
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/040

Judgment No.: UNDT/2017/057

Date: 14 July 2017

Original: English

Before: Judge

Introduction

1. The Applicant filed this Application on 2 March 2015 challenging the administrative decision of the Organization to impose on him the disciplinary sanction of separation from service.

2. He joined the United Nations Mission in Liberia (UNMIL) in October 2004. Before his separation, the Applicant held a fixed-term contract as an Engineering Technician at the G-3 level.

3. On 5 December 2015, the Applicant was informed by a memorandum that the disciplinary measure of separation from service, with compensation *in lieu* of notice and without termination indemnity, was being imposed on him.

Facts

4. On 30 January 2012, two store-men at UNMIL discovered that the padlocks to several containers used to store new tyres for United Nations vehicles at the heavy-duty vehicle park in the UNMIL Star Base compound in Monrovia, Liberia, would not open.

5. The two store-men, Jean Colins and Emmanuel Sarpong, first went to the container with the original keys to the padlocks in their possession but on inserting them into the said padlocks found that they would not open.

6. The padlocks to the four affected containers were thereafter cut open with a bolt cutter. It was then discovered that 382 out of 636 tyres stored in the containers were missing.

7. A joint investigation into

49. The records show that neither of the two staff members mentioned by the Applicant as having been offered leniency by the Respondent in exchange for inculpatory evidence against their colleagues had offered evidence implicating the Applicant.

Oral Hearing

50. An oral hearing of this matter took place on 16 and 17 August 2016. In his sworn testimony and under cross-examination, the Applicant denied any participation in the stealing and sale of tyres belonging to UNMIL. He told the Tribunal that he was wrongly accused, and that the hand-written statement of 18 February 2013 which bore

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66. Evidence placed before this Tribunal unequivocally shows that AW was the central figure in the case of the theft and sale of about 382 different sizes and brands of tyres valued at USD104,178.86. It is not contested that the said tyres were taken from four storage containers in the UNMIL Star Base compound. AW was the mastermind and coordinator of the thefts and recruited other staff members who participated in the scheme while he also found buyers for the stolen tyres.

67. On 21 February 2013, the said AW who had previously denied any knowledge or participation in the stealing of the missing tyres in March 2012 when the theft was first discovered, made a confessional statement to SIU investigators. In that later statement, he confessed to stealing and selling the tyres and named the Applicant as one of his accomplices.

68. Specifically, AW recorded in his statement that on one occasion, he together with the Applicant stole some thirteen tyres from a container at Star Base which they covered with dirt in the UNMIL dirt truck. He said they then drove to the tyre dealer FK and sold the tyres to him and shared the money with TS and others who were involved with the stealing.

69. Also before the Tribunal is the statement of BS, another staff member, who at the times material to this application was a heavy-duty vehicle driver attached to the Transport/Dispatch Unit at UNMIL. His statement to investigators was made on 22 February 2013. He stated therein that on one occasion during the period that the thefts took place; he was instructed by his supervisor to move a container from the drive way to allow the dump truck to collect dirt from the newly renovated cafeteria site. He said he complied with the instruction and left.

70. The statement continued that soon afterwards, BS was on his way to eat at the cafeteria at about midday when he observed the Applicant and two others namely TS and ES standing beside a 40ft container that was open on one side. When he left the

said cafeteria to return to his office, he saw some brand new tyres inside the dump truck

84. The Tribunal finds it difficult to believe the testimony of the Applicant that it must have been AW who had used his mobile phone to call the tyre dealer FK on seven separate occasions when the theft and sale of tyres were on-going. Not only is this

UNMIL, to use as they pleased during the period of the thefts. It is significant that the heavy phone traffic between the implicated staff members including the Applicant ceased after the arrest of FK the tyre dealer in March 2012.

89. Having considered the Applicant's denials and the evidence before the Tribunal linking the Applicant to active participation in the theft and sale of UNMIL tyres, the Tribunal makes no hesitation in concluding that the required threshold of clear and convincing evidence was indeed reached by the Respondent. The Tribunal finds and holds that the Respondent acted lawfully in finding that a case of misconduct was established against the Applicant and in taking disciplinary action against him.

Were any of the Applicant's due process rights violated, at any time, during the investigations and disciplinary process?

90. It was submitted on behalf of the Applicant that several of his due process rights were violated. These violations were said to include:

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the said records came from proper custody on the orders of a properly constituted court and did not constitute a breach of due process.

94. Also, the tendering of a hand-written and signed statement said to have been made to investigators by the Applicant is evidence which the Applicant may rebut and does not constitute a breach of due process. Similarly, non-identification of the Applicant by the tyre dealer who gave the Applicant's name and phone number and claimed that they were acquainted, in a physical or photo line-up might have implications for the weight to be attached to the tyre dealer's statements concerning the Applicant's participation in the scheme but is not a due process violation.

95. A person against whom allegations and charges of misconduct are brought has a right to have a decision made within a reasonable time. In this case, the theft of

review of the entire case against the Applicant and communicating to him of the outcome took a little over three months. This time frame is not unreasonable and does not constitute a breach of due process.

