



UNITED NATIONS DISPUTE TRIBUNAL



## **Facts**

9. The facts are taken from the signed and attested witness statements (including annexes) of the Applicant; the Chief of the Claims Unit of ONUCI and Secretary of the Local Claims Review Board (LCRB); the Secretary of the UNCB; the Regional Administrative Officer (RAO), Daloa with ONUCI; and a Security Officer formerly stationed with ONUCI in Daloa. This evidence was supplemented by the responses of the Applicant and the Respondent to questions from the Tribunal.

10. The Applicant has been employed by the United Nations since 1993 and holds a permanent appointment. In 2007, he was transferred to ONUCI in its south-west headquarters (SE-HQ) at Daloa, Cote d'Ivoire, where he serves as a Security Officer.

11. On 7 December 2010, the Applicant completed, signed and dated a form containing an inventory of his personal effects which were located at the duty station. The total value of these effects was USD8,120.

12. The end of the form stated:

It is your personal responsibility to update your inventory regularly. An unsigned or undated form is not valid. Keep in mind that in case of loss of personal effects, only your inventory, duly filed with Personnel, and the values indicated therein, will be taken into consideration by the Claims and Property Survey Unit for possible reimbursement.

13. The Applicant submitted the form to an administrative assistant in the Office of the RAO in Daloa who, according to Mission policy, would sign the lists and send them to the Human Resources (HR) section at HQ-Abidjan for further action.

14. The RAO confirmed that the Applicant's inventory list dated 7 December 2010 was forwarded to him by his administrative assistant and that it was his signature which appears at the bottom of the form, but it was not stamped by his office. The RAO could not confirm the date the form was seen by him before sending it to Abidjan.

15. There is no evidence that that inventory list was transmitted by the RAO or his office to HR in Abidjan. It was not signed by HR.

16. On 25 February 2011, during a series of violent post-election demonstrations, armed vandals broke into and looted the Applicant's residence in Daloa. They destroyed anything they could not carry away. The Applicant lost everything except the clothes he was wearing.

17. At the time the Applicant and other ONUCI staff members were at the Mission's compound having been advised not to return to their residences.

18. The Applicant reported this incident. His claim was investigated by the ONUCI Special Investigations Unit (SIU).

19. On 24 March 2011, the Applicant made a compulsory statement about the incident and the loss of his personal effects. He stated:

I have completed the inventory list and updated it several times and provided it to the RAO office in the SW-HQ in order to get it to be approved and forwarded to the Personnel section ONUCI HQ in Abidjan as advised by procedure. Even my inventory list was updated recently in December 2010.

He also referred to two other lists he had made since the incident.

20. On 28 March 2011, the SIU concluded its investigation into the Applicant's claim. It recommended that he be compensated for the items looted according to United Nations Rules and Regulations. The SIU report included a copy of the Applicant's inventory list dated 7 December 2010 as well as the two inventories completed after the violence.

21. On 1 April 2011, the Applicant submitted claims for reimbursement of expenses for the loss and/or damage to personal effects at his residence at Daloa to the value of USD12,120. To this claim he attached two in0 0 rg 0.9981 0 0 1 335.76 398.88 Tmsie a

22. The second was a list the Applicant prepared after the looting and provided to SIU on 26 March 2011. This was headed “Inventory of Other Private Items” and listed items to the value of USD4,000 that had not been included in his first list.

23. The Applicant says that the first list contained all the high value items in his residence such as computers, DVDs and other electronics, whereas the second list included lesser value effects such as bed linen, sneakers and his personal medications which he had lost in the attack on his residence.

24. On 25 August 2011, the Applicant sent an interoffice memo to the Chief of General Services ONUCI-Abidjan in which he described his claim, gave reasons for submitting the second inventory, providing photos of his looted residence and asking for it to be dealt with without further delay. He again attached the 7 December 2010 inventory.

25. On 28 September 2011, the LCRB deferred the Applicant’s case until such time as he provided an inventory list stamped by the HR section prior to the events.

26. On 21 November 2011, the Applicant was advised by the Claims/Property Survey Assistant that his case would be re-reviewed and finalized only if he could provide the inventory list that had been stamped by the HR section.

27. The Applicant protested that he had already provided the inventory list, which had been signed and stamped by the RAO in accordance with official policy. He stated: “In the case that somebody else is not taking care of his duties why should I be victimized?”

28. On the same day, the Chief of General Services, ONUCI, wrote to the Applicant advising him that it was the responsibility of a staff member to ensure that the inventory list reaches the HR section. He stated: “That you submitted a document to the RAO does not necessarily absolve you of that responsibility. You should follow up”. He went on “It is now evident that you have not submitted your PE Inventory list to Personnel section as is required by the Rules”.

