UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/010
Judgment No.: UNDT/2024/022
Date: 24 April 2024
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

FULTANG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Sètondji Roland Adjovi, *Études Vihodé*

Counsel for Respondent:
Jacob van de Velden, DAS/ALD/OHR, UN Secretariat
Andrea Ernst, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former Conduct and Discipline Officer at the P-4 level, with the United Nations Interim Security Force in Abyei ("UNISFA"). He contests the decisions to:

a. Impose on him the disciplinary measure of dismissal in accordance with staff rule 10.2(a)(ix);

b. Require him to reimburse the Organization for its financial loss up to the amount of USD17,213.00 in accordance with staff rules 10.1(b) and 10.2(b)(ii); and

c. Recover said amount (USD17,213.00), to the extent possible, from his final entitlements or emoluments, in accordance with staff rule 3.18(c)(ii).

Facts and procedural history

2. On 17 March 2020, UNISFA circulated a Broadcast to all staff members informing them that those who were at risk of coronavirus ("COVID-19") should relocate out of Abyei to other locations, including Entebbe in Uganda, where there existed sufficient medical facilities. Coincidentally, at the time the Broadcast was issued, the Applicant was already in Uganda on Rest and Recuperation leave and undergoing medical treatment.

3. On 22 March 2020, the Entebbe airport in Uganda was closed due to COVID-19 lockdown. Accordingly, the Applicant was not able to return to Abyei, remained in Entebbe, and worked remotely from there.

4. The Applicant requested UNISFA to pay him daily subsistence allowance ("DSA") for his time in Entebbe. UNISFA rejected his request. Thereafter, the Applicant requested management evaluation of that decision.

5. While management evaluation was pending, the parties engaged in settlement negotiations. On 1 September 2020, the Applicant's Counsel[1] emailed the Applicant saying (emphasis added):

> I had an interesting meeting with the [Management Evaluation Unit ("MEU")] … They have made a proposal for settlement which is serious … The conversation was essentially that they could pay for hotel costs and they might be able to contribute to food costs … They would be willing to discuss any other expenses you say were incurred as a result of being in Entebbe. <u>They will need receipts for anything that might be repaid … If you are inclined to accept [,] then you would need to be able to evidence each expense sought.</u>

6. The Applicant then sent to his Counsel a series of receipts for 174 consecutive nights at the Imperial Golf View Hotel, Entebbe, at USD160 per night, plus USD40 per night for meals. This included the period 18-31 March 2020.The parties agreed to settle the DSA claim under terms that were set forth in writing in a release form. Specifically, the Applicant agreed to release his claims for DSA.

> for and in consideration of the [O]rganization to reimburse [him] for actual expenses for a six-month period (mid-March to mid-September 2020) up to the amount designated for the accommodation portion of DSA for Entebbe (in total, approximately $21,787.20).

7. The Applicant signed the form on 30 October 2020 and was subsequently paid USD18,519.12.

8. On 23 January 2021, the Chief of Mission Support ("CMS"), UNISFA, sent to the Office of Internal Oversight Services ("OIOS") a report of possible misconduct implicating the Applicant reporting the Applicant in having submitted a fraudulent claim for hotel expenses in Entebbe allegedly incurred between March and September

[1] At the management evaluation stage, the Applicant was represented by Counsel from the Office of Staff Legal Assistance ("OSLA"). As of the filing of his application, the Applicant is represented by private counsel. Any references to "Counsel" in this judgment are meant to refer to his OSLA Counsel unless specifically stated otherwise.

2020 as a result of the COVID lockdown. It was further alleged that that this claim was submitted in the context of an MEU review and as a result the Applicant was paid USD18,519.12.

9. OIOS conducted an investigation and submitted its report on 27 May 2021.

10. By letter dated 21 July 2021, the Director, Administrative Law Division, Office of Human Resources, addressed the allegations of misconduct to the Applicant. The Applicant responded on 19 September 2021.

11. By letter dated 28 November 2022 ("sanction letter"), the Assistant Secretary-General for Human Resources informed the Applicant about the sanctions listed in para. 1 above.

12. On 22 January 2023, the Applicant filed an application contesting the sanctions in question.

13. On 22 February 2023, the Respondent filed his reply to the application on the merits.

14. In response to Order No. 52 (NBI/2023), the Applicant filed a rejoinder on 14 March 2023.

15. The Tribunal held a hearing on the merits from 11 to 12 March 2024 and heard the testimony of six witnesses, including that of the Applicant.

16. The parties filed their closing submissions, so the case is ripe for ruling.

Consideration

Standard of review and burden of proof

17. The Tribunal's Statute, as amended on 22 December 2023, provides that in reviewing disciplinary cases:

> the Dispute Tribunal shall consider the record assembled by the Secretary-General and may admit other evidence to make an assessment on whether the facts on which the disciplinary measure was based have been established by evidence; whether the established facts legally amount to misconduct; whether the applicant's due process rights were observed; and whether the disciplinary measure imposed was proportionate to the offence. (Art. 9.4).

18. The Tribunal's Statute generally reflects the jurisprudence of the United Nations Appeals Tribunal ("UNAT" or "Appeals Tribunal"). See, e.g., *AAC* 2023-UNAT-1370, para. 38; *Miyzed* 2015-UNAT-550, para. 18; *Nyawa* 2020-UNAT-1024.

19. The Appeals Tribunal clarified that:

> When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute 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. (*Sanwidi* 2010-UNAT-084, para. 40).

20. The Appeals Tribunal has, however, underlined that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General". In this regard, "the Tribunal is not conducting a "merit-based review, but a judicial review" explaining that a "judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (*Sanwidi*, op. cit).

Whether the facts on which the disciplinary measure was based were established by clear and convincing evidence

21. In disciplinary cases "when termination is a possible outcome", UNAT has held that the evidentiary standard is that the Administration must establish the alleged misconduct by "clear and convincing evidence", which "means that the truth of the

facts asserted is highly probable" (*Negussie* 2020-UNAT-1033, para. 45). UNAT clarified that clear and convincing evidence can either be "direct evidence of events" or may "be of evidential inferences that can be properly drawn from other direct evidence".

22. The Applicant's case is that the investigation report of OIOS was based on confidential documents and privileged communications between him and MEU referred to during the informal resolution process of Case No. UNDT/NBI/2020/076 (Fultang), which were not supposed to be used as evidence against him in the OIOS investigation procedure.

23. The Applicant also submits that he does not owe USD17,213.00 to the Organization. He argues that, clearly, he incurred many other actual expenses since he was not staying in a hotel where many of those additional expenses would have been built into the cost of the room. Actual expenses incurred included not only accommodation costs but also security, equipment, food, Wi-Fi, and transportation. The recovery decision is, therefore, not in compliance with the original 30 October 2020 signed agreement.

24. In the same spirit of contesting the recovery decision, the Applicant states that the Under-Secretary-General, Department of Management Strategy, Policy and Compliance ("USG/ DMSPC"), who took the decision, does not have the delegated authority to order deductions from his final entitlements or emoluments under staff rule 3.18(c)(ii) for any staff who does not work in DMSPC.

25. The Applicant worked in UNISFA. He argues that only the Head of Entity has explicit delegated authority from the Secretary-General to make a decision as to whether to recover the amount of USD17,213.00 by withholding it from the Applicant's final entitlements or emoluments in accordance with staff rule 3.18(c)(ii). He claims that the decision of the USG/DMSPC is, therefore, axiomatically unlawful and cannot stand as it was taken without the requisite delegated authority.

26. The facts are very clear from the testimony and record. The Applicant admits that he never stayed in the Imperial Golf View Hotel and, thus, that the receipts he provided to his Counsel were false. According to his own testimony, "I knew [the receipts] were not genuine in the sense that I never slept in that hotel". This is also confirmed by the transcript of his interview.

27. However, the Applicant argues that the receipts were "confidential and privileged" because they were sent by his Counsel to MEU during settlement negotiations.

28. This issue has been dealt with and rejected previously by both this Tribunal and the Appeals Tribunal. See, *Fultang* UNDT/2022/102, paras. 26-28; *Fultang* UNAT-2023-1403, para. 110; and *Fultang* UNDT/NBI/2023/010.

29. However, a review of the record would be helpful in clarifying these rulings. As noted in para. 5 above, the Applicant's prior Counsel wrote him that the Organization was willing to compensate him for out of pocket expenses and that "[t]hey will need receipts for anything that might be repaid … If you are inclined to accept[,] then you would need to be able to evidence each expense sought".

30. Within two weeks of this communication, the Applicant provided the false Imperial Golf View Hotel receipts to his Counsel, which Counsel then forwarded to the Organization.

31. It is crystal clear that the Applicant sent the false receipts in response to a request from the Organization for receipts and evidence supporting the expenses he was claiming. Having done so, he cannot now claim that these receipts are confidential and privileged. As previously ruled, the receipts were never privileged and, even if they were, the Applicant waived any privilege by providing them to the Organization.

32. The Applicant now argues that he never provided them to the Organization for reimbursement and that he only sent the receipts to his Counsel for use as an example of the going rate for accommodations in Entebbe at the time. However, there is no evidence that the Applicant placed any such limitation on his Counsel. Indeed, the record reflects just the opposite.

33. After receiving the receipts, a staff member of MEU asked Applicant's Counsel: "I thought you said that he stayed in several different hotels? These receipts look like they are all from the same hotel".

34. And his Counsel answered:

> I think the confusion is of my making. I've sought clarification from Mr. Fultang, he indicates that some other staff stuck in Entebbe had tried to get accommodation in cheaper hotels (these were mainly uniformed staff) but they were made to move to MOSS compliant accommodation. He indicates that he has been staying in the same spot since he got stuck in Entebbe.

35. This correspondence clearly shows that the Applicant knew the receipts had been provided to the Organization as evidence of the expenses he claimed, and that he was requested to explain why the receipts were from only that one hotel.

36. The Applicant now argues that the receipts were not used as proof of actual expenses actually incurred but "to set a standard for negotiations. I got the rate of the highest hotel and put it in for leverage". This argument, and the testimony upon which it is based, are simply incredible.

37. First, it is important to recall that the negotiations themselves were about the Applicant's claim for reimbursement and that the receipts were submitted after the Organization agreed to reimburse him for documented hotel (and possibly food) costs.

38. Second, and most importantly, no reasonable and honest person would obtain or create false hotel receipts to show the market rate for a hotel. The market rate could be shown much more easily in any number of ways: quotations from the hotel, a letter from the hotel listing the rates, or even as suggested in the email exchange, providing hotel names to the Organization so it "could maybe verify their average rates online". Creating or obtaining false receipts that show the Applicant stayed in the hotel for 170 consecutive nights takes much more effort and implies more than an effort to establish the market rate. The receipts expressly assert that the Applicant actually stayed there and incurred those costs.

39. The Applicant further argues that the receipts were not provided to the Organization for reimbursement because receipts for reimbursement are supposed to be submitted through Umoja, which he never did. This argument is not worthy of belief given that the receipts were submitted in connection with the Applicant's claim for reimbursement and that he was reimbursed USD18,519.12 without submitting any receipts through Umoja. The only receipts that the Organization had to justify paying this reimbursement to him were the false receipts to a hotel that he admits he never slept in.

40. In sum, the Organization has proven by overwhelming evidence, beyond all possible doubt, that the Applicant submitted false receipts to it for reimbursement and that, as a result, he was paid USD18,519.12.

41. The Applicant also argues that he does not owe the Organization USD17,213 as stated in the sanction letter. Instead, he says that he incurred substantially more costs due to being "stranded" in Entebbe, and he supports this claim with a spreadsheet of those expenses and additional receipts.

42. However, the Tribunal finds no credible evidence to support this argument. As noted above, it is undisputed that the Applicant submitted false receipts from the Imperial Golf View Hotel. Thus, any other receipts that he presents are suspect as well. *Falsus in uno, falsus in omnibus.*

43. In addition, the Applicant's testimony was contradicted by each and every one of his own witnesses. Quite simply, the Applicant is not a believable witness.

44. Contradicting the Imperial Golf View Hotel receipts, the Applicant testified that when he was directed to stay in Entebbe he already:

> had a small room on the outskirts of Entebbe where [he] used to pack his luggage and stayed there … It was not meant for [him] to stay there. It was an accommodation without power, without utilities … [He] struggled to bring in these facilities but it was not working … That was a packing room that [he] got. It was not a house to stay there. There were no utilities; there was no water, there was no electricity, there was no security, and so on and so forth. But [he] was compelled to stay there and that's when [he] brought in [his] security, [he] had to bring in power and so on, which were not reliable considering the remote nature of the area … It was not a living room, it was a packing stall.

45. This testimony was soon contradicted, or at the very least revealed to be misleading, when the Applicant testified that the "packing stall" was actually an apartment with "a bedroom, a small sitting area, and a toilet". The packing stall seemed to grow as the Applicant continued speaking and conceded that it also had a smaller packing room, but "no water, no power, nothing. It was just like that".

46. Even the expanded testimony was contradicted by the Applicant's own witnesses.

47. Mr. Jackson Nambadi testified that the Applicant hired him to provide security at the packing stall/apartment continuously from June 2019 until June 2021. This contradicted the Applicant's testimony that the there was no security and he had to bring security beginning in March 2020.

48. Mr. Nambadi also testified that the packing stall/apartment had "electricity outside and inside", two bedrooms (a guest room and a master bedroom), a kitchen area, bathroom, and sitting room. It was fully furnished.

49. Mr. Roberts Seaman Ambaki was the Applicant's next witness and testified that the Applicant's packing stall/apartment had electricity, two bedrooms, a kitchen, sitting room, bathroom, and balcony.

50. Mr. Ambaki also testified that he had gotten the Applicant internet service including a router and SIM card. He got it when the Applicant was not in Entebbe and the Applicant would send him the money for the internet service because the Applicant needed the data to work on his Ph.D. According to the Applicant, he started his Ph.D. in 2019 but COVID-19 brought this to a halt. Thus, the Applicant clearly had internet service at his packing stall/apartment for some time before being "stranded" in Entebbe by COVID.

51. Finally, the landlord, Mr. Felix Ogwang, testified that he rented an apartment to the Applicant before COVID-19. The apartment had two bedrooms, a sitting room, kitchen, bathroom and toilet, and another toilet outside. The apartment had electricity and water already installed although the Applicant was responsible for paying those utilities.

52. Mr. Ogwang said that he provided receipts to the Applicant for the rent payments made and he identified several receipts covering the period of May to October of 2016. He also testified that the apartment was rented to the Applicant continuously, without interruption, until the Applicant moved out in August after COVID -19 began.

53. The Applicant's lack of credibility could not be any clearer. Contrary to his testimony that he had no place to live when stranded by COVID in Entebbe, it is clear from his own witnesses that he already had a perfectly liveable two-bedroom apartment with electricity, water, internet access and security.

54. It is clear that all the expenses associated with the pre-existing apartment were costs for which he was already obligated before COVID-19 (in economic terms they were "sunk costs"). Thus, these expenses were not "actual expenses" related to the decision to have him stay in Entebbe for during the agreed reimbursement period of mid-March to mid-September 2020.

55. Indeed, many of the receipts that the Applicant submitted in this case either pre-date or post-date that period. The fact that the Organization gave him credit for those expenses was erroneous, although the error was in the Applicant's favour.

56. The spreadsheet that the Applicant submitted to support his claim seems to be a work of fiction and wishful thinking. For example, the entries for food expenses are simply based on USD40 per day, and these entries do not even account for the partial months of mid-March and mid-September. The only evidence that the Applicant actually paid USD40 per day for food is the fraudulent receipts from Imperial Golf View Hotel, which, as the Applicant testified, was the most expensive hotel in Entebbe. Moreover, Mr. Nambadi testified that he purchased groceries for the Applicant when he was living continuously in the apartment during COVID-19.

57. Therefore, the Tribunal finds that there is clear and convincing evidence that the Applicant owes the Organization at least USD17,213.

Whether the established facts qualify as misconduct

58. The Applicant does not specifically address the issue of whether his actions amount to misconduct. His position is that he did not commit any wrong and, therefore, no misconduct was committed. However, it is axiomatic that fraud and misrepresentation qualify as misconduct.

Whether the staff member's due process rights were guaranteed during the entire proceeding

59. The Applicant submits that OIOS violated his due process rights during the interview process. He notes that he was interviewed by a single investigator and argues that this violated para. 14 of the OIOS Investigative Procedure on Interviews. He also observes that the procedure also states that where only one investigator is available, approval to proceed must be sought in advance from the relevant Section Chief.

60. The Applicant opines that the interview process violated his rights and, therefore, the investigation report must be considered null and void. Consequently, in his view, the impugned decision based on the investigation report is unlawful.

61. In his closing submission, the Applicant expands on this to allege that the entire case was the result of a personal vendetta against him by the CMS which he alleges somehow morphed into a conspiracy involving the "countrymen" of the CMS.

62. Although the Applicant alleges that his interview was not conducted in compliance with ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) ("the AI"), the AI does not require that two investigators conduct the interview.

63. He also claims that the interview by a single investigator violated para. 14 of the OIOS Procedure on Interviews (document number 5a-PROC-112017). However, it has previously been ruled that manuals and procedural guidelines do not take precedence over ST/AI/2017/1 and do not provide additional vested rights to staff members. (See *Viteskic* 2022-UNAT-1220, para. 56).

64. Even if the procedure were binding, the Applicant's claim is based on an incomplete reading of the Procedure itself. Paragraph 14 of the Procedure says:

> All audio-recorded interviews with subjects should be conducted by two investigators (footnote omitted). Where only one investigator is available, approval to proceed must be sought in advance from the relevant Section Chief. Where an interview involves an extensive number of exhibits, a third person, identified as a document handler, may assist the investigators in managing exhibits during the interview (see paragraphs 22-23 – Exhibit Handling).

65. Thus, it is clear that interviews by a single investigator are permitted if "only one investigator is available" and prior approval is sought from the Section Chief. In his testimony, the investigator explained that the procedure was complied with because, in his view, he was the only available investigator (being the only person with knowledge of the investigation) and that he was himself the Section Chief.

66. The Applicant takes issue with this because "it is well established that OIOS has many investigators based in Vienna, Nairobi and Entebbe on the same time zone as the Applicant …who could have participated as an additional investigator … during their regular working hours". However, under that reasoning there would always be an "available" investigator somewhere during working hours. Surely, the procedure is not meant to be that broad, which is why there is an exception included.

67. In context, it is clear that the preference for two investigators is to ensure an accurate record of the interview. The sentence at issue has an accompanying footnote, footnote nine, which reads:

> [t[he investigator(s) must ensure that comprehensive notes are taken throughout the course of the audio recorded interview, in order to facilitate transcription and provide a safeguard should there be irreparable equipment failure.

68. It is a matter of administrative convenience to have a second investigator present to take notes while the prior investigator conducts the interview.[2] It is quite clear that that procedure is not meant to provide additional substantive rights to the subject of an investigation during their interview.

69. Additionally, and most importantly, the Applicant has not demonstrated how the absence of a second investigator prejudiced him in anyway (*Millan* 2023-UNAT-1330, paras. 85-86). The interview was audio recorded without any equipment failure so there was no need for a second investigator to be present to take notes. The Applicant also testified that he read the transcript of his interview and that the transcript was accurate. See also *Fultang* 2023-UNAT-1403, para. 111.

70. Nor has the Applicant proven that there was a personal vendetta or conspiracy against him and how that affected the decision in this case. As noted above, the essential facts are not in dispute: The Applicant was "reimbursed" for hotel expenses based on receipts that he concedes "were not genuine in the sense that [he] never slept in that hotel". The CMS "and his countrymen" did not invent those facts.

71. In sum, the Applicant's argument regarding his interview by a single investigator, and the broader argument claiming an unfair conspiracy, lack any factual or legal merit.

72. The Applicant also claims that the Organization's financial recovery of the wrongly issued reimbursement was made without proper authority. He admits that the USG/DMSPC has delegated authority to decide to recover monies under staff rule 10.1(b) and 10.2(b)(ii) in accordance with ST/SGB/2019/2 (Delegation of authority in the administration of Staff Regulations and Rules and the Financial Regulations and Rules). However, he argues that the USG/DMSPC lacks the authority to decide the ways in which such monies can be recovered.

[2] This is similar to the language in para. 14 that provides for "a third person, identified as a document handler" to assist in managing exhibits in cases with an extensive number of exhibits.

73. This argument was previously raised by the Applicant in prior litigation and rejected by this Tribunal. See *Fultang* Order No. 22 (NBI/2023), para. 34.

74. In addition, the Respondent points out that the sanction letter expressly provides for the financial recovery to be implemented "to the extent possible by deducting that amount from [the Applicant's] final entitlements or emoluments, in accordance with staff rule 3.18(c)(ii)". Thus, the Respondent argues that the deduction from final entitlements "was implemented by UNISFA in accordance with the head of entity's delegation of authority". See Respondent's reply, para. 30.

75. This is consistent with the general principles enunciated in ST/SGB/2019/2, which includes this language: "The exercise of a delegated authority is the taking of a decision within the authority delegated and is separate from the execution of that decision, which may require a specific administrative capacity". *Id*, sec. 2.3.

76. In his rejoinder, the Applicant does not take issue with the Respondent's assertion, and he has presented no evidence throughout the litigation that refutes or contradicts the factual claim that the implementation was done by UNISFA within the delegated authority of its Head of Entity. Thus, it is deemed admitted.

77. Therefore, the Tribunal rejects this argument and finds no violation of the Applicant's due process rights.

Whether the sanction was proportionate to the offence

78. The Applicant does not specifically submit any argument on the issue of proportionality. In any event, the Tribunal finds that the sanctions imposed on the Applicant for his misconduct were proportionate to the offenses he committed.

Request for referral for accountability

79. The Applicant has filed numerous requests for accountability. In this regard, the Tribunal recalls that the Appeals Tribunal recently pointed out to the Applicant that it has "consistently held that the exercise of the power of referral for accountability … must be exercised sparingly and only when the breach or conduct in question displays serious flaws". See *Fultang* 2023-UNAT-1403, para. 134.

80. The Applicant's first request in this case was included in the application, where he submits that MEU violated confidentiality in sharing the false receipts with the Administration and that the Administrative Law Division did the same by relying on the receipts in their allegations. As a result, the Applicant requests that the Tribunal refer the Chief of MEU and the Counsel for the Respondent to the Secretary-General for the enforcement of accountability under art. 10(8) of the Tribunal's Statute.

81. This same request has been rejected previously by both the Dispute Tribunal in *Fultang* UNDT/2022/110, and the Appeals Tribunal in *Fultang* 2023-UNAT-1403. Thus, it is barred by the doctrine of *res judicata*. See, e.g., *Shanks* 2010-UNAT-026bis; *Costa* 2010-UNAT-063.

82. Moreover, for the reasons set forth in paras. 27-31 above and in *Fultang* UNDT/2022/102, paras. 26-28, *Fultang* 2023-UNAT, para. 110, and *Fultang* UNDT/NBI/2023/010, the false receipts are not privileged or confidential. Even if they were, the Applicant waived any privilege or confidentiality when he submitted them to the Organization through his Counsel and agent in response to a request for documentation of his claimed expenses.

83. Therefore, there was no impropriety or misconduct when the Organization investigated and charged the Applicant with submitting those false receipts. See also, *Fultang* 2023-UNAT-1403, para. 131-134. So, the Applicant's first request for accountability is denied.

84. The Applicant later filed a motion to hold Counsel for the Respondent in contempt of Court and refer them for enforcement of accountability. This motion claims that the Respondent's submissions early in the litigation stated that the decision had been implemented, which the Applicant contends was a blatant attempt to mislead the Tribunal to argue non-receivability. The Applicant points out that the Final Pay Statement that the Respondent filed as annex R/6 of his 22 August 2023 submission, proved that the recovery was not implemented until 23 May 2023.

85. The Tribunal finds it ironic that the Applicant accuses Respondent's Counsel of filing false allegations when, as detailed above, the case arises from the Applicant's submission of false receipts and his subsequent arguments in the case are premised on a pile of further falsehoods.

86. The Applicant is correct that the Final Pay Statement in question establishes that the recovery was implemented on 23 May 2023. Yet, in the face of that document, the Applicant filed his 18 August 2023 motion for contempt and accountability stating that "[o]n 14 August 2023, the Applicant confirmed to his [current attorney] that the 23 November 2022 recovery decision STILL has not been implemented and that he is yet to receive his final and entitlements net of the claimed recovery amount of US$ 17,213.00" (emphasis in the original). That statement of the Applicant is clearly and knowingly false since the Applicant had received his final pay (with the deduction) over two months earlier. The Applicant's lack of "clean hands" alone justifies denial of his motion.

87. Furthermore, the record shows that the Respondent's submissions were not "blatantly misleading" as alleged. To be sure, at the beginning of this litigation, apparently there was confusion as to the implementation date of the recovery. Respondent's Counsel submitted that the recovery had been implemented relying on the entry in Umoja of the USD17,213.00 deduction, which was submitted in the Respondent's annexes. That turned out to be incorrect because the Organization took about six months to issue the final pay from which the deduction was made. The

Respondent later clarified this, submitting the Final Pay Statement referred to in para. 84 above. However, the Tribunal finds that the initial statements were not made with the intent to mislead. Thus, the Applicant's motion for contempt and accountability will be denied.

88. Next, on 26 February 2024, the Applicant filed a third request that Respondent's Counsel be referred for accountability, this time for "filing *inter partes* communications and the Applicant's unsigned proposed statement of facts with the Tribunal". Again, this request is meritless.

89. The filing about which the Applicant complains was the Respondent's submission regarding the requested Joint Statement of Agreed and Disputed Facts. In that submission, the Respondent's Counsel recounted their efforts to prepare a joint statement in which Applicant's current attorney did not cooperate, and they attached the correspondence demonstrating this. The Tribunal finds that the Respondent's submission was perfectly appropriate under the circumstances and certainly not in violation of the Code of Conduct. Thus, the third motion for accountability is denied.

90. And finally, in his closing submission, the Applicant alleged that the investigator interviewing him without a colleague present was "an abuse of authority for which he should have been held accountable by his supervisors". To the extent that this is yet another request for accountability, it is denied.

Conclusion

91. In light of the foregoing, the Tribunal DECIDES to deny:

a. The application in its entirety;

b. The Applicant's numerous requests for accountability; and

c. The Applicant's motion to hold Counsel for the Respondent in contempt of Court and refer them for enforcement of accountability.

(Signed)
Judge Sean Wallace
Dated this 24th day of April 2024

Entered in the Register on this 24th day of April 2024
(Signed)
René M. Vargas M., Officer-in-Charge, Nairobi