



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/015

Judgment No.: UNDT/2017/058

Date: 17 July 2017

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SYRJA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:
Nicole Washienko, OSLA

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant is serving as a Security Officer at the FS-4 level with the United Nations Operation in Côte d'Ivoire (ONUCI). He filed an application on 6 March 2017 with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi contesting the Administration's decision not to honour its commitment to pay him USD10,790 as compensation for the loss of his personal effects at his residence following post-election violence in Côte d'Ivoire in 2011 (Contested Decision).

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life. She suggested that the ONUCI compensation matrix be used to complement ST/AI/149/Rev.4 (Compensation for loss of or damage to personal effects attributable to service) and recommended applying a 10% depreciation rate to all items except those purchased in 2010. The recommendation of the Secretary of the LCRB, which was accompanied by the analysis of the claim list per the matrix, recommended that the Applicant be compensated in the full and final amount of USD6, 525. As the recommended amount exceeded the Mission's local delegation of authority granted by the Controller to settle staff member claims, the Secretary of the LCRB recommended that the claim be forwarded to UNCB for final review and approval by the Controller.³

In about February 2013, the Applicant was asked to complete additional forms for UNCB. He submitted a claim form which deleted some items he had earlier claimed for but had subsequently found. The revised total of his claim was USD11,710.⁴

The Secretary of the UNCB stated that the UNCB found the claim was compensable. It considered that the ONUCI claims officer stated that all inventory lists for the claims submitted by ONUCI members were dated and stamped after the loss. Accordingly, due to the lack of adequate corroboration and proof of items, the UNCB recommended approval of the minimum necessary for mission life such as a few changes of clothes, one cell phone, one lap top, minimal appliances, minimal cash and no recreational equipment.⁵

On 19 December 2013, the Applicant received the decision of the UNCB. 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, minimal appliances, minimal cash and no recreational equipment. The Controller therefore approved on 10 December 2013, that you be compensated in the final amount of US\$2,654.67.⁶

10. On 29 March 2016, the parties filed a joint submission informing the Tribunal that “a mutually determined amount of compensation to be paid to the Applicant

18. In the absence of an error in the procedure adopted by the UNDT which may render the hearing of the case unfair, the Appeals Tribunal will not interfere with the discretion of the UNDT to manage its cases. In the instant case, the UNDT was in possession of the respective applications and documentations which it considered to be sufficient to make the relevant decisions to facilitate the fair and expeditious disposal of the case.

15. It is clear from the UNDT Rules of Procedure and the Appeals Tribunal's jurisprudence that a hearing is not mandatory for every case. Whilst the Tribunal may take the parties' views into consideration, the decision to hold an oral hearing lies squarely within the authority of the Tribunal.

16. In the present matter, the Tribunal has concluded that the issue before it is purely one of law and interpretation. Hence, an oral hearing is not necessary. A determination will therefore be made based on the parties' pleadings and supporting documentation.

Considerations

17. The crux of this application is whether there was an agreement between the parties that created an obligation on the part of the Respondent to pay the Applicant the sum of USD10, 790.

18. It is a basic principle of contract law that for there to be a contract or an agreement that is enforceable at law, there must be *consensus ad idem* (a meeting of the minds). This sim9.44 302.16] TJ ET Q q BT /F1 12he7m.0 Tf 0.0

Whether a binding contract has been concluded is established by making an objective assessment of what the parties

ongoing. The Tribunal granted the motion and gave the parties until 16 March 2016 to reach an agreement on remedies.¹⁰

b. On 16 March 2016, Respondent's counsel sent an email to the Applicant's counsel that stated: "We still need to go back to New York to finalize a few matters regarding a possible agreement in this case. Would you be agreeable to a further extension of one week?"

c. Counsel for the Applicant agreed and on the same day, the parties filed another joint motion for extension of time. The Tribunal granted the motion and gave the parties until 29 March 2016 to reach an agreement.

d. On 29 March 2016, the parties filed a joint submission informing the Tribunal that "a mutually determined amount of compensation to be paid to the Applicant has been reached" and that, ac

c. Since the Tribunal had remanded the matter to UNCB for reconsideration, it was necessary for the parties to agree on the final amount sought. Consequently, he contacted the Applicant's counsel on 17 March 2016 to understand the value of the Applicant's claim, which the Applicant had modified on 7 October 2015. Given the uncertainty over the valuation of the claim and to assist the UNCB with its determination, an agreement was reached on the actual sum sought. His communications did not include an agreement to pay the Applicant USD10, 790.

d. The joint submission of 29 March 2016 was intended to reflect the parties' agreement on the value of the Applicant's claim.

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remedies that the Applicant was seeking. The Tribunal did not order any valuation exercise or other assistance to be given to the UNCB so it is no surprise that the Applicant deemed the discussions around the USD10, 790 to be an agreement and not just a mere valuation.

29. Additionally, the Tribunal finds the three joint motions filed by the parties and Respondent's counsel's email of 16 March 2016 to be quite indicative of the parties' intentions. On 29 February 2016 and 16 March 2016, the parties submitted joint motions that prayed for extensions of time because discussions on "an agreement" were ongoing. The Respondent's counsel's email of 16 March 2016 states in relevant part that he had to go back to New York to "finalize" a few matters regarding "a possible agreement" in this case. There is no mention of a "valuation"

on the payment. Accordingly, the Tribunal concludes that there was an implied-in-fact contract for the Respondent to pay the Applicant USD10, 790 as compensation for the loss of his personal belongings.

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Entered in the Register on this 17th day of July 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi