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Introduction

1. The Applicant is a former staff member of the United Nations Truce Supervision Organization (UNTSO) having joined the Organization on 1 June 2000. Prior to his separation from service on 19 March 2013 he was serving as a Movement Control Assistant in the Movement and Control Unit (“MOVCON”) on a Fixed-Term Appointment at the G-5 level in Jerusalem, Israel.

2. The decision to terminate his appointment was taken on the grounds that he stole and used a duty-free PAZOMAT Company fuel card, belonging to the Mission’s duty-free shop, to refuel his personal car. The said duty-free fuel card is reserved for the use of international staff members who purchase it.

3. On 20 June 2013, the Applicant filed an Application with the Tribunal primarily contesting the decision to impose on him the disciplinary measure of separation from service. He admitted that he had used the stolen fuel card to refuel his car, but stated that he

USD258 in November 2011), redeemable at PAZOMAT Company fuel stations and dealers in Israel. In November 2011 these cards could be purchased from the PX for USD158.

7. One of the duties of MOVCON was to carry out an official mail run to the north of Israel, exchanging a mail pouch from the UNTSO office in Jerusalem at the border with Lebanon. There existed an informal arrangement for a staff member of MOVCON, while on the mail run, to pick up the fuel cards from the PAZOMAT Company office near Netanya on behalf of the PX.

8. On 16 November 2011, Mr. Zvika Pyankevich, a colleague of the Applicant in the MOVCON unit, went to collect new fuel cards issued by the PAZOMAT Company on behalf of the PX. The cards collected by Mr. Pyankevich were in an unsealed box which, when collected, contained 250 sequentially numbered cards.

9. Mr. Pyankevich spent at least one evening in the north of Israel and having returned to the Jerusalem office in the morning of 18 November 2011, delivered the cards to the PX office later the same morning. They were subsequently counted by a member of the PX staff in the course of the same day and it was found that one card was missing, namely card number 80002000170457343 (“the missing card”).

10. The PX office contacted the PAZOMAT Company over the matter and was informed that the missing card had been sent with the box.

11. On 25 November 2011, the PX Coordinator reported the loss of the missing card to the UNTSO Special Investigations Unit (“SIU”).

12. Following investigations into the report, the SIU established that the missing card had been used on 19 November 2011 at the Mendel Bon Gas Station in Jerusalem to purchase over 41 litres of fuel. A fake vehicle registration number 00-011-11 was entered by the purchaser into the vehicle-data-section during the purchase.

13. There was an attempt to use the missing card once more on a subsequent date,

enquiries should be followed up by the UNTSO Administration and appropriate disciplinary measures taken. The report stated that:

- a. The Applicant was in illegal possession of two duty free

missing card to refuel his car on 19 November 2011, he was using it under the assumption that it was a fuel card that he had purchased at an earlier date.

31. Contrary to the statements of Mr. Pyankevich, he and the Applicant were at no point alone within the office nor was he left alone in the office on the morning of 18 November 2011. The Applicant was in the habit of having coffee with his colleagues to start the day and as such was out of the office when Mr. Pyankevich arrived. On his return to the MOVCON office he found Mr. Bamulanzeki and Ms. Ghoury present.

32. The Applicant was unaware that Mr. Pyankevich had fuel cards in his possession and only became aware of the fact when he returned to the office after having coffee and Mr. Pyankevich was on his way to the PX to deliver the cards. At no point in time did he have the opportunity to steal the missing card.

33. The Applicant had a reliable and steady source of fuel cards through one Ms. Shireen Bawab. In 2011, he had purchased at least 2 fuel cards and received a third one from a departing national staff member, Mr. Eric Tshimbumbu.

34. Having recently been appointed to the G5 level he would have no reason to put himself at risk. Since he had a steady source of fuel cards, he had no reason to steal one.

35. At the time of the incident, the Applicant was in possession of another fuel card which he had received from Mr. Tshimbumbu. He was in the habit of placing this card in his desk drawer and this would have been common knowledge to the other members of the MOVCON office.

36. Even before the allegations against him surfaced, the Applicant had experienced difficulties working with his colleagues in the MOVCON Unit and the fuel card was switched with the one he kept in his desk drawer in a plot to discredit him and have him fired. The set-up is primarily at the behest of Mr. Pyankevich who, being a G4 at the time of the incident, wanted to take the Applicant's G-5 post.

37. Prior to joining the MOVCON office, he had applied for the G-5 post and his name was not placed on the shortlist by Mr. Bamulanzeki and it was only at the intervention of the Chief of Mission Support (“CMS”) that his name was added. Apart from this, there had been a disagreement with Ms. Ghoury’s sister who was a dentist. Ms. Ghoury had boasted to MOVCON staff that the Applicant would be unsuccessful in his application to join MOVCON; and even if he was successful he would not last in the unit.

38. All these instances bear witness to the conclusion that the missing card was substituted for the one in the Applicant’s desk in an effort to discredit him.

39. The Applicant admitted being at fault in making use of duty free fuel cards solely into wpeor

44. Given the frequency of the use of the second fuel

possession of new fuel cards; that the loss of the missing fuel card would be noticed by the PX; and that an investigation and disciplinary measures would be undertaken leading to the Applicant's eventual dismissal. She would also have had to disregard the personal risk both in taking the missing card from Mr. Pyankevich as well as in placing it in the Applicant's drawer.

50. With regard to Mr. Pyankevich, he did not have any past grievance with the Applicant and had no interest in the Applicant's position, in fact he often told the head of MOVCON unit that he desired to move away from Jerusalem to the North of Israel so as to be closer to his family. It is noted that he has since been appointed to such a position while the Applicant's post remains vacant.

51. His involvement in the scheme would carry risks common to those that would have to be entertained by Ms. Ghoury as a potential transgressor. It would additionally

55. The Respondent noted the absence of direct evidence of the theft, however he submitted that such evidence is rare in cases of theft and there was a significant amount of circumstantial evidence. Beyond this, contrary to the Applicant's assertion that he had no motive to steal the card as he had a ready source of them, the Applicant stood to obtain a financial advantage - the obtainment of USD258 of free fuel serves as a motive for the theft.

56. Having been placed in a position whereby he had to explain how he came to be in possession of the missing card, the Applicant could either admit having stolen it or deny it and provide an account of how he came to into possession of the missing card.

57. Given the facts before the Respondent, and the lack of a credible explanation for how the missing card came to be in the Applicant's possession, the Respondent was properly entitled to reach the rational conclusion that the Applicant had stolen the missing fuel card.

58. The contested decision was a proportionate exercise of the decision maker's discretion. Prior practice in disciplinary matters evidences that cases of theft, misappropriation or taking of property of the Organization without authorization normally attract the most severe sanction.

59. Having established the allegations of misconduct against the Applicant, the Respondent took proper account of relevant mitigating factors such as the Applicant's prior good service and positive recommendations and lessened the sanction from one of dismissal to one of separation from service.

60. The Applicant's due process rights were respected throughout the investigation and disciplinary process. He was interviewed on a number of occasions and signed the statements recorded to certify their accuracy; all

61. The Applicant also contended that SIU, in the person of Ms. Tracey Walcott, failed to carry out a sufficiently detailed investigation and to properly consider the proffered alternative explanation as to how the missing card came to be in his possession.

62. The Applicant took issue with the sufficiency of the investigation citing various actions that the Respondent should have taken. It is the role of the Tribunal to examine the correctness of the decision taken by the Respondent and not to conduct a further investigation. The investigation was sufficient given that it was a disciplinary matter being investigated and not a criminal matter. Beyond this, even if the steps the Applicant argues should have been explored, it is unlikely that they would have led to any probative evidence.

63. The Applicant alleged that Mr. Pyankevich came into the office on 17 November 2011 after working hours as opposed to the morning of

- b. Was the disciplinary measure of separation from service proportionate?

Considerations

Did the Applicant steal the missing fuel card?

67. It was the Respondent's case that the Applicant stole a duty-free fuel card belonging to the UNTSO PX and illegally used it to fuel his personal car. The missing fuel card was traced to the Applicant after he had used it to fill his personal car at the Mendel Bon Gas Station in Jerusalem on the day after it was discovered to be missing. It was also the Respondent's case that the Applicant had the opportunity to steal the missing fuel card.

68. While admitting that he had used the missing fuel card to fill his personal car, the Applicant claimed that he was unaware that it was stolen and believed it to be one he had previously received from a fellow staff member. He explained

names of these colleagues as: (a) Barsoum, (b) Anastasio, (c) Ibrahim and (d) Minassian and stated that they were later joined by Mr. Pyankevich.

71. It was later established that two of the staff members he named were in fact away on certified sick leave and away from the office on that day and could not have had coffee with the Applicant on the morning of Friday 18 December 2011.

72. The Applicant also wrote in his statement that before he went for coffee, Ms. Ghoury was in the office. On his return to the MOVCON office after having coffee with the named colleagues, he found Ms. Ghoury and Mr. Bamulanzeki in the office. Mr. Pyankevich then showed him the cards and told him that he was going to deliver the fuel cards to the PX and thereafter left with the cards.

73. In the same statement, the Applicant wrote that it was easy for him to purchase duty-free fuel cards through some work colleagues and had no reason to steal one. Before leaving the office on Friday 18 November 2011, he took out a fuel card which he believed was the one he had kept in his desk drawer and used it the next day, 19 November 2011, to fuel his car. He did not know that the card he used was the missing card. He stated that he believed someone replaced the

81. Also during his second interview with the investigator, the Applicant said he had purchased a fuel card from a United Nations Military Observer (UNMO) named 'Gerald' who was 'maybe Irish' but that he could not remember. It was established that there had been an UNMO officer named Commandant Gerald O'Grady who was Irish who had since left the mission.

82. On being contacted by investigators, Commandant O'Grady who left Jerusalem in June 2009 stated that he had never met the Applicant and that they had only spoken on the phone when he was importing his private vehicle and organizing the necessary paperwork. At no point in time had he provided the Applicant with a fuel card, nor had he ever had reason to purchase a petrol fuel card from the PX as his vehicle used diesel fuel.

83. During the second interview the Applicant was asked if he owned or had in his possession any duty-free fuel cards. He stated that he only had the missing card which he had unknowingly used once in his possession. He was requested by the investigator to hand it in and later the same day he handed in an entirely different card (the second fuel card).

84. During the same interview, the Applicant stated that on the morning of 18 November 2011, Mr. Pyankevich joined him and other colleagues for coffee after which they returned to the office together where they found Ms. Ghoury. This clearly contradicts his earlier assertion that he returned to the office to find Mr. Pyankevich en-route or just about to leave to go to the PX office to deliver the fuel cards.

85. The Applicant was not truthful and contradicted himself in the various accounts he gave at different interviews with investigators on different dates and during his testimony before the Tribunal.

The Credibility of the Applicant's other claims

86. In response to the Respondent's case, the Applicant's story was that though he had used the missing fuel card, he did not know that it was stolen. He said he believed that it had been swapped for one he had kept in his desk drawer.

He also believed that the perpetrator was either Ms. Ghoury, who he said had a longstanding problem with him following a disagreement between his wife and Ms. Ghoury's sister; or Mr. Pyankevich who he said wanted him out of the way so that he could take over his G-5 position.

87. He stated that Mr. Bamulanzeki who was head of the MOVCON office did not like him and had initially not included him in a shortlist for the post for which he was later selected. He had told investigators at one stage that Mr. Bamulanzeki and Ms. Ghoury were in the office when he returned with other colleagues after having coffee in the morning of 18 November 2011.

88. The Tribunal also heard testimony from Saher Zreiq, a driver attached to the UNTSO Transport Section. Mr. Zreiq testified for the Applicant that he worked with him for one and a half years and that they would start work at about 7.00 a.m. and before then have coffee in an area adjacent to their office. He said that this routine continued until the Applicant was separated in March 2012.

89. The witness said he heard Ms. Ghoury state many times before the Applicant went to work in the MOVCON unit that he would not be successful in his application for the G-5 posting as long as she was in that office. The witness said that he was not the only one that heard Ms. Ghoury say so and added that she would whisper about the Applicant when he was not in the office.

90. In reply to a question from the Tribunal, Mr. Zreiq could not identify who else was present when Ms. Ghoury allegedly made this threat. Under cross-examination, the witness admitted that between July and December 2011, he was away from the office on sick leave.

91. The Tribunal will examine the veracity of these claims by the Applicant via-a-vis the Respondent's answer to them.

92. Mr. Pyankevich testified that he had no interest in the Applicant's position and in fact wanted to move closer to the North of Israel where his family was

the G-4 level and

have had the opportunity to exchange the Applicant's fuel card with the missing card.

109. These arguments have no merit. As the Respondent correctly submitted, these investigative practices go above and beyond what is required in a disciplinary matter. Even if the missing card which had been used by the Applicant on 19 November 2011 and produced to investigators by him on 13 February 2012 and the box in which the fuel cards were delivered to the PX were to be tested for finger prints; no value would have been added to the investigation of the case in the circumstances.

110. The Tribunal finds that the Applicant had both the opportunity as well as a pecuniary motive to steal the missing fuel card. His argument that he could easily procure duty-free fuel cards to which he was not entitled and so had no need to steal one, does in fact betray a pecuniary motive. The only reason why the Applicant would procure duty-free fuel cards was in order to obtain a pecuniary benefit by paying less for gasoline when he fuelled his private vehicle.

111. Given the inconsistencies in the Applicant's statements to investigators, his unreliable and unconvincing testimony, his apparent inability to explain how he came to use a stolen fuel card, as well as the untenable explanations of a suspected conspiracy to set him up by his work colleagues; the Tribunal finds that the Applicant has not told the truth and has not successfully discharged the burden of establishing that the Administration wrongfully imposed a disciplinary measure on him in this case.

112. The Tribunal is not in any doubt that the facts upon which the sanction imposed on the Applicant was based have been established and that the said facts amount to serious misconduct on the part of the Applicant.

Was the disciplinary measure imposed on the Applicant proportionate to the misconduct established?

113. The Respondent submitted that the disciplinary measure imposed on the Applicant was proportionate. He stated that a review of the Secretary-General's

practice in disciplinary matters shows that cases of misappropriation, theft or taking of the Organization's property usually attract the most severe of sanctions.

114. The Appeals Tribunal has repeatedly stated that in disciplinary cases the role of the Tribunal is among other things to examine whether the sanction is proportionate to the offense.¹

115. The Basic Rights and Obligations of Staff (Core Values) are contained in the Staff Regulations of the United Nations² and govern the conduct of staff members. Staff regulation 1.2(b) provides:

Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to

120. Termination of an employment contract is undoubtedly only applicable in the most severe of cases. A review of the practice of the Secretary-General in disciplinary matters and cases of criminal behaviour show that cases of theft or misappropriation of the Organization's property consistently attracts this most severe of sanctions.⁴

121. In the present case, the Applicant in misappropriating the missing fuel card violated the relationship of trust that existed between him and the Organisation.

122. The Tribunal is satisfied that the Respondent properly considered all the mitigating factors and finds that the disciplinary measure imposed was proportionate to the serious misconduct established against the Applicant.

Judgment

123. The case as made out in this Application is unreliable, unconvincing, evasive and untenable.

124. The Applicant took illegal possession of a fuel-card belonging to the UNTSO PX. With guilty knowledge he used it to purchase discounted fuel on one occasion, and attempted to do so on a second occasion.

125. The Applicant's actions amounted to serious misconduct contrary to the Organization's Staff Rules and Regulations.

126. The Respondent's imposition of the disciplinary measure of separation from service was proportionate taking into account all mitigating factors in the case.

127. This Application is dismissed in its entirety.

⁴ See the Practice of the Secretary-General in Disciplinary Matters and Possible Criminal Behaviour; ST/IC/2010/26, ST/IC/2011/20, ST/IC/2012/19 and ST/IC/2013/29.

(Signed)

Judge Nkemdilim Izuako

Dated this 11th