

UNDT/2017/078, Buckley

UNAT Held or UNDT Pronouncements

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.; 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.; 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.; 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.; In light of the letter of the Under-Secretary-General for Management and the findings in this judgment, the Tribunal finds that the Applicant has been sufficiently vindicated and rejects the request for a written apology.; 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.

Decision Contested or Judgment/Order Appealed

The Applicant 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.

Legal Principle(s)

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 SecretaryGeneral.; 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. 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.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Buckley

Entity

Other peacekeeping mission

Case Number(s)

UNDT/NY/2016/65

Tribunal

UNDT

Registry

New York

Date of Judgement

28 Sep 2017

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Applicable Law

Administrative Instructions

- ST/AI/149/Rev.4

Staff Rules

- Rule 6.5