged in the misconduct alleged.

... The letter stated that, given the lack of motive, the complicated nature of the scheme, the proximity to the cards and the danger involved[,] it was highly improbable that Mr. Pyankevich would seek to incriminate the Applicant by switching the fuel card he said he kept in his office desk drawer.

... The Under-Secretary-General for Management [USG/DM] noted that the Applicant's actions were clearly in violation of the Staff Regulations and the standards of integrity United Nations staff members are expected to uphold. Taking into consideration mitigating factors and the Applicant's prior good service, the disciplinary measure of separation from service was imposed.

3. Mr. Mizyed appealed. In Judgment No. UNDT/2014/060, the Dispute Tribunal dismissed Mr. Mizyed's application. The UNDT found that Mr. Mizyed had given inconsistent statements to the SIU investigator and during the UNDT hearing, that both Mr. Mizyed and his witness were not truthful, and that his explanations about a suspected conspiracy to set him up by his work colleagues were untenable. The Dispute Tribunal concluded that the facts that led to Mr. Mizyed's separation from service were established, that they amounted to serious misconduct on the part of Mr. Mizyed, and that the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity was proportionate to the misconduct.

Submissions

Mr. Mizyed's Appeal

4. The Dispute Tribunal failed to exercise the jurisdiction vested in it when it ignored Mr. Mizyed's closing statement, as it was not even once mentioned in the Judgment. It failed to conduct judicial review as to whether the decision-maker had reached the decision correctly and on the basis of the available facts; instead it proceeded to carry out a merit-based review as to whether he had stolen the missing card.

5. The Dispute Tribunal also failed to exercise jurisdiction vested in it by ignoring the issues in connection with the decision-making process that led to the decision to terminate Mr. Mizyed's service. The letter from the ASG/OHRM was *ultra vires*, because, on 19 March 2013, the USG/DM had not even received the recommendation from the ASG/OHRM, let alone taken the contested decision. The Office of the USG/DM received the ASG/OHRM's recommendation on 21 March 2013 and approved it on 25 March 2013. If the decision to dismiss Mr. Mizyed's service was taken by an incompetent person, as in the present case, the decision was illegal and must be cancelled. The Administration failed to respect Administrative Instruction ST/AI/371/Amend.1 (Revised Disciplinary Measures & Procedures).

6. The Dispute Tribunal committed the following procedural errors such as to affect the decision of the case: i) it denied Mr. Mizyed's motions for the Respondent to produce information and documents, thus seriously impeding his ability to defend himself against the allegations of theft; ii) it failed to provide him with English and Arabic interpretation during the hearing; iii) it allowed the Respondent to file his responses to Mr. Mizyed's motions for disclosure belatedly in violation of the five-working-day requirement in Article 6 of the UNDT's Practice Direction No. 5; iv) it imposed limits on the number of witnesses Mr. Mizyed could call for the UNDT hearings; and v) it failed to consider character witness testimony by Mr. Butler, the Chief of General Service Section, UNTSO.

7. The contested decision as embodied in the ASG/OHRM's letter of 19 March 2013 was based on a fundamental error in fact, in that the Administration had confused the person (Mr. Pyankevich), whom Mr. Mizyed had accused of stealing his card, with another person (Ms. Ghoury).

8. Mr. Mizyed's due process rights were violated because of a deficient and incomplete investigation that failed to establish the misconduct by clear and convincing evidence. The investigation team did not pursue the appropriate lines of enquiry, he was not afforded the presumption of innocence, and his case was included among the disciplinary cases in Information Circular ST/IC/2013/29 (Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2012 to 30 June 2013), which was issued on 18 September 2013, before the UNDT completed its review of Mr. Mizyed's case.

9. Mr. Mizyed requests that the Appeals Tribunal reverse the Judgment and order his reinstatement and “three years’ salary for moral, psychological/emotional, health and reputational damages”.

The Secretary-General’s Answer

10. The Dispute Tribunal correctly upheld the decision to separate Mr. Mizyed from service for knowingly using a stolen duty-free card to refuel his private car and correctly concluded that the facts on which the disciplinary measure was based had been established by clear and convincing evidence, that the established facts legally amounted to misconduct, and that the disciplinary measure imposed on Mr. Mizyed was proportionate to the offence.

11. It should be noted that Mr. Mizyed did not contest that he was in possession of the stolen card and that he had used it to refuel his own car. The UNDT carefully considered whether Mr. Mizyed’s theory of a conspiracy of card swap or his assertion of lack of pecuniary motive offered a credible explanation for his possession of the stolen card. It also considered his various statements to the SIU investigators, but found Mr. Mizyed’s testimony as to who might have given him the card, the number of duty-free fuel cards he had in his possession, or why he could not remember his car’s registration number untruthful and unconvincing. The UNDT had the opportunity to assess Mr. Mizyed’s credibility and that of his witnesses as well as the Administration’s witnesses. Mr. Mizyed has not established that the UNDT had improperly ignored his arguments or evidence. Mr. Mizyed merely reiterates his arguments made to the UNDT, rather than identifying specific errors in the UNDT Judgment that would warrant review by the Appeals Tribunal.

12. The UNDT correctly concluded that there were no procedural irregularities warranting rescission of the contested decision. Mr. Mizyed relies on the UNDT jurisprudence in *Bastet*² in support of his position that the ASG/OHRM had unlawfully decided on Mr. Mizyed’s separation from service and influenced the USG/DM in taking his decision to separate him. The Secretary-General states that the UNDT Judgment in *Bastet* was under appeal,³ and that the case of *Bastet* can be clearly distinguished from the present case. Mr. Mizyed merely expresses his

² *Bastet v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/172.

³ In Judgment No. 2015-UNAT-511 (*Bastet v. Secretary-General of the United Nations*), the Appeals Tribunal vacated the UNDT’s order to declare the dismissal decision unlawful on the ground that the delegation of disciplinary authority from the Secretary-General to the USG/DM had not been officially published.

dissatisfaction with the UNDT's rulings in the management of the case, but fails to demonstrate how it affected his right to a fair trial or to provide evidence in this sense.

13. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Mizyed's appeal and affirm the Judgment.

Considerations

14. Mr. Mizyed requests an oral hearing "to provide and brief the court with all evidence that was not taken into consideration neither at the hearing nor during the trial of the UNDT". This Tribunal is satisfied that all relevant issues have been clearly defined in the submissions of the parties. Mr. Mizyed's request therefore does not come within Article 18(1) of the Appeals Tribunal Rules of Procedure in that an oral hearing would not assist in the expeditious and fair disposal of the case. Mr. Mizyed's request is therefore denied.

15. Mr. Mizyed was separated from service with compensation in lieu of notice and without termination indemnity after the USG/DM concluded that there was sufficient evidence that he had stolen a duty free gasoline card and used it to refuel his private vehicle, and had later attempted to use the card again.

16. Mr. Mizyed contested the Administration's decision to separate him. His case before the UNDT was that, while admitting to using the missing fuel card to refuel his personal car, he was not aware that it was stolen and believed it to be the one he had previously received from a fellow staff member. He believed that the missing fuel card had been exchanged with one he had kept in his desk drawer. He suspected it was exchanged either by Mr. Pyankevich or Ms. Ghoury, both of whom shared an office with him and two other colleagues, in order to get him into trouble and force him out of the Organization.

17. The UNDT found that the facts on which the sanction was based were established, that such facts amounted to serious misconduct and that the sanction was proportionate to the offence. In challenging that decision, Mr. Mizyed claims that the UNDT committed errors of fact and law as mentioned earlier.

18. In disciplinary cases, the role of the Dispute Tribunal is established by the consistent jurisprudence of the Appeals Tribunal. As set out in *Applicant*:⁴

Judicial review of a disciplinary case requires the UNDT to consider the evidence adduced and the procedures utilized during the course of the investigation by the Administration. In this context, the UNDT is “to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct [under the Staff Regulations and Rules], and whether the sanction is proportionate to the offence”. And, of course, “the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred”. “[W]hen termination is a possible outcome, misconduct must be established by clear and convincing evidence”, which “means that the truth of the facts asserted is highly probable”.

Clear and convincing evidence established that Mr. Mizyed stole a duty free gasoline card and used it to refuel his private vehicle

19. In reviewing the Administration’s decision, the UNDT had before it the documentary evidence on the record and heard the testimony of three staff members and an investigator, together with the evidence of Mr. Mizyed and his witness Mr. Zreiq.

20. The UNDT was clearly unconvinced by Mr. Mizyed’s explanation as to how he came into possession of the stolen fuel card. The UNDT found material inconsistencies in the separate accounts given by Mr. Mizyed at various times during the SIU investigation and at the hearing of the case. The UNDT concluded that Mr. Mizyed “was not truthful and contradicted himself in the various accounts he gave at different interviews with investigators on different dates and during his testimony before the Tribunal”.⁵

21. Regarding other claims made by Mr. Mizyed, the UNDT made the following observations and findings:

(i) It was telling that although Mr. Mizyed was first contacted by investigators to make a statement on 15 December 2011, and despite the seriousness of being suspected of stealing the fuel card, it took him two weeks to send his statement by e-mail;

⁴ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 29, quoting *Molari v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-164.

⁵ Impugned Judgment, para. 85.

(ii) Mr. Mizyed entered a fake registration number while using the missing card at the gas station. He explained that he did not remember his vehicle registration number, but if he had nothing to hide he could have easily entered the correct information by looking at the license plate of the very car he was refueling. The UNDT was “not in any doubt that [Mr. Mizyed] put in fake registration numbers in order to cover his tracks and avoid detection”;⁶

(iii) Mr. Mizyed’s account that he had kept a fuel card in his office desk drawer which was exchanged by one or more of his work colleagues with the missing card was unconvincing, especially considering that they had no way of knowing that he used duty-free fuel cards which were not meant for national staff;

(iv) Mr. Mizyed claimed that he obtained the duty-free fuel cards from others outside the MOVCON office, yet there was no evidence that he discussed his use of them with his MOVCON colleagues. It was thus far-fetched to claim that his colleagues set him up by exchanging a stolen fuel card with the one he had kept in his desk drawer;

(v) It was “highly improbable and unbelievable” that his office colleagues, who did not know that he procured duty-free cards for personal use, would search through his desk drawers to exchange a stolen fuel card, the size of a credit card, in order to implicate him;

(vi) If indeed his colleagues had set him up by planting the missing card in his desk drawer on 18 November 2011, “it is utterly incredible that he took the said fuel card out of his desk drawer the same day, mistaking it for a fuel card he got from Tshimbumbu⁷ since October [2011], and took it home only to use it for fuel[]ing his private vehicle the very next day!”;⁸

⁶ *Ibid*, para. 102.

⁷ According to the UNDT, Tshimbumbu was a national staff member who had worked as a driver for the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO). Tshimbumbu took an annual leave in October 2011 and then sent a resignation letter to the Organization without any forwarding address and without completing the necessary separation requirements.

⁸ Impugned Judgment, para. 105.

(vii) It was not credible that Mr. Pyankevich would embark on such a plot due to the high risk of discovery and the overall complexity of the plot. As to Mr. Mizyed's explanation of Mr. Pyankevich's motive, there was no guarantee that Mr. Pyankevich would get Mr. Mizyed's job following a competitive recruitment process.

22. The UNDT found that the case made out in the application before it was "unreliable, unconvincing, evasive and untenable".⁹ After carefully and thoroughly examining the evidence on which the Administration had based the sanction, the UNDT concluded:¹⁰

... Given the inconsistencies in the Applicant's statements to investigators, his unreliable and unconvincing testimony, his apparent inability to explain how he came to use a stolen fuel card, as well as the untenable explanations of a suspected conspiracy to set him up by his work colleagues[,] the Tribunal finds that the Applicant has not told the truth and has not successfully discharged the burden of establishing that the Administration wrongfully imposed a disciplinary measure on him in this case.

... The Tribunal is not in any doubt that the facts upon which the sanction imposed on the Applicant was based have been established and that the said facts amount to serious misconduct on the part of the Applicant.

23. The UNDT also considered Mr. Mizyed's argument that the investigation was procedurally defective, but dismissed it as being without merit.

24. In the view of this Tribunal, the evidence against Mr. Mizyed uncovered by the investigation was so overwhelming that the only reasonable conclusion available to the UNDT was that the facts were established by clear and convincing evidence. The evidence that Mr. Mizyed was in possession of the stolen card and that he used it to refuel his own private vehicle was not contested by Mr. Mizyed. His explanation of how he came into possession of the stolen card and how he came to use it is incapable of belief.

The established facts qualify as misconduct

25. This Tribunal agrees with the finding of the UNDT that the established facts amount to serious misconduct on the part of Mr. Mizyed.

⁹ *Ibid*, para. 123.

¹⁰ *Ibid.*, paras. 111-112.

26. Staff Regulation 1.2(b) provides:

Staff Members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status.

Staff Rule 10.1 provides in part:

Misconduct

- (a) Failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct.

27. Mr. Mizyed, by his actions in stealing a fuel card and using it to refuel his own private vehicle, has violated his obligation under Staff Regulation 1.2(b) to uphold the highest standard of integrity. Since the UNDT properly found that the facts amounting to misconduct were established, the Administration has shown serious misconduct on Mr. Mizyed's part.

The sanction of separation from service was proportionate to the offence

28. In arriving at the sanction, the Secretary-General considered the mitigating factors in Mr. Mizyed's case, in particular his prior good service and the letters of recommendation he had provided. The UNDT noted that cases of misappropriation or theft of the Organization's property consistently attracted the most severe sanctions. In the present case, the UNDT was of the view that Mr. Mizyed had violated the relationship of trust that existed between him and the Organization. The UNDT was thus satisfied that the disciplinary measure imposed was proportionate to the serious misconduct established against Mr. Mizyed, taking into account all mitigating factors.

29. We agree with the UNDT's finding that the sanction was proportionate. The Administration did not impose the most severe sanction on Mr. Mizyed, as he was not summarily dismissed. Clearly, the lesser sanction of separation from service with compensation in lieu of notice and without termination indemnity should be upheld.

There were no procedural irregularities capable of invalidating the Administration's decision to separate Mr. Mizyed

30. There was no evidence that Mr. Mizyed's rights were infringed in any way during the investigation. The Administration diligently undertook the investigation and Mr. Mizyed had ample opportunities to make his case. He was able to present his explanation of how he came to be in possession of the stolen fuel card and use it to refuel his private vehicle. He was provided with the allegations of misconduct and was given, and availed himself of, the opportunity to answer them.

31. We therefore agree with the UNDT's finding that there was no merit in Mr. Mizyed's argument that the investigation was procedurally defective.

Mr. Mizyed's arguments

32. Mr. Mizyed alleges that the UNDT committed errors of fact, law and procedure in arriving at its decision.

33. Having examined the Impugned Judgment, we find that UNDT's findings of fact are fully supported by the evidence before it. Mr. Mizyed is critical of the UNDT's factual findings, but he has failed to show that such findings resulted from an improper assessment of the facts.

34. Mr. Mizyed alleges that the UNDT erred in fact or law or failed to exercise the jurisdiction vested in it by ignoring his closing statement, which it did not even mention once in its Judgment.

35. This Tribunal is not persuaded that the UNDT ignored his closing statement. It is correct that the UNDT did not specifically mention Mr. Mizyed's closing statement in its Judgment. However, it did state that in weighing up Mr. Mizyed's case it took into account his oral testimony and his pleadings.¹¹ The UNDT obviously did not accept Mr. Mizyed's arguments, but that does not mean that they were ignored. It was not essential for the UNDT to set out findings on every submission made by Mr. Mizyed. This Tribunal has held that "[i]t is not necessary for any court, whether a trial or appellate court, to address each and

¹¹ UNDT Judgment, para. 29.

every claim made by a litigant, especially when a claim has no merit”.¹² Having examined Mr. Mizyed’s closing statement, we are of the view that it was open to the UNDT to consider that the arguments set forth therein were without merit. We do not find that the UNDT’s failure to specifically refer to Mr. Mizyed’s closing statement had any effect on the outcome of the case.¹³

36. However, there is one matter on which we wish to comment. Mr. Mizyed argues that the UNDT failed to exercise the jurisdiction vested in it by ignoring the illegality of his separation from service and by ignoring the UNDT judgment in *Bastet*.¹⁴ Mr. Mizyed claims that the letter from the ASG/OHRM dated 19 March 2013 establishes that “the USG-Management has illegally sub-delegated to the ASG-OHRM his responsibility to exercise on behalf of the Secretary-General the decision to separate from service the Applicant”. Mr. Mizyed’s claim is based on the fact that the letter clearly states that the USG/DM “has considered” the mitigating circumstances in his case and “has decided” to separate him from service, whereas at that time the USG/DM had not made any such decision.

37. It was clear from documentary evidence that the said letter was sent to the relevant office for delivery to Mr. Mizyed on 26 March 2013, after the approval of the USG/DM had been given on 25 March 2013. Therefore, when Mr. Mizyed received the letter, the decision had been approved by the USG/DM, as is evidenced by the manuscript note on the letter. Further, the letter stated that the decision to separate him from service became effective as at the date of his receipt of the letter.

38. Nonetheless, the letter contained statements that were simply not true as at the date of the letter. In our view, such a procedure is detrimental to the reliability and integrity of the disciplinary process and should be abandoned.

¹² *Abu Jarbou v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-292, para. 47 (internal citation omitted).

¹³ *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-328, para. 22; *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309, para. 26.

¹⁴ See footnote 2.

39. We think it would have been more prudent for the UNDT to have addressed this matter in the context of a judicial review. However, Mr. Mizyed's submission on the illegality of the decision to separate him from service has no merit, nor is the UNDT Judgment in *Bastet* relevant.¹⁵

40. Mr. Mizyed raises several claims of procedural error by the UNDT, but does not demonstrate how the alleged errors prejudiced him or violated his due process rights. Even assuming, *arguendo*, that such errors occurred, none of them would be a ground to reverse the UNDT Judgment.

41. Being the Appellant, Mr. Mizyed has the burden of satisfying the Appeals Tribunal that the Judgment rendered by the Dispute Tribunal is defective. The Appeals Tribunal finds that Mr. Mizyed has failed to meet that obligation in that he has not established any errors of law, fact or procedure warranting a reversal of the UNDT Judgment.¹⁶

Judgment

42. The appeal is dismissed in its entirety and the Judgment of the UNDT is affirmed.

¹⁵ In *Bastet v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-511, dated 26 February 2015, the Appeals Tribunal allowed the Secretary-General's appeal, vacated the rescission ordered in the UNDT Judgment and affirmed the UNDT Judgment with respect to the merits of the impugned administrative decision and its order for no compensation. Mr. Bastet's appeal was dismissed in its entirety.

¹⁶ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar