



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

BUCKLEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a Chief, Supply Chain Management Service at the D-1, step 3, level in the United Nations Multidimensional Stabilization Mission in the Central African Republic, contests the United Nations Claims Board's ("UNCB") recommendation that his claim for loss of some personal effects in connection with an emergency evacuation of staff from Camp Faouar in Syria be denied. This recommendation was subsequently endorsed by the Controller of the United Nations.

2. As remedies, the Applicant seeks: (a) rescission of the recommendations of the UNCB and annulment of the decision of the Controller denying settlement of his claim; (b) an award of USD7,490 for the depreciated value of some lost items, including an iPad and a wristwatch; (c) one month's net-base salary as restitution for incurred financial hardship; and (d) a written apology from UNCB "expressing remorse for the hurtful and insulting nature of its remarks" in its allegedly unsubstantiated findings.

3. The Respondent claims that the application is without merit and submits that the Applicant should only receive USD5,390 in compensation, and nothing for his iPad and wristwatch.

Facts

4. The following factual chronology is based on the parties' submissions and the documentation on record.

5. After having served with the Organization since November 1984, at the material time, the Applicant served as Chief of the Integrated Support Services at the P-5 level with the United Nations Disengagement Observer Force ("UNDOF") in Syria.

6. On 15 September 2014, upon the order of the Head of Mission and Force Commander, all staff in Camp Faouar in Syria, including the Applicant, were

relocated or evacuated to Camp Ziouani in the Israeli Occupied Golan Heights on an emergency basis. The Tribunal notes that in *Buckley* UNDT/2017/077 a clear distinction is made between the meanings of the words “evacuation” and “relocation” based on the relevant UN Security Management System (“UNSMS”) Security Policy Manual, for purposes of various claims made by the applicant therein, but notes that this distinction is not material in the present case. In particular, it is not disputed in the present case, that a planned relocation turned into an emergency evacuation due to the rapidly deteriorating security situation. Throughout this Judgment, therefore, all references to these words are to be understood according to their ordinary common usage in English.

7. As background for the evacuation, the Respondent submits that “[o]n 12 September 2014, due to the deteriorating security situation, a temporary relocation plan was initiated to relocate United Nations personnel and property from the B-side to Camp Ziouani in the Israeli Occupied Golan Heights on the A-side”. As for the role of the Applicant, the Respondent explains that he led “a team to arrange for the transportation of United Nations property and equipment from Camp Faouar on the B-side to Camp Ziouani on the A-side”. In total, according to the Applicant (and not contested by the Respondent), around 600 individuals were evacuated and equipment at an estimated value of over USD200 million was recovered.

8. The Applicant explains that the planned relocation, which was to take place over three days, transitioned into an emergency situation due to the deteriorating security conditions and imminent threat to the lives of United Nations personnel (military and civilian), its property and equipment. Instead, they were instructed to abandon the facility and he was charged with supervising the transfer of United Nations property and critical equipment, together with the evacuation of up to 200 personnel. He describes the circumstances on 15 September 2014 as “[a] dangerous situation within which the activity was being performed, which included rockets (whistling overhead), mortar round and live ammunition strikes in proximity of Camp Faouar”. The Respondent has not opposed this and indeed submits that the Applicant

was among the last to leave Camp Faouar before it was officially handed over to the Syrian authorities. Furthermore, it is uncontested that the Applicant did not manage to collect and take with him any of his personal effects, aside from his so-called “run bag” that contained his passports, credit cards and other documents.

9. On 4 November 2014, the Applicant filed a “[c]laim for compensation for loss of personal effects as a result of abandonment of Camp Farouar (UNDOF Headquarters) on the morning of 15 September 2014” with the Chief of Mission Support at UNDOF (“CMS”). The Applicant estimated his loss at USD14,700 and, *inter alia*, stated that:

... In conformance with the provisions of Staff Rule 106.5 and Administrative Instruction ST/AI/149/Rev. 4 of 14 April 1993, I am herewith submitting a Claim for compensation for loss of personal effects as a result of abandonment of same in Camp Faouar (UNDOF Headquarters) on the morning of 15 September 2014 following receipt of instructions to abandon the facility from the Force Commander/Head of Mission and Designated Official, [name redacted].

... The loss of personal effects are directly attributable to the performance of official duties, due to my presence in accordance with an assignment by the United Nations at UNDOF Headquarters (Camp Faouar), which is an area designated by the Department of Safety and Security as hazardous. The loss of personal effects was a direct result of fighting (hostile action) on the part of Anti Government Armed Groups (AGAEs) and Syrian Arab Armed Forces (SAAF), which threatened the presence and safety and security of United Nations personnel, and which ultimately led to issuance of instruction by the Designated Official to abandon the facility on the morning of 15 September 2014.

... Of note, a small team of Mission Support Personnel had stayed in Camp Faouar - under my supervision - to organize the transfer of UN owned property and equipment from the B-Side to the A-side. This task was ongoing from Friday 12 September 2014, and as of the morning of 15 September 2014 our team had organized the transfer of critical equipment, including: (1) Financial, HR and Procurement records; (2) up to 80 x 20’ ISO containers of assorted goods (containing Communications, IT, Engineering and Supply Equipment); (3) over 150 vehicles of various types, including light utility vehicles, trucks, trailers, light armoured vehicles and armoured

personnel carriers, and (4) up to 200 personnel without a single accident, incident or injury.

... In terms of planning/execution, we had prepared a further series of stores, comprising of up to 20 x 20' ISO containers of assorted equipment (Supply, Engineering, Communications, IT and Transport Stores) and 14 x 20' Refrigerated Containers of Frozen Food/Rations as well as all functional vehicles, and mechanical handling equipment (forklifts etc.) which we were using to outload equipment, however, we did not have sufficient time to ensure the transfer of this additional equipment prior to abandoning Camp Faouar on the morning of Monday, 15 September 2014. In addition to this equipment, we also abandoned the 89 vehicles (soft skin) that had been written-off and which were pending sale for more than two years as well as other stores/vehicles and other items of equipment that we had not as of then prepared for transfer. Regrettably, the aim of relocating all UN property and equipment from Camp Faouar to Camp Zouani was curtailed by the necessity to vacate.

... We had planned to remove the remaining UN owned equipment over a three day period from 15 through 18 September 2014 but unfortunately, we were not afforded the time or opportunity to achieve this objective due to the prevailing security situation.

... Similarly, on receipt of the order to abandon Camp Faouar, I did not have the time to secure my own personal effects, with the exception of a "Run Bag" containing important documents such as passports, credit cards etc. In consequence, I lost all my personal effects, including those items detailed on the Itemized Valued Inventory, which was submitted to Personnel Section on 01/10/2011 with a value of \$14,700. The estimated replacement cost of these items is \$17,000.

10. At its meeting on 18 December 2014, the UNDOF Local Claims Review Board recommended that the Applicant be paid USD7,490 for "the total depreciated/payable value of the claimed lost/abandoned personal effects ... releasing UN/UNDOF ... from any further liability in respect of this case".

11. On 15 July 2015, the Applicant initially contacted the UNCB Secretariat, and pursuant to a request for additional information in October 2015, on 7 December 2015, he filed the "Claim for loss of or damage to personal effects attributable to the performance of official duties" form (dated 5 December 2015) with the UNCB in

which he referred to his previous claim of 4 November 2014 filed with the UNDOF CMS.

12. According to an interoffice memorandum dated 8 June 2016 from the UNCB Secretary to the UNDOF Chief of Human Resources, the UNCB considered the Applicant's claim at its 346th meeting held on 24 March 2016, together with the claims of three other staff members who had evacuated from Camp Faouar. In this interoffice memorandum, the UNCB Secretary notes, after having first described one staff member's claim in much detail, that all claims were denied as the UNCB, *inter alia*, made the following observations and recommendations (emphasis added):

The board carefully reviewed the list of claimed items for the remaining three claimants [including the Applicant] and *noted the conspicuous resemblance in certain items/prices claimed.*

...

Accordingly, for all the foregoing reasons, the board recommended denial of these claims, in particular, pursuant to Article 4(8) of the [ST/AI/149/Rev.4 (Compensation for loss of or damage to personal effects attributable to service)] because *the claimants acted in a negligent manner, under Article 8 of the ST/AI or articles that cannot be considered to have been reasonably required by the staff member for day-to-day life under the conditions existing at the duty station, and for the lack of credibility of the claims.*

13. On 31 May 2016, the Controller of the United Nations approved UNCB's recommendation to deny the Applicant's claim.

14. On 14 June 2016, the Applicant filed a request for management evaluation of the contested decision, also highlighting his dissatisfaction with the "hurtful and insulting nature of the [UNCB's] remarks" in the interoffice memorandum (italicized above).

15. On 9 September 2016, having received no response on his request for management evaluation, the Applicant filed this application with the Tribunal.

16. On 17 October 2016, whilst the matter was pending before the Tribunal, the Under-Secretary-General for Management ("USG/DM") responded to the

Applicant's request for management evaluation in which he accepted the recommendations of the Management Evaluation Unit ("MEU") to reverse the contested decision in part. The MEU found, *inter alia*, as follows:

The MEU also noted that your statement that you and your teammates had no time or opportunity to secure your personal effects was reviewed alongside the Weekly Situation Report (09 Sept -15 Sept 14) dated 16 September 2014 of UNDOF Head of Mission and Force Commander, which indicated that an order was given sometime after 8:30 a.m. to execute "the final stage of the temporary relocation plan" and that "the last convoy crossed into "A" side at 12:30h on 15 September," of which you were a part based on your statement of 4 September 2015 that you were the last to leave.

The MEU, however, considered that the UNCB's reliance on Section 8 (articles not necessary for daily life) and the similarity of claimed items between you and two other claimants as the basis for the denial of your claims could not be considered reasonable. The MEU noted that all your claimed items related to articles that can be considered to be reasonably required for life at Camp Faouar. These included clothes, kitchen and other household appliances, tv and stereo and related accessories, and treadmill.

As for the "conspicuous resemblance" in certain items/prices claimed, the MEU noted that your inventory was based on a list provided to UNDOF Human Resources in 2011 for purposes of insurance coverage at the time of your relocation to Damascus in 2011. While the MEU noted that the three claims included very similar and even some identical claimed items, descriptions and values, the MEU considered that the UNCB should have taken into account the fact that your claim is based on your 2011 inventory list and that the resemblance of the other two claims to your claim should not affect the credibility of your claimed items.

Accordingly, based on these findings, the MEU considered that your claim for loss of personal effects, other than the watch and iPad, should have been evaluated. In such a case, the UNCB's valuation of your claimed items would have been USD 5,390 [footnote omitted]. The MEU recommended that you be granted compensation for your loss of personal effects in the amount of USD 5,390.

Procedural history

17. On 9 September 2016, the Applicant filed the application.

18. The case was registered with the Dispute Tribunal in Nairobi and assigned to Judge Klonowiecka-Milart.

19. On 18 October 2016, having received a response from the USG/DM accepting the recommendations of the MEU, the Applicant submitted some additional documents in evidence.

20. On 21 October 2016, the Respondent filed his reply.

21. By Order No. 465 (NBI/2016) dated 26 October 2016, Judge Klonowiecka-Milart ordered the parties to express their views, if any, on transferring the case to the Dispute Tribunal in New York. The Dispute Tribunal in Nairobi had selected the case for such transfer following the Dispute Tribunal's resolution at the Plenary in May 2016 where, to balance the Dispute Tribunal's workload, it was decided to transfer ten cases to from Nairobi to New York. It appears neither party objected to the transfer to New York.

22. By Order No. 475 (NBI/2016) dated 7 November 2016, Judge Klonowiecka-Milart ordered the case to be transferred from Nairobi to New York with immediate effect. The case was thereafter assigned to the undersigned Judge.

23. On 26 January 2017, the Applicant filed a further submission, providing some additional contentions, submitting "additional relevant information, which was incorrectly uploaded to [the Dispute Tribunal's] e-filing portal on 21 November 2016".

24. By Order No. 115 (NY/2017) dated 14 June 2017, the Tribunal ordered the parties to attend a Case Management Discussion ("CMD") on 21 June 2017 to discuss the further conduct of the case.

25. At the CMD on 21 June 2017, the Applicant participated via Skype from Ireland where he was on leave, while Mr. Dietrich for the Respondent appeared personally in court in New York. The Applicant stated that he had another matter (filed in June 2016, Case No. UNDT/NY/2016/057) pending before the Dispute Tribunal in which he referred to matters touching on the instant application. He explained that he referred to these matters in the previous case simply to show the pattern of the Respondent's failure to deal with matters in a timely manner and to properly implement policies and to address staff members concerns in good faith. The Tribunal explained that an applicant may not file multiple applications concerning the same administrative decision as this offends against the principle of *lis pendens* which disavows simultaneous parallel proceedings between the same parties concerning the same subject matter and founded on the same cause of action. The parties agreed that events had subsequently overtaken the UNCB decision when the management evaluation was completed and an offer of settlement was made by the USG/DM. Both parties confirmed that the claims in the present case are separate and discrete from those of the Applicant's other case currently pending before another Judge of the Dispute Tribunal (the aforementioned Case No. UNDT/NY/2016/057) and the Respondent confirmed that *lis pendens* was not an issue in the instant case, thus confirming the competency of the sitting Tribunal to deal with the instant matter. The Tribunal noted that, due to the particular circumstances of the case, including the nature of the Applicant's claim, the amount involved, and the fact that the parties had commendably previously attempted informal resolution, an amicable resolution of the case would appear appropriate and proposed different options for doing so.

26. By Order No. 119 (NY/2017) dated 21 June 2017, the Tribunal ordered the parties to file a response by 7 and 14 July 2017, respectively, regarding any informal resolution or settlement reached.

27. In response to Order No. 119 (NY/2017), on 7 July 2017, the Respondent filed a submission informing the Tribunal "that there is no prospect for an amicable resolution of this case".

28. On 13 July 2017, the Applicant filed his response to the aforesaid order, confirming the unsuccessful informal resolution attempts. The Applicant also invited the Tribunal to proceed to judgment “on the merits of his application and in the light of the papers before the [the Dispute Tribunal]”.

29. By Order No. 131 (NY/2017) dated 13 July 2017, the Tribunal ordered the Respondent is to file a response to the Applicant’s submission of 13 July 2017, if any.

30. On 24 July 2017, the Respondent filed his response to Order No. 131 (NY/2017).

31. On 25 July 2017, the Applicant filed his comments to the Respondent’s 24 July 2017 response.

32. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the Tribunal considered that this matter could be fast tracked due to the particular circumstances of the case, including the nature of the Applicant’s claim, the amount involved, and the case status. Therefore, by Order No. 141 (NY/2017) dated 25 July 2017, the Tribunal informed the parties that it will proceed to render its judgment on the papers before it.

Applicant’s submissions

33. The Applicant’s principal contentions may be summarized as follows:

a. The UNCB failed to correctly implement relevant Staff Regulations and Rules and Administrative Instructions, in particular, the provisions of ST/AI/149/Rev.4. The Applicant was denied his rights, and the UNCB failed to perform in accordance with its duty and requirements to act fairly, transparently, and justly in its dealings with staff members;

b. The Administration, including the UNCB, did not act in a timely manner and caused an undue delay in making decisions, which impacted the

Applicant's rights as well as caused him anxiety and stress. This indicated a lack of dealing in good faith with the Applicant;

c. The Applicant's claim for compensation was genuine and legitimate and is supported by evidence. The UNCB's recommendation to deny the claim was unsubstantiated and had a punitive effect on the Applicant, referring to *Haroun* UNDT/2016/058, para. 155. The UNCB's remarks were hurtful, insulting, untrue and harmful to the Applicant's reputation;

d. The Applicant did not act "negligently", as stated by the UNCB or the MEU—this would suggest that his conduct, at the time of the occurrence, departed from the conduct expected of a reasonably prudent person acting under similar circumstance—and there is no substantive justification to support such view. The Applicant is a very experienced Field Operative with almost thirty-three years' service in support of peacekeeping operations and, in this instance, any reasonable/experienced person, within the field of activity or otherwise, would conclude that the Applicant demonstrated an extraordinary "duty of care" towards the Organization, other UNDOF staff (including contingent personnel) and the task at hand. Rather, the Applicant's performance was beyond what any reasonably prudent person would have done in similar circumstances, notwithstanding the dangerous situation with rockets whistling overhead, and mortar rounds and live ammunition strikes in close proximity of Camp Faouar;

e. The UNCB's assessment that the Applicant had been negligent was manifestly unreasonable because it clearly and unmistakably went beyond what was reasonable, was irrational, wrong in principle, logically flawed, and depended on findings that are unsupported by evidence.

Respondent's submissions

34. The Respondent's principal contentions may be summarized as follows:

a. The denial of the Applicant's claim for compensation was based on ST/AI/149/Rev.4, sec. 4 (exclusion for negligence) and sec. 8 (exclusion for articles not reasonably necessary for use in day-to-day life), as well as the UNCB's view that the claim lacked credibility. ST/AI/149/Rev.4 provides that no compensation shall be paid for any loss or damage that was caused by the negligence or misconduct of the claimant (sec.4 (a)), or for articles, which in the opinion of the Secretary-General, cannot be considered to have been reasonably required for day-to-day life under the conditions existing at the duty station (sec. 8);

b. The denial of compensation for the loss of the Applicant's iPad and the wristwatch was reasonable. The UNCB considered that the loss occurred during a planned relocation that turned into an emergency evacuation on the morning of 15 September 2014. The UNCB took into account the Applicant's email dated 4 September 2015, in which the Applicant stated that his team did not have time to secure any of their personal effects other than their "Emergency Run Bag", which contained passports/money, etc. and reasonably found that the Applicant's failure to place portable high value items such as an iPad (value USD1,000) and a wristwatch (valued at USD 2,000) in his run bag was negligent;

c. The Secretary-General, however, considered that the Controller's reliance on sec. 8 (exclusion for articles not reasonably necessary for use in day-to-day life), and the similarity of claimed items between the Applicant and two other claimants, could not be considered reasonable as basis for the denial of the Applicant's claims. Rather, in the outcome of the Applicant's management evaluation, it was noted that all of his claimed items related to articles that could be considered to be reasonably required for life at Camp Faouar. These included clothes, kitchen and other household appliances, TV and stereo and related accessories, and a treadmill, all of which were included on an inventory list the Applicant submitted upon assignment to UNDOF in

2011. Accordingly, the Applicant's negligence did not warrant denial of the Applicant's entire claim. As relief, the decision to offer the Applicant USD5,390 in compensation based on the depreciated value of the lost items, excluding the iPad and his wristwatch, is appropriate;

d. There was no undue delay or lack of good faith and fair dealing. No specified timelines for processing claims for loss of personal effects exists. The Claim Review Board of UNDOF reviewed the Applicant's claims shortly after receiving it. However, because the recommended amount of compensation exceeded its authority, there was some delay of about seven months in forwarding the claim to the UNCB. Once the UNCB received the claim, it found that it was incomplete and that the Applicant had to provide additional information. When the Secretary of the UNCB finally received that information, the Applicant's claim was presented to the UNCB at the earliest opportunity. To the extent that there was some lag in time in forwarding the Applicant's claim to the UNCB, the Applicant was also responsible for the delay in providing the UNCB with the necessary information to review his claim. Moreover, the Applicant has not produced any evidence that he suffered harm from any delay or any other actions of the Administration (*Marcussen* 2016-UNAT-682).

Consideration

35. Generally, the judicial review of the Dispute Tribunal is limited and it is not the role of the Tribunal to substitute its own decision for that of the Secretary-General. In *Toure* 2016-UNAT-660, para. 30, the Appeals Tribunal, for instance, reiterated the definition of this review as follows (see, similarly *Sanwidi* 2010-UNAT-084, *Jibara* 2013-UNAT-326, *Balan* 2014-UNAT-462, *Said* 2015-UNAT-500, *Munir* 2015-UNAT-522, *Jaffa* 2015-UNAT-545, *Ogorodnikov* 2015-UNAT-549, *Awe* 2016-UNAT-667, *Wilson* 2016-UNAT-676):

... When judging the validity of the Administration's exercise of discretion in administrative matters, the Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Tribunal to consider the correctness of the choice made by the administration amongst the various courses of action open to it. Nor is it the role of the Tribunal to substitute its own decision for that of the administration. [reference to footnote omitted]. As part of its judicial review, it is necessary to determine whether the decision was vitiated by bias or bad faith, that is, if it was taken for an improper purpose. A decision taken for an improper purpose is an abuse of authority. It follows that when a complainant challenges a discretionary decision, he or she by necessary implication also challenges the validity of the reasons underpinning that decision. [...]

36. Staff Rule 6.5 regarding compensation for loss or damage to personal effects attributable to service states as follows:

Staff members shall be entitled, within the limits and under terms and conditions established by the Secretary-General, to reasonable compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of official duties on behalf of the United Nations.

37. ST/AI/149/Rev.4 further details the rules for how staff members are to be compensated for loss or damage to personal effects attributable to their performance of official duties on behalf of the United Nations. In this regard, sec. 4 on which the UNCB based its recommendation, provides that, "No compensation shall be paid for any loss or damage which was: (a) Caused by the negligence [...] of the claimant [...]". Section 8 of ST/AI/149/Rev.4 further provides that no compensation shall be payable for articles, which in the opinion of the Secretary General, cannot be considered to have been reasonably required by the staff member for day-to-day life under the conditions prevailing at the duty station.

38. The Tribunal notes that, in the management evaluation decision dated 17 October 2017, the USG/DM (although the Respondent states the Secretary-General) endorsed the MEU's finding that the UNCB's and the Controller's additional reliance

on sec. 8 of ST/AI/149/Rev.4, holding that an iPad and a wristwatch was not reasonably required by the staff member for day-to-day life under the conditions existing at the duty station, could not be considered reasonable. In the submissions to the Dispute Tribunal, the Respondent does not alter this finding of the USG/DM and the MEU, and indeed attributes it to the Secretary-General, the Respondent in this case. The Tribunal finds that, in agreement with the USG/DM and the MEU, the Respondent admits and concedes that sec. 8 is not applicable in this context.

39. Consequently, the only remaining issue in the case is, essentially, whether it was appropriate for the Administration, pursuant to ST/AI/149/Rev.4, to deny the Applicant any compensation for his iPad and wristwatch, which he lost in connection with the emergency abandonment of Camp Faouar in Syria, on the basis that he had allegedly been negligent in not securing them in his run bag. The Tribunal notes that the total monetary value of these two items can be estimated at USD2,100, namely the difference between the Applicant's claim for compensation (USD7,490) and the compensation that the Respondent is willing to pay for his other lost items (USD5,390). In judging the validity of the decision denying the Applicant compensation, the Tribunal may consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. It may examine if the decision is legal, rational, procedurally correct and proportionate.

40. The Tribunal notes that the word "negligence" may be defined as follows (see Jonathan Law and Elizabeth A. Martin, *A Dictionary of Law* (Oxford University Press, 2009), p. 365):

[...]. Carelessness amounting to the culpable breach of a duty: failure to do or recognize something that a reasonable person, (i.e. an average responsible citizen) would do or recognize, or doing something that a reasonable person would not do. In case of professional negligence, involving someone with a special skill that person is expected to show the skill of an average member of his profession. [...]

41. Similarly, negligence is defined as “the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation” (see Black’s Law Dictionary 2016); the elements of negligence generally constituting duty of care, breach of the duty of care, causation, and damage.

42. What then is a staff member’s obligation or duty with regard to the preparation of a run bag in preparedness for an emergency? The purpose of a run bag is defined in “Lesson 3.6 Safety and Security for UN Personnel” of 2017, slide 10, by the UNSMS, which provides United Nation peacekeepers guidance on what measures they should take when deployed to dangerous and life-threatening environments in order “to prevent and respond to events of danger threat or injury”. The run bag’s contents should be for survival and evacuation. Specifically, the UNSMS states that a “[United Nations] Staff Evacuation RUN BAG”, should be a backpack of the size of 30-50 liters and not weigh more than 15 kilograms. Highlighted as “important”, the UNSMS lists the following items as a “priority”, also noting that a staff member should “[m]ake sure there is room for them in your backpack before considering any other items of less importance for your evacuation”. These priority items are: “[d]ocuments & cash”; “[s]pare warm clothes, underwear, socks, hat, scarf, etc.”; “[w]arm weather gear”; “[p]en-knife”; “[n]otebook & pen”; “[s]leeping bag”; “[v]itamin tablets”; “[t]owel & toiletries”; “[p]illow (if available)”; “[s]unglasses”; “[c]amera”; “[w]ater”; “[f]ood & other nutritions”; “[f]irst aid kit and field dressing”; “[t]orch & extra batteries”; and “[i]nsect repellent”.

43. Among the priority items in a run bag, UNSMS makes no mention of iPads, wristwatches or any similar items, nor is it stated that if an emergency is predicted, any such items should be carried along with the priority items in the run bag. Accordingly, under the UNSMS guidelines, there is no legal duty for a staff member to carry an iPad or a wristwatch in a run bag—if anything, the situation would rather appear to be the opposite: depending on the circumstances, it might even be negligent of her/him to do so. The Tribunal notes that there is no reason to believe that the guidance provided in 2017 by UNSMS on the contents of a run bag was any different

in 2014 when the Applicant was evacuated out of Camp Faouar on an emergency basis. In any event, it would be unreasonable and irrational to expect a staff member to include items not essential for survival and evacuation in an emergency.

44. As for the factual background, the Tribunal takes note that none of the parties contests that:

a. On 15 September 2014, the escalating and dangerous circumstances in and around Camp Faouar required all personnel to be evacuated on an emergency basis as there were “rockets (whistling overhead), mortar round and live ammunition strikes in proximity of Camp Faouar”, even though a temporary relocation plan had already been initiated on 12 September 2014;

b. The Applicant was the team leader whose priority was to arrange for transportation of United Nations personnel, property and equipment during a planned relocation which subsequently, with the deteriorating security situation, turned into an emergency evacuation, several days earlier than anticipated;

c. The Applicant was among the last to leave Camp Faouar before it was officially handed over to the Syrian authorities;

d. When evacuated, the Applicant carried with him his run bag, containing, *inter alia*, his passport and some money.

e. That there is no dispute that the items in question had been submitted on the itemized inventory in the Applicant’s request for insurance coverage of his household goods and personal effects in 2011 at the stipulated prices.

45. The Tribunal further notes that the Respondent does not submit that the Applicant was negligent because he did not to return to his residence to collect the iPad and the wristwatch before leaving Camp Faouar, but rather that, considering the circumstances, he should have packed them in his run bag, presumably during the

period of planned relocation, and in advance of the unplanned emergency evacuation on 15 September 2014.

46. With reference to the general principles of the limits of judicial review and the definition of “negligence”, in considering whether the Applicant was negligent under sec. 4 of ST/AI/149/Rev.4 by not including the iPad and wristwatch in his run bag when evacuating Camp Faouar, the Tribunal finds that the Administration failed to consider the following “relevant matters”:

a. The objective of a run bag and the guidelines on how to pack it: the purpose of such run bag is to secure the life and safety of the staff member in a difficult and precarious environment. The run bag should therefore be light (maximum 15 kilograms) and only include strictly necessary items for the staff member’s health and survival. It would be out of place to even suggest that an iPad or a wristwatch could have served any use for the Applicant evacuated in Camp Faouar and that he therefore breached any duty of care in this regard;

b. The extreme and treacherous circumstances in Camp Faouar at the relevant time, which on 15 September 2014 led to an emergency evacuation: while an initial relocation had been initiated on 12 September, even if the Applicant had room in his run bag for the iPad and the wristwatch, there are no indications that it would have been possible for the Applicant to predict the drastic worsening of the situation;

c. The Applicant’s important role as a team leader in recovering valuable United Nations equipment at an estimated value of over USD200 million during the relocation: it appears only reasonable to believe that, rather than thinking of the fate of his own personal belongings, the Applicant was focused on his and the personal safety of others, and his responsibility for the recovery of the valuable United Nations equipment. This submission is supported by the fact that the Applicant was one of the last United Nations

staff members to leave Camp Faouar, which also shows that he had little, if no time to return to his container to collect the iPad and the wristwatch to place them in his run bag.

47. If the Applicant were to have been required to pack the iPad and wristwatch in his run bag, such instructions would not only have been in direct contravention of the UNSMS guidelines, but also lead to the absurd or perverse result that, instead of focusing on saving lives and valuable United Nations equipment in a worsening security situation, the Applicant should have prioritized the recovery of these personal items of a relatively miniscule monetary value of USD2,100. This simply makes no sense. If the Applicant had a duty of care in the given context, it would rather have been not to carry his personal iPad or wristwatch in his run bag, nor to attempt to retrieve them from his residence in the midst of a dangerous emergency evacuation. On the contrary, had the Applicant done so, this may well have amounted to negligence.

48. The Tribunal finds therefore that, in the exercise of its discretion, the Administration did not take into account, or give due regard to all the aforesaid circumstances surrounding the loss of the Applicant's property. In particular, there was no requirement, either by law or by reason, or on any reasonable basis, for the Applicant to pack the said items in his run bag; and consequently, in all the circumstances, he could not have been said to have been negligent.

Relief

Compensation

49. As hereinbefore stated, staff rule 6.5 provides that staff members are entitled "to reasonable compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of duties on behalf of the United Nations". This rule is implemented by ST/AI/149/Rev.4 which sets out the procedures, conditions, and limitations governing such compensation. In this

instance, following the filing of the application contesting the denial of Applicant's claim by the UNCB and Controller, events were overtaken by the USG/DM's acceptance of the MEU recommendations, thus reversing the contested decision in part. The only objection by the Respondent to the claim, and the only matter for consideration before the Tribunal, is whether the Applicant had been negligent in not securing the items in his run bag. The Tribunal has found he was not so negligent, and the denial of his claim was not reasonable. Therefore, the Applicant is entitled to compensation for this property.

The monetary value of the iPad and the wristwatch

50. The contested amount for the iPad and the wristwatch is USD2,100 as the Respondent has conceded to pay USD5,390 for the remaining items that the Applicant lost in Camp Faouar. Regarding the amount of USD2,100, the Respondent makes no contentions denying this valuation; on the contrary, in his reply, he submits that the UNCB stated that the iPad had a value of USD1,000 and the wristwatch had a value of USD2,000; these also being the valuations provided by the Applicant on the itemized inventory for insurance coverage. The Applicant has indicated that he is prepared to accept the sum of USD2,100 as a depreciated value and settlement figure, and not the full original value of USD3,000 for the items.

51. Accordingly, the Tribunal finds that the Respondent has conceded that USD2,100 is a reasonable amount in compensation for the iPad and the wristwatch and no further substantiation of the claim is therefore necessary.

One month's net-base salary as restitution for incurred financial hardship

52. The Applicant claims one month's net base salary for financial hardship "incurred as a result of the Administration's omissions and its failure to attend to the matter in a timely manner", alleging also that the delays and lack of dealing in good faith have resulted in anxiety, emotional distress and stress for him. The Applicant has not demonstrated how he has incurred any financial hardship and since no such

evidence has been proffered, the Tribunal must reject this claim for compensation (see, for instance, *Krioutchkov* 2017-UNAT-712 and *Tsoneva* 2017-UNAT-713).

A written apology from UNCB

53. The Applicant is particularly aggrieved by the adverse comments and insinuations made by the UNCB in the composite interoffice memorandum dated 8 June 2016 dealing with the claims of three claimants together. The Applicant considers that the unsubstantiated findings of the UNCB are an attack on his integrity and character. He seeks a written apology from the UNCB expressing remorse for the hurtful and insulting nature of its remarks and an unconditional withdrawal of the recommendations outlined in its memorandum of 8 June 2016 as they pertain to him.

54. The Tribunal is indeed surprised that the claims of three claimants, together with the comments therein, which may well be considered defamatory but as to which the Tribunal makes no finding, are dealt with in one interoffice memorandum by the UNCB. However, the Tribunal notes that the MEU, in particular the letter of the USG/DM, exonerates the Applicant from any attack on his credibility regarding the UNCB's comments about the so-called conspicuous resemblance and similarity of descriptions and values between the items claimed by the three different claimants. The Tribunal has also found that the Applicant was not negligent, in all the circumstances, in failing to pack the items in his run bag.

55. The types of relief that the Dispute Tribunal may award is limited, and whilst the Tribunal has sympathy with the Applicant's claim for an apology, such remedy is not listed in its Statute and thus there is no legal basis upon which to grant it. Nevertheless, in light of the aforementioned letter of the USG/DM and the findings in this judgment, the Tribunal finds that the Applicant has been sufficiently vindicated in this respect (See *Applicant* UNDT/2010/148 upheld by the Appeals Tribunal in *Appellant* 2011-UNAT-143). The Applicant's claim for a written apology is therefore denied.

Conclusion

56. In view of the foregoing, the Tribunal ORDERS:

a. The Applicant to be paid the amount of USD2,100 as compensation for his iPad and wristwatch in addition to USD5,390 that the Respondent has already agreed to pay for the loss of the Applicant's personal items in connection with the emergency evacuation of Camp Faouar on 15 September 2017;

b. The total amount of USD7,490 is to be paid within 60 days from the date the judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Ebrahim-Carstens

Dated this 28th day of September 2017

Entered in the Register on this 28th day of September 2017

(Signed)

Morten Albert Michelsen, Registrar, New York, Officer-in-Charge