29. The Applicant replied ~~it~~ :

I strictly followed all procedures rules and policies and I provided my inventory list to the RAO's Office and the RAO signed and stamped the document and then, as far as I know, the RAO forwarded the document along with other documents to Abidjan.

We should all remember how the situation was in the country from December 2010 to April 2011; UN flights were not operating properly, roads were totally blocked, all unessential movement was restricted (sic) and the whole mission was paralysed. In this point of view it was impossible for me or anybody else to go to Abidjan bringing the lists to the personnel section in order to ensure it reaches there.

30. The Applicant requested that the Chief of General Services forward his case to UNHQ to be considered by UNCB and to include the inventory list signed and stamped by the RAO.

31. In October 2012, the Secretary of the LCRB who was stationed at Côte d'Ivoire visited Daloa and informed the staff members that she would recommend that the requirement for stamped inventories of personal effects be waived for all post-electoral related claims so as to ensure fairness and equality in the treatment of all the claimants. In her statement to the Tribunal she said that she also recommended that compensation be awarded on the basis of reasonableness and requirement for mission life. She told the staff members that, as per the procedure, her recommendations would be made to the Local Property Survey Boards (LPSB) for the Chief of Missions Support's (CMS) review and review by the Controller "with whom lies the final decision".

32. According to the Applicant's statement, the Secretary of the LCRB also recommended that in accordance with the practice previously undertaken in other United Nations Missions, Daloa staff members should ask a close friend, relative or colleague to sign a statement confirming that all alleged losses had indeed been stolen or destroyed.

33. In light of this recommendation, the Applicant submitted a statement from his friend, a radio officer at ONUCI, who stated that he had known the Applicant for many years and confirmed that he had had all the items on his inventory lists

before his villa was attacked and he lost all of them when his villa was looted and destroyed.

34. In the LCRB's report dated 28 November 2012, the Secretary of the LCRB determined that the loss of his entire inventory of personal effects was directly attributable to the performance of official duties and the events were beyond his control and could not have been prevented by him.

35. In relation to compensation, the Secretary of the LCRB noted that the Applicant had provided a copy of his inventory list, which was not stamped by the HR section prior to the incident. He had submitted a separate list of all his personal belongings lost during the crisis. The Secretary of the LCRB found no reason to doubt the genuineness of those documents.

36. The Secretary of the LCRB suggested that the requirement for stamped inventory lists be waived for all post electoral related claims and, in lieu of these lists, recommended that compensation be conditional on the provision of proof of ownership such as

the LCRB recommended that the claim be forward to UNCB for final review and approval by the Controller.

40.



general concerns including whether inventory lists were all dated and stamped after the incident and whether the LCRB's method of assessment of the claims could be considered to be in violation of the ST/AI. The claims were deferred to obtain explanations.

45. The 5 August 2013 minutes stated:

Timing and stamping of inventories

The board noted [the Secretary's] response in her 23 April email that all inventory lists were dated and stamped after the incident. Therefore due to the lack of adequate corroboration and proof of items....with regard to international staff members the board recommended approval of only necessary for mission life, such as a few changes of clothes, one cell phone, one laptop, minimal appliances, minimal cash and no recreational equipment.

The Board recommended the payment of \$2654.67 to the Applicant calculated as follows

Total claim at replacement value	\$12120
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Less:

Excess over maxima: (\$2736.66)	
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Depreciation:	(\$1703.67)
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Disallowed:	(\$5025.00	(\$9465.33)
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46. On 19 December 2013, the Applicant received the decision of the Claims Board. It stated:

According to the information provided by ONUCI, all inventory lists were dated and stamped after the incident and hence, due to lack of adequate corroboration and proof of ownership, the UNCB recommended approval of only the minimum necessary for mission life, such as few changes of clothes, one cell phone, one laptop,

## **Submissions**

### **Applicant's submissions**

48. The Contested Decision was unlawful because UNCB and the Controller failed to consider material facts relating to the Applicant's inventory list that was stamped and signed by the RAO. Contrary to the determination of UNCB, the Applicant had obtained a signed and stamped list from the RAO approximately two and a half months prior to the event in question.

49. The decision was unlawful to the extent that it was based on the failure of the Applicant to produce an inventory list stamped by the HR section and/or to provide such a list to the HR section.

50. The Applicant has consistently adhered to all requirements in the ST/AI for presenting a claim for his personal effects. Including notifying the relevant authorities with evidence the day after the incident and making an appropriate claim with copies of reports, investigations and inventories.

51. The Applicant has a legitimate expectation to the funds he claimed based on the promise of the Secretary of the LCRB that his claim would be reimbursed even in the absence of inventory lists provided before the violence.

### **Respondent's submissions**

52. The Respondent denies that the Applicant obtained a stamped and signed list from the RAO's office approximately two and a half months before the event in question. Accordingly, there was no inventory list dated and received in advance of the incident in the possession of the Administration.

53. In the absence of that evidence, the Controller was entitled to have regard to the other evidence submitted by the Applicant. The letter from a colleague was produced after the events in anticipation of the Applicant's claim. The Controller was entitled to give little weight to the evidence produced by the Applicant.

54. The Controller had regard to the provisions of ST/AI/149/Rev.4. Compensation was restricted to the items reasonably required for day-to day life in the Mission area.

55. The Applicant was not given an express promise that he would be reimbursed for all his losses and he had no legitimate expectation.

### **Issues**

56. In determining whether the decision to award the Applicant less than the compensation he claimed was lawful the following issues arise:

- a. Did the decision-maker consider all material facts including the inventory list dated 7 December 2010?
- b. Was the decision based on the Applicant's failure to produce a pre-incident inventory list stamped by the HR section and if so was this proper?
- c. Did the decision-maker apply the correct criterion for assessing the amount of compensation to the Applicant?
- d. Did the Applicant have grounds for a legitimate expectation that his claim would be reimbursed in full based on an express promise?

### **Legal framework**

57. Staff Rule 6.5 provides that staff members are entitled to "reasonable compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of duties on behalf of the United Nations".

58. This rule is implemented by ST/AI/149/Rev.4 which defines the conditions and limits governing such compensation and sets out the procedure for the submission and examination of such claims.

59.

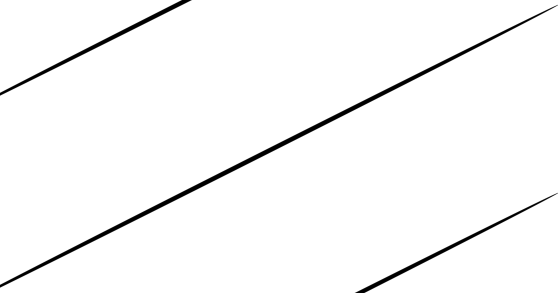
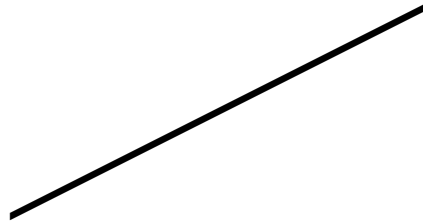
camp or barracks, it would not be considered reasonable to have antiques, porcelain or valuable art. In addition, no compensation is payable for the loss of or damage to animals, motorcycles, boats, jewelry, negotiable instruments, tickets or documents.

67. The DFS Guidelines states at paragraph 5.2.5 that the claimant shall provide **it** a copy of the most recent inventory list submitted to the mission's HR section.

68. A power point presentation of a security briefing for the Sector West security section, annexed to the Application (Annex 3) covers the topic of



**Issue 2**



initialed it. The Tribunal finds that the Applicant met his obligation to provide a pre-incident inventory to the RAO.

85. In light of the mission policy on the submission of such inventories the Administration was incorrect not to take into account the Applicant's pre-incident inventory.

### **Issue 3**

#### **Did the decision-maker apply the correct criterion for assessing the amount of compensation to the Applicant?**

86. The UNCB decided that the inventory lists submitted by the Applicant in support of his claim were dated and stamped after the loss and accordingly in the absence of corroboration and proof of loss recommended approval of the "minimum necessary for mission life".

87. There is no written policy or rule that empowers the UNCB to invoke that test for approving compensation. That test does not conform with the entitlement of staff members either under staff rule 6.5 to "reasonable compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of duties on behalf of the UN" or paragraph 8 of ST/AI/149/Rev. 4 which refers to articles reasonably required by the staff member for day-to-day life under the conditions existing in the c3(th)9(e)coinup



91. The Tribunal holds that the test of “minimum necessary for mission life the UNBC life was arbitrary and not in compliance with ST/AI/149/Rev. 4.

#### **Issue 4**

**Did the Applicant have grounds for a legitimate expectation that his claim would be reimbursed in full based on an express promise??**

92. The evidence established that the Applicant did not receive an express promise from the Secretary of the LCRB that they would be reimbursed for all their losses. The Tribunal is satisfied that she advised him and other claimant of what she would recommend but not of the ultimate decision by the Controller.

93. The Applicant’s claim of legitimate expectation is rejected.

#### **Conclusions**

94. The Contested Decision is unlawful for the following reasons:

a. The decision-maker did not take into account a material fact, namely that the Applicant had submitted an inventory of personal items that pre-dated the incident; and

b.

(8)

Judge Coral Shaw

Dated this 6<sup>th</sup> day of January 2016

Entered in the Register on this 6<sup>th</sup> day of January 2016

(8)

Abena Kwakye-Berko, Registrar, Nairobi