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that was previously uploaded”. The Respondent therefore also uploaded an explanatory note indicating the time periods covered by each of the clips.

4. On 16 November 2015, the Applicant filed a “Motion not to admit CCTV footage filed by Respondent and to remove it from CCMS”.

5. By Order No. 300 (NY/2015) dated 3 December 2015, the Tribunal directed that the case join the queue of pending cases awaiting assignment to a Judge. The Tribunal further ordered that the Applicant’s motion for exclusion of evidence would be decided by the Judge assigned to the case.

6. On 14 January 2016, the Applicant’s Counsel sent an email to the New York Registry, inquiring where this case was in the queue of pending case, and when it would be assigned to a Judge.

7. On 15 January 2016, the New York Registry replied to Counsel for the Applicant, stating that, at the time, there were 45 cases older than the present case pending before the Tribunal in New York. Counsel for the Applicant was also asked to confirm whether he had full access to the CCTV footage uploaded in CCMS.

8. On 27 January 2016, the Applicant’s Counsel informed the New York Registry by email that he was unable to “access the three video clips (marked Clip 1, Clip 2 and Clip 3) uploaded by Respondent in CCMS”.

9. In the period of January–February 2016, the CCMS support team provided assistance to the Applicant’s Counsel in accessing the CCTV footage filed in CCMS.

10. On 14 March 2016, Counsel for the Applicant sent an email to the New York Registry confirming that he “was able to properly extract and view the CCTV footage”.

11. On 9 May 2016, the present case was assigned to the undersigned Judge.
12. By Order No. 111 (NY/2016) dated 11 May 2016, the Tribunal ordered the parties to file, by 14 June 2016, a joint submission setting out: lists of agreed legal issues and facts; a joint proposal for dates for a hearing on the merits; a list of witnesses; brief statements of evidence each party intends to elicit from their proposed witnesses; and an agreed bundle of documents. The parties were also ordered to attend a Case Management Discussion (“CMD”) on 16 June 2016.
13. By Order No. 135 (NY/2016) dated 7 June 2016, the Tribunal informed the parties that, due to unforeseen circumstances, it would be unable to hold the CMD on 16 June 2016, as scheduled by Order No. 111 (NY/2016). The Tribunal therefore vacated the date of 16 June 2016 for a CMD, and ordered the parties to attend a CMD on 30 June 2016.
14. On 13 June 2016, the parties filed a joint request for extension of time, stating that they “have engaged in efforts to agree on a joint submission [as per Order No. 111 (NY/2016)] but do not anticipate that they will have finalized the submission by 14 June 2016”. The parties requested an extension of time until 28 June 2016 to file the jointly-signed submission.
15. By Order No. 139 (NY/2016) dated 13 June 2016, the Tribunal granted, in part, the joint request for an extension of time, and directed that the joint submission under Order No. 111 (NY/2016) be filed by 24 June 2016.
16. On 24 June 2016, the parties filed the joint submission in response to Orders No. 111 and 139 (NY/2016), providing a list of agreed facts and legal issues, brief statements of evidence for proposed witnesses, and an agreed bundle of documents to be relied upon at the hearing.
17. Pursuant to Order No. 135 (NY/2016), the CMD took place as scheduled at 11 a.m. on 30 June 2016. It was attended in person by Counsel for

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20. At the hearing, Counsel for the Respondent produced and reviewed portions of the CCTV footage and put questions to the Applicant with reference to the footage.

21. At the conclusion of the hearing, both Counsel made oral closing submissions.

Agreed facts

22. On 24 June 2016, the parties filed a joint submission with the following agreed facts. The agreed facts are generally consistent with the written record and the oral evidence in this case. The facts, as agreed by the parties, are as follows:

III. AGREED FACTS

... On 5 September 1989, the Applicant commenced employment with the Organization. At the time of his dismissal, he held a permanent appointment and performed the function of both winehw5(lplaTJ0o.8a c m)t9, s can

cabinet in the Holding Area. The yellow property tag matching the intern's was affixed to the exterior of the bag. However, the bag contained a bottle of beer instead of a bottle of wine. The wine was never recovered.

... The same day, the Special Investigations Unit (SIU) of the Department of Safety and Security opened an investigation into the incident.

... On 26 December 2014, Mr. Lenworth James, Senior Security Officer, SIU, obtained CCTV footage of the Holding Area on the day in question. Prior to interviewing the Applicant, Mr. James reviewed the CCTV footage. Mr. James also prepared a memorandum, dated 8 January [2015], to Mr. Michael Browne, then Chief ad interim, Security and Safety Service, describing what he observed in the CCTV footage. The 8 January [2015] memorandum includes Mr. James' observation that the Applicant removed a bottle of wine from the aqua coloured bag and replaced it with a bottle of beer.

... In the morning of 5 January 2015, Mr. James contacted the Applicant to request a statement from him with respect to his relief duty on 24 December 2014.

... At 11:44 a.m. on 5 January 2015, the Applicant responded to Mr. James by email, stating as follows:

Dear SS/O James,

This is to confirm that at approximately 1200 hours to 1300 hours, on Wednesday 24th December 2014, the writer was dispatch to the North Screening Building ... to relive LT, Johnson, L. The writer conduct[ed] an inspection of the Post and all was in order, due to a doctor apt was scheduled in that day the writer left the post at 1300 hours. The writer arrived at the Post at 1200 h and walk[ed] the[re] and outside the post and back to the post ... when I get back a call came from [Lieutenant] Johnson for me to ta[ke] of[f] to my [appointment]. Everything it se[emed] to be normal and operational at this time, it was very qui[e]te and nothing was observed by the writer within the Post.”

... On 8 January 2015, Mr. James and Mr. Eric Bramwell, Sergeant, SIU, interviewed the Applicant. The interview may be summarized as follows:

(a) The Applicant was shown CCTV footage of the Holding Area, covering the time period 11:49 a.m. to 12:50 p.m. This was not the full length of

(e) When asked whether he noticed a yellow receipt (property tag) attached to the bag, he replied, “No”.

(f) When asked whether he removed the yellow receipt (property tag) from the bag, he replied, “I don’t recall that”.

(g) When asked whether he opened the aqua-coloured bag, he replied, “I could not recall opening it. It was not locked to be open”.

(h) When asked whether he removed anything from the aqua-coloured bag, he replied, “I removed the bag from the counter to the upper level of the cabinet”.

(i) When asked whether he recognized the bottle of red wine inside the bag, he replied, “There was a bottle. I don’t recognize the colour”.

(j) When asked whether he removed the bottle of red wine from the aqua-coloured bag, he replied, “I said I removed the bag from the counter to the upper cabinet”.

(k) When asked whether he removed anything from the overhead cabinet, he replied, “I believe the same bottle. This bottle was being moved back and forth I think”.

(l) When asked whether he placed anything inside the aqua-coloured bag”, he replied, “No, I placed the bottle in the aqua coloured bag to the overhead cabinet”.

(m) When asked whether he removed anything from the aqua-coloured bag and placed it in a winter coat, he replied, “No”.

(n) When asked whether he removed a coat from the back of a chair and placed it on the back of the chair that he was sitting on, he replied, “No, I only move[d] my coat at the end of my relief hour to leave the tent”.

(o) When asked whether he wished to add anything further, he replied, “1 – I never received any item from the OIC [Officer-in-Charge] of the Post [i.e., Mr. Johnson] that was for safekeeping. 2 – When my one hour relief finished the OIC [i.e., of 7-cois plph15. it. .16 you’.]TJ14W nved item

December where the incident happened there is a table and four chairs where officers hang out during their break and next to it there is a coat rack where they hang their coat and in the back there is a bathroom where the officers go back and forth all eight hours not just the forty five minutes that I was there. Not to mention there was a cake for a birthday on the counter on that day. It is shown clearly in the same footage where officer Van de Reep was sitting and having a piece of it. Officer Lim also came and she took a piece of the same cake.”

(p) The Applicant signed a written summary of the interview.

... On 10 April 2015, the SIU finalized its investigation report.

... By memorandum dated 17 April 2015, the Under-Secretary-General for Safety and Security referred the investigation report to the Office of Human Resources Management (OHRM) for appropriate action (the “referral memorandum”).

... By memorandum dated 5 May 2015, OHRM requested the Applicant to respond to formal allegations of misconduct under ST/AI/371 (Revised disciplinary measures and procedures), as amended (the “allegations memorandum”). The specific allegation against the Applicant was that, “on 24 December 2014, [he] engaged in misconduct by taking, without authorization, a bottle of wine belonging to a third party”. The Applicant was informed that,

a.m. to 11:57 a.m.; 12:17 p.m. to 12:19 p.m.; and 12:49 p.m. to 12:51 p.m. on 24 December 2014. The Applicant was informed that the supporting evidence included the plastic bag itself, which he could view by making arrangements with OHRM.

... On 8 May 2015, OSLA requested, on the Applicant's behalf, an extension of time until 10 June 2015 to respond to the allegations of misconduct. The request was granted.

... On 20 May 2015, the Applicant submitted comments on the allegations of misconduct. Among other things, the Applicant stated that:

(a) He had "never taken, stolen, concealed, opened, consumed or otherwise taken control and carried with [him] any wine bottle on 24/12/2014 in or out of the UN premises" and, more specifically, had not placed the bottle "in the jacket on the chair". He was "totally innocent of the charges laid against [him] concerning this wine bottle".

(b) His answers to the questions put to him during the interviews on 20 March and 8 April 2015 "were based on very limited portions of [the] CCTV footage [of] the Holding Area, none of which indicated that [he] was holding the bottle and hiding it in the jacket". Moreover, he had not been provided with "all the CCTV footage from all other cameras filming different angles in the Holding Area, which would clearly have confirmed that [he] never put in the jacket any wine bottle".

(c) The investigation targeted him and was biased against him. In support of this assertion, the Applicant stated that investigators failed to interview "12 other persons who had entered and left the Holding Area on 24/12/2014".

(d) Contrary to the allegations memorandum, it was "by no means apparent anywhere from the video footage shown to [him]" (emphasis in original) that he had engaged in the alleged conduct. Rather, the facts set out in the allegations memorandum were "personal and speculative opinions".

... By e-mail dated 21 May 2015, OHRM informed the Applicant that, on the basis of his comments, it had requested DSS to: (a) confirm whether there were other CCTV cameras installed in the North Screening Building that would have captured different angles of the Holding Area; and (b) if so, indicate whether the footage from any such cameras was reviewed in the context of

the investigation. OHRM informed the Applicant that, in response, DSS had stated as follows:

Sgt. Ibrahim's assertion is incorrect. Please refer to the below photos of the area in question. While there are indeed multiple cameras installed in the Screening Building, at the time of the incident, only one was actually focused on the Holding Area (location of interest). In February of this year (2015) long after the incident had occurred, an additional camera was installed to monitor a Safe that is in the same Holding Area. The cameras in the Screening Building are dedicated to capture specific activities, such as X-ray processing and bag/package checks, to facilitate the capture of full face images of all persons entering the premises, and of course the Holding Area. The camera dedicated to the Holding Area, was the only one reviewed, because it held the sole recording of the transactions and sequence of events that occurred in the Holding Area.

... OHRM also sent the Applicant photographs provided by DSS to support its response. OHRM requested the Applicant to submit any further comments on the matter by 29 May 2015.

... By e-mail dated 25 May 2015, the Applicant provided further comments. His comments may be summarized as follows:

(a) The Applicant reiterated his denial of the allegations against him.

(b) There were some 22 CCTV cameras installed in the North Screening Building, of which two were located at the end of the building closest to the Holding Area and were specifically focused on the Holding Area. The Applicant stated that investigators had only reviewed the footage from one of those two cameras. He stated that the second camera "would have captured different angles of the Holding Area". To support his assertion, the Applicant provided a photograph of the Holding Area, showing the location of the camera that he alleged would have captured different angles of the Holding Area.

(c) The Applicant had served DSS for more than 25 years, [both as] a Sergeant and Team Leader and, as recently as May 2015, had received a performance evaluation of "frequently

exceeding performance expectations” for the 2014–2015 performance cycle.

... By e-mail dated 27 May 2015, OHRM informed the Applicant that, on the basis of his comments, it had requested DSS to provide additional information regarding whether the camera depicted in the photograph that the Applicant had provided on 25 May 2015 was installed at the time of the alleged incident and, if so, which area(s) of the North Screening Building it would have recorded. OHRM informed the Applicant that, in its response, DSS had stated as follows:

One of the security benefits of using the type of ‘domed camera’ installation in areas such as our Screening Buildings is that individuals, including those who may be conducting hostile surveillance on our facilities, cannot tell where these cameras are focused. The orientation of these cameras is not information that is readily available. Sgt. Ibrahim would have had to get this information from someone in the Security Operations Center, who in turn would have to be authorized to provide any such information, even to another member of the Service.

Sgt. Ibrahim, obviously seeing the camera hanging in the vicinity, and unable to determine what it is pointing at, has made an erroneous assumption. This is the exact deterrent effect that is expected.

This particular camera is a fixed camera; meaning it does not pan, tilt, or zoom (PTZ). Or, more clearly stated, it cannot be moved remotely from the Security Operations Center to focus on anything other than its fixed area of reference.

Please refer to the below photos, which were taken by Sgt. Bramwell, OIC Special Investigations Unit. Photo #1, shows the camera to which Sgt. Ibrahim refers, and it is indeed in the vicinity of the ‘Holding Area.’ However, please refer to

meant to solely capture access to a restroom area in the Screening Building that is used as a weapons clearing area for Law Enforcement officers who are not allowed to take firearms on to the premises. A firearm storage box is also kept in the room, hence the abundance of caution as to who goes in and out of that room.

This particular camera was installed and went online prior to the start of the last General Debate of the General Assembly (69th Session). As stated, it cannot be adjusted without special permission from the Chief of Service, and there is no report or evidence to suggest that its focus was readjusted since it went online.

... OHRM also sent the Applicant photographs provided by DSS to support its response. OHRM requested the Applicant to submit any further comments on the matter by 4 June 2015.

... By e-mails dated 29 May 2015 and 1 June 2015, the Applicant provided further comments. His comments may be

that the allegations were established by clear and convincing evidence, and had decided to dismiss him from service in accordance with Staff Rule 10.2(a)(ix). The letter was delivered to

(b) Your actions are aggravated by the fact that, as a Security Sergeant, you held a position of heightened trust and authority. The responsibility of security officers to act with the utmost integrity, especially as concerns the protection of life and property, particularly when such property has been entrusted to the Security and Safety Service for safekeeping, cannot be overstated. For a staff member with a supervisory role, such as yours, such expectations can only be heightened. Your actions were a direct abuse of the trust placed in you. In this respect, it bears noting that you had access to the Holding Area by virtue of your functions as a DSS staff member.

(c) While it was noted that you have served the Organization satisfactorily for more than 25 years, taking into account the seriousness of your conduct and the aggravating factors noted above, the Under-Secretary-General for Management did not consider that this period of service served to mitigate the otherwise applicable sanction.

On the basis of your conduct, and having taken into account the principles of consistency and proportionality, as well as aggravating and mitigating considerations, the Under-Secretary-General for Management has decided to impose on you the disciplinary measure of dismissal, in accordance with Staff Rule 10.2(a)(ix). Your dismissal will take effect on the date of your receipt of this letter.

Applicant's submissions

24. The Applicant's submissions may be summarized as follows:

Whether the facts were established and amounted to misconduct

a. The facts in question have not been established. The Respondent failed to establish by clear and convincing evidence that the Applicant engaged in misconduct by taking the bottle of wine of a third party without authorization. The following is of relevance:

- i. Firstly, the inference applied by the Respondent is based upon the premise that Applicant "turned his back to

the CCTV camera”. There are several cameras in the North Screening Building. The Respondent could have produced the footage of any of these cameras to support its allegations, if such allegations were true. Instead, the Respondent purposefully relies and speculates on an inconclusive excerpt of the CCTV footage. The Respondent did not establish the alleged facts that the Applicant removed the bottle of wine from the aqua-colored bag by clear and convincing evidence;

- ii. Secondly, the Respondent infers that the Applicant removed the bottle of wine from the aqua-colored bag on the assumption that such bag could not contain both the bottle of wine and a bottle of beer and that Applicant could not have “wrapped the top of the aqua-colored bag downward in the manner in which (he) did”. These were mere speculations from Respondent;
- iii. Thirdly, the record shows that the Respondent failed to establish by clear and convincing evidence that Applicant allegedly carried the bottle of wine out of the Holding Area, which is a critical element of Respondent’s allegations of theft. In fact, the Respondent’s allegations varied from alleging that the Applicant concealed the bottle of wine “in a jacket he had just placed next to him” to alleging that the Applicant “removed the wine bottle from the bag and placed it inside the jacket that was hanging on the chair opposite the aqua-coloured bag or in something else next to the jacket”. Such variation clearly shows that the Respondent speculated about the Applicant’s liability

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evidence that at the time Applicant placed the bag in the overhead compartment, such bag did not contain the bottle of wine. Therefore, since the facts are not established, it is requested that the Tribunal rescind Respondent's administrative decision;

Proportionality

- b. The Respondent's decision is manifestly disproportionate to

Applicant is manifestly disproportionate. Such decision constitutes, in fact, an abuse of discretionary authority;

Procedure

c. The procedure followed was irregular. Given the information available to the investigators already by the time of the first interview on

that the Applicant acted deliberately and with full knowledge of his actions. The Applicant claims that the CCTV footage does not show him removing the bottle of wine from the plastic bag. Indeed, at the very moment that the Applicant removed the bottle of wine from the bag (11:54 a.m.), the CCTV camera's view was obstructed by the Applicant's body. However, the Respondent submits that it can be easily inferred, from the CCTV footage, that the Applicant removed the bottle of wine from the bag;

b. By taking a bottle of wine belonging to a third party, the Applicant failed to "uphold the highest standards of ... integrity", in violation of staff regulation 1.2(b). Furthermore, the Applicant failed to act in accordance with the Security and Safety Service's Standard Operating Procedures;

Proportionality

c. The disciplinary measure of dismissal was proportionate to the Applicant's actions. Theft constitutes a serious lapse of integrity. A single instance of such conduct generally results in the irreparable breach of the trust placed in a staff member by the Secretary-General, thereby severing the possibility of a continued employment relationship. Indeed, cases of theft and similar conduct consistently attract sanctions at the strictest end of the spectrum. The Applicant's actions were aggravated by the fact that, as a Security Sergeant, he held a position of heightened trust and authority. His actions were a direct abuse of the trust placed in him;

d. The Under-Secretary-General for Management noted that the Applicant had served the Organization satisfactorily for more than 25 years. However, taking into account the seriousness of his conduct it

was not considered that this period of service served to mitigate the otherwise applicable sanction. Similarly, the fact that the Applicant may have received positive performance evaluations does not detract from the conclusive evidence that he engaged in misconduct, and does not constitute a mitigating factor. An excellent service record does not entitle a staff member to commit serious misconduct;

Procedure

e. The Applicant's procedural fairness rights were respected throughout the investigation and disciplinary process. The Applicant was thrice interviewed by investigators in connection with the investigation into his suspected conduct. During his interviews, he was shown relevant parts of the CCTV footage of the incident and was specifically invited to comment on his actions as shown therein. In the allegations memorandum, the Applicant was informed of the allegations against him. He was provided with copies of all relevant documentary evidence, as well as with copies of the full CCTV footage of the event. The Applicant was informed of his right to seek the assistance of counsel and was given the opportunity to comment on the allegations against him. The Applicant was granted an extension of time to submit his comments on the allegations. The Applicant submitted comments on the allegations. His comments were fully considered and, on their basis, additional input was twice sought from DSS on two occasions. On each occasion, the additional information obtained from DSS was shared with the Applicant and he was afforded further time to comment on it. The Applicant's further comments were considered. The Applicant was fully informed of the reasons for his dismissal. Further, although during the interviews the Applicant was shown the relevant portions of the interviews, he suffered no prejudice as he was provided with the full length of the CCTV footage at the time he

was sent the memorandum of 5 May 2015, containing the allegations of misconduct.

Applicable law

26. Staff rule 10.2(a) states:

Rule 10.2

Disciplinary measures

(a) Disciplinary measures may take one or more of the following forms only:

- (i) Written censure;
- (ii) Loss of one or more steps in grade;
- (iii) Deferment, for a specified period, of eligibility for salary increment;
- (iv) Suspension without pay for a specified period;
- (v) Fine;
- (vi) Deferment, for a specified period, of eligibility for consideration for promotion;
- (vii) Demotion with deferment, for a specified period, of eligibility for consideration for promotion;
- (viii) Separation from service, with notice or compensation in lieu of notice, notwithstanding staff rule 9.7, and with or without termination indemnity pursuant to paragraph (c) of annex III to the Staff Regulations;
- (ix) Dismissal.

Consideration

Scope of judicial review

27. When considering appeals against the imposition of disciplinary measures for misconduct, the Tribunal must examine whether the procedure followed is regular, whether the facts in question have been established, whether these facts

constitute misconduct, and whether the sanction imposed is proportionate to the misconduct committed (see *Mahdi* 2010-UNAT-018; *Sanwidi* 2010-UNAT-084; *Masri* 2010-UNAT-098). The Appeals Tribunal has reiterated in a number of judgments that due deference is to be afforded to the decision of the decision-maker and that it is not the role of the Dispute Tribunal to substitute a decision that it may have otherwise made, had it been in the shoes of the decision-maker (*Doleh* 2010-UNAT-025; *Said* 2015-UNAT-500; *Hepworth* 2015-UNAT-503; *Portillo Maya* 2015-UNAT-523; *Ogorodnikov* 2015-UNAT-549).

Whether the facts were established

28. As the Appeals Tribunal stated at para. 17 of *Liyanarachchige* 2010-UNAT-087,

In a system of administration of justice governed by law, the presumption of innocence should be respected. Consequently, the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred.

29. When termination is a possible outcome, there should be sufficient proof, and misconduct must be established by clear and convincing evidence, which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable (*Molari* 2011-UNAT-164).

Officer Lim's evidence

30. Security Officer Lim testified that, on 24 December 2014, she took over the post at 9:30 a.m. Officer Lim confirmed that, prior to the wine bottle being left in the storage area, she had seen a beer bottle in the same area, which had remained uncollected for a long time. On that Christmas Eve, she was delegated the task of logging prohibited items into a log book. These items would generally

wine, he reached and opened the overhead compartment above the desk. He found that the top shelf contained a bottle of beer. The Applicant testified that he then put the bottle of beer in the same plastic bag as the bottle of wine, and put the plastic bag containing both the beer bottle and the wine bottle in the overhead compartment. The Applicant testified that he left the post at approximately 12:50 p.m., following an instruction that he should take off as Lt. Johnson had telephoned another officer to inform that he had been delayed and that the Applicant should leave. Therefore, no proper hand-over took place at the end of the relief either. He testified that, after he left the post, he went directly to the armory to surrender his gun, and that therefore he could not have concealed a bottle of wine.

33. The Applicant testified that the first time he had learned about the missing wine bottle was on 5 January 2015. The Applicant stated that he had no explanation for the missing bottle of wine, but his view was that the investigators failed to explore and follow-up on other leads. In particular, no other footage of the surrounding areas was examined to look at the movements of other people in the area, and at least 12 witnesses who entered and left the holding area at the material time were not interviewed. He said no action was taken regarding the improper hand-over prior to and following his relief of Lt. Johnson's shift, nor regarding the birthday party.

34. When asked why he did not mention placing the beer bottle in the bag during his first interview, the Applicant explained that such was his recollection at the time, as the interviews took place over the course of several months after the wine had disappeared. He answered the questions to the best of his knowledge.

Conclusions

35. The Applicant was charged with taking, “without authorization, a bottle of wine belonging to a third party”. The letter of 24 July 2015 also specifically referred to “theft”, noting that “[t]heft constitutes a serious lapse of integrity”. *Black’s Law Dictionary* (West Publishing Co., 1990, 6th ed.) defines “theft” as

[a] popular name for larceny. The act of stealing. The taking of property without the owner’s consent. *People v. Sims*, 29 Ill. App. 3d 815, 331 N.E.2d 178, 179. The fraudulent taking of personal property belonging to another, from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking.

36. The Applicant, however, says that he has never taken, stolen, concealed, opened, consumed or carried the wine bottle in and out of the United Nations premises.

37. Having reviewed the circumstances of this case and the parties’ submissions, the Tribunal finds that there is no direct evidence that the Applicant “took” or stole the wine bottle, let alone appropriated it for his own use or benefit. The case against the Applicant was based on the CCTV footage and inferences drawn by the investigators. However, on the Respondent’s own submissions, the video footage is inconclusive on the alleged “taking”³⁶.

consumed. There is no chain of evidence from the moment the Applicant left the holding area until the aqua colored bag was found by Security Officer Van de Reep at 3.30 p.m. It is possible that it went missing sometime between 1 p.m. and 3:45 p.m., after the Applicant's departure. It is unclear who had access to the area in that time period. The Applicant's inability to explain what happened to the wine bottle should not be viewed as a factor pointing to his guilt; if he did not steal the bottle, he would naturally not know what had happened to it.

39. In the absence of direct evidence, the Tribunal finds that other possibilities of what may have happened with the bottle were not fully explored by the investigators. Even if the Tribunal were to accept that the Applicant moved the wine bottle outside the plastic bag—which the Applicant denies—it is unclear whether he indeed secreted it anywhere, or carried it outside the security holding area with him, let alone stole it or even intended to steal it. In fact, even the Respondent's witnesses acknowledged that no intent was proven on the Applicant's part to steal the wine bottle (testimony of Officer James).

40. In conclusion, no evidence has been offered to the Tribunal that the Applicant took and carried the bottle outside the area and, moreover, stole or acted with the intent to steal it. These claims remain a conjecture, and do not take into account or explore other explanations of what may have happened. The Tribunal finds that the facts in this case have not been established to the required standard, that is, the alleged misconduct has not been established by clear and convincing evidence. All factors considered, the Tribunal does not find that the Administration has established by clear and convincing evidence that the Applicant "took" the wine bottle, let alone stole it or acted with the intent to steal it by converting it to his own use or benefit.

Whether proper procedures were followed

45. The Applicant was interviewed three times—on 8 January, 20 March, and 9 April 2015.

Applicant's evidence

46. The Applicant testified that, in 2007, he was the subject of a disciplinary process and suspended for 18 months on full pay. The allegations in that case were also based on video evidence and were proved unsubstantiated. He received a formal apology from the Deputy Secretary-General. He stated that some of the individuals involved in that investigation are the very same persons who were involved in the investigation of the incident of 24 December 2014.

47. The Applicant testified that, when he was asked to review and sign copies of his interview records, he did not think the matter was serious, particularly at the early stages of the investigation. He stated that he did not read them carefully and did not take the matter seriously at that time, as it seemed like a mere formality. He testified that, during the first interview, all persons present were laughing at the absurdity of the situation, seeing it as a mere formality since it concerned a bottle of wine valued at USD19, and the Applicant “didn’t even bother to read what [he] saw”.

48. The Applicant’s evidence is that he felt that the matter was serious enough to inquire, before the second interview, whether he should have a lawyer present. The Applicant explained that he realized at that time that something was amiss but he answered questions and reviewed and signed the records of interviews as failure to do so and to assist the designated investigator would be deemed uncooperative and result in measures as stated on the statement form. He said he made the statements to deny walking away with a bottle of wine.

Sgt. Bramwell's evidence

49. Sgt. Bramwell testified that, at the time of the incident, he was on annual leave. He returned to the office on Monday, 5 January 2015, and reviewed the CCTV footage on the same day. Sgt. Bramwell testified that, having reviewed the footage, he formed the view that the Applicant had moved the wine bottle.

50. Sgt. Bramwell testified that he took notes on his laptop during the interviews, and that he gave them to the Applicant for his review. Sgt. Bramwell testified that he had informed the Applicant that he could make any changes he wanted to the notes. The Applicant reviewed the notes for each of the three interviews and signed off on them, confirming their accuracy. Sgt. Bramwell explained that he did not show the CCTV footage to the Applicant during the first interview because the rules do not require that this be done. However, he showed the relevant portions of the CCTV footage during the second interview. Sgt. Bramwell explained that, since the Applicant did not mention the wine bottle during the first interview, Sgt. Bramwell considered it necessary to show him the CCTV footage. However, the Tribunal notes that the first statement requested from the Applicant was very general “with respect to his relief duty on 24 December 2014”. It was only at the second interview that the Applicant was informed again in very general terms that he would be asked about “a missing item”. Sgt. Bramwell explained that he conducted the third interview to give the Applicant the opportunity to explain what happened to the wine bottle. During the third interview, he was shown the same footage.

51. Sgt. Bramwell explained that, although in his view the CCTV footage showed the Applicant moving the wine bottle, he considered it necessary to interview the Applicant three times because he did not know what the Applicant might have done with the bottle, and he wanted to hear what the Applicant had to say in this regard. He explained that he considered this to be in the Applicant's interests, and he wanted to give him a fair opportunity to provide his explanations.

the Applicant provided statements that appeared in contradiction to the CCTV footage and that raised doubts regarding his credibility.

Inspector Lyttle's evidence

55. Inspector Lyttle's evidence was consistent with the evidence of Officer James and Sgt. Bramwell. He testified that he was made aware of the matter by Sgt. Bramwell, and reviewed the CCTV footage shortly thereafter. He stated that it was clear to him what had happened fr

income and medical insurance, which he also used to provide insurance coverage for members of his family. He has to some extent rehabilitated himself economically but the Applicant testified that, although he has sporadic employment, it, however, does not provide for a source of income comparable to what he had with the United Nations.

61. The Applicant's earnings are irregular and not comparable to his earnings with the Organization. The point of mitigation was not pressed by the Respondent and, on the evidence before it, the Tribunal finds that Applicant's earnings during the relevant time period were so minimal that they can be disregarded for the purposes of compensation.

62. The Tribunal notes that, during the investigation and the disciplinary process, the Applicant continued to receive salary.

63. In view of the above, the Tribunal sets the amount of compensation to be paid as an alternative to the rescission of the contested decision and reinstatement at two years' net base salary.

Non-pecuniary loss

64. The Appeals Tribunal has consistently held that, as a general principle of compensation, moral damages may not be awarded without specific evidence supporting the claim for such relief (*Kozlov and Romadanov* 2012-UNAT-228; *Hasan* 2015-UNAT-541).

65. In his application, the Applicant sought compensation for moral injury caused by the contested decision. He testified that he suffered a mini-stroke and had to go to the emergency room ("ER") on two occasions shortly after his dismissal. He was dismissed on 27 July 2015 and, on 4 August 2015, had to be taken to a hospital. He was sent home with medicine and one day later he had

a mini-stroke and went back to hospital and stayed there in ER for two days. His testimony was that this was a direct consequence of his dismissal. The Applicant filed medical records to the effect that he experienced health-related issues as a result of his dismissal. He was also particularly stressed as one family member has had medical complications since birth and the Applicant was unable to pay for his medical treatment for some months.

66. The Applicant's credentials and impressive professional history in the security industry is a matter of unchallenged record. There can be no solace 9.035 -1.

Orders

70. The decision to dismiss the Applicant is rescinded and the Applicant shall be reinstated in service retroactively from the date of dismissal. Alternatively, the Respondent may elect to pay the Applicant compensation in the amount of two years' net base salary.

71. The Applicant is awarded the sum of USD30,000 as compensation for emotional distress.

72. The aforementioned amounts shall bear interest at the U.S. Prime Rate with effect from the date this Judgment becomes executable until payment of said