Introduction

1. The Applicant is a former Transport Assistant, at the FS-4 level, with the United Nations Mission in Liberia (UNMIL). On 25 November 2015, he filed an application with the United Nations Dispute Tribunal (the Tribunal) contesting the disciplinary measure to separate him from service with compensation in lieu of notice and without termination indemnity.

2. The Applicant is seeking reinstatement to his former position or, in the alternative, to be paid a termination indemnity.

Facts

3. On 12 February 2006, the Applicant joined the Organization as a vehicle mechanic with the former United Nations Mission in Sudan (UNMIS). In February 2011, he was reassigned to UNMIL as a Transport Assistant. At the time of his separation, he held a continuing appointment and performed th

prepared an investigation report dated 17 February 2015. OIOS concluded that the Applicant failed to observe the standards of conduct expected of a United Nations civil servant and recommended that the Department of Field Support (DFS) take appropriate action against him.

6. By memorandum dated 28 April 2015, DFS referred the
the Office of Human Resources Management (OHRM) for appropriate action.

7. By memorandum dated 11 June 2015, the Chief of the Human Resources Policy Service, OHRM, informed the Applicant of the allegations against him and provided him with a copy of the investigation report and supporting documentation. The Applicant was requested to respond to the formal allegations of misconduct. Specifically, it was alleged that in September 2013, the Applicant engaged in misconduct by submitting various medical insurance claims to VBI containing false information.

8. On 25 June 2015, the Applicant submitted his comments on the allegations of misconduct expressing remorse for the wrongs that he committed.

9. By letter dated 5 October 2015, delivered on 12 October 2015, the Applicant was informed that based on a review of the record, including his comments, the Under-Secretary-General for Management (USG/DM) had concluded that the allegations against the Applicant were established and that they amounted to serious misconduct. The USG

21. By Order No. 054 (NBI/2017) dated 10 March 2017, the Tribunal informed the parties of its decision to determine the matter on the papers without a hearing. The ubmission that there was no need for a hearing and

Tribunal found that the Applicant had waived his right to have a hearing.

22. entions may be summarized as follows:

a. The decision of termination was unlawful, improper and extreme.

b. His termination was disproportionate particularly in view of his 17 years of service in the United Nations system and his continuous satisfactory performance. Furthermore, VBI is not part of the United Nations but an external company.

c. The relevant legal framework does not provide for the dismissal of a staff member in case of fraud.

d. He did not take any money from VBI.

e. He was mistreated on 13 October 2015 when he was notified of the contested decision. He was harassed and intimidated by the Human Resources team. He was 5pm [without being allowed] to use the toilet, eat, drink or see anybody as criminal or rebel.
time he travelled home.

23. The Respondent

a. The facts on which the disciplinary measure was based were established by clear and convincing evidence. The Applicant

> (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.

30. ST/AI/371 (Revised disciplinary measures and procedures), as last amended by ST/AI/371/Amend.1, provides guidelines and instructions on the application of chapter X of the Staff Rules, disciplinary measures and procedures, and outlines the basic requirements of due process to be afforded a staff member against whom misconduct is alleged. This Administrative Instruction provides, in relevant part, as follows:

> Upon consideration of the entire dossier, the Assistant Secretary-General, Office of Human Resources Management, on behalf of the Secretary-General shall proceed as follows:
>
> (b) Should the preponderance of the evidence indicate that misconduct has occurred, recommend the imposition of one or more disciplinary measures.
>
> Decisions on recommendations for the imposition of disciplinary measures shall be taken by the Under-Secretary-General for Management on behalf of the Secretary-
> shall be notified of a decision to impose a disciplinary measure by the Assistant Secretary-General for Human Resources Management.

31. In disciplinary cases, the United Nations Appeals Tribunal (Appeals Tribunal) has specified the scope of judicial review (see *Applicant* 2013-UNAT-302, *Nyambuza* 2013-UNAT-364, *Dibagate* 2014-UNAT-403, *Toukolon* 2014-UNAT-407, *Jahnsen Lecca* 2014-UNAT-408, *Khan* 2014-UNAT-486) as follows:

> Tribunal] to consider the evidence adduced and the procedures utilized

36. The Applicant admitted to falsifying the claims in his statement to OIOS dated 14 July 2014 whereby he stated that what he had done regarding the claims to

. to the allegations of misconduct dated 25 June 2015. Furthermore, the Applicant did not contest the facts in his application or at any stage during the proceedings before this Tribunal.

Whether the established facts amount to misconduct?

37. The Applicant argues that VBI is not part of the United Nations but a third party company and that he did not take any money from VBI.

38. Paragraph 6 of ST/IC/2013/18 (Renewal of the United Nations Headquarters-administered health insurance programme), effective 1 July 2013, sets out how the VBI insurance plan is funded in the following terms:

> administrative directives. Such measures may include the forfeiture or suspension of participation in any health insurance plan of the Organization or suspension from receiving any subsidy from the Organization.

40. The Tribunal considers that while VBI is a third party entity that administers the plan, the costs are born in part by the Organization and any fraud or abuse of the plan by any member may lead to disciplinary measures in accordance with the Staff Regulations and Staff Rules of the United Nations.

41. While it is true that the Applicant did not receive any money from VBI in respect of his falsified claims, the mere fact that the Applicant attempted to defraud the health benefit plan by knowingly submitting false information to VBI constitutes a violation of staff regulation 1.2(b) and amounts to misconduct. Indeed, the which is one of the core values of the United Nations. As the Appeals Tribunal held in *Jaber et al.* 2016-UNAT- and an attempt to defraud has the same impact not only on the integrity of the staff member but on the integrity of the United Nations system.

42. The Applicant further argues that he obtained the falsified supporting documents through a third party so as to claim for some past unrelated expenses for which he had lost the invoices. In this regard, the Tribunal finds that any claim based on falsified information would have the effect of misleading VBI even if the intention was to request the reimbursement of legitimately incurred medical claims and in such

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imposed at the strictest end of the spectrum, namely, separation from service or dismissal in accordance with staff rule 10.2(a). In the present case, the evidence shows that the USG/DM considered,
cooperation with the investigation and his length of service with the Organization in determining the disciplinary measure to the imposed.
claim, his continuous satisfactory performance is of little weight in determining a disciplinary measure.

48. While ST/IC/2013/18 does not specifically provide for the dismissal of a staff member in case of fraud, it

Regulations and Staff Rules. The disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity is in accordance with staff rule 10.2(a)(viii).

49. In light of the above, the Tribunal finds that the decision to impose on the Applicant the disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnity was proportionate to the offence committed and consistent with the practice of the Secretary-General in similar cases.

Whether the implementation of the disciplinary sanction was in breach of the

50. The Applicant submits that he was mistreated on 13 October 2015, when he was notified of the contested decision. He claims that he was harassed and intimidated by the Human Resources team. He argues that he was
room from morning to 5pm [without being allowed] to use the toilet, eat, drink or see anybody as criminal or rebel.
until the time he travelled home.

51. The Respondent submits that the delivery of the sanction letter and the subsequent check-out process was handled in accordance with the normal practice
The Applicant was handed the letter

dated 5 October 2015 by the Chief Human Resources Officer and asked to read the letter and sign receipt of delivery of the document. The Applicant then commenced the check-out process. He was in the Chief Human Resources Officer approximately five hours and he was not restricted from using the bathroom or requesting something to eat or drink but he did not avail himself of either. The Respondent clarified that the door of the office was not locked and remained open for most of the period, with different staff members from the Human Resources Management Section entering and leaving in order to assist the Applicant in completing necessary forms in order to process his separation entitlements. A security officer was present during the check-out process in order to ensure the safety of staff, the Applicant and United Nations property. The Respondent clarifies that the Applicant was exceptionally permitted to remain in Liberia for one week to settle his personal affairs and was provided with documentation to facilitate his stay and a signed, stamped letter from UNMIL to facilitate his travel from Liberia.

52. allegations in his application, he did not provide any evidence of the alleged mistreatment. The Applicant failed to provide his own sworn written statement or any other witness statement to substantiate his allegations. The Tribunal is satisfied with the evidence[1] submitted unfounded. The Applicant has failed to show an error of procedure on the part of the Administration.

[1] Letter dated 15 December 2015 from the Officer-in-Charge, Mission Support to the Administrative Law Section, OHRM on the UNMIL comments in the case of the Applicant and sworn written statements of Muthiani, Human Resources Officer and Mr. Muhammad Sajjad, Security Officer.

Decision

53. he application is dismissed.

(Signed)
Judge Alexander W. Hunter, Jr.
Dated this 26th day of April 2017

Entered in the Register on this 26th day of April 2017

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi