



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1182

**Pierre Paris
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Sabine Knierim
Case Nos.:	2020-1488
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Appellant: Francisca Lagos Pola

Counsel for Respondent: Julia Kyung Min Lee, OSLA

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The Secretary-General of the United Nations has appealed against Judgment No. UNDT/2020/165 (the impugned Judgment) issued on 10 September 2020.
2. Mr. Pierre Paris, a former staff member at the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), had filed an application before the Dispute Tribunal contesting the decision to separate him from service with compensation in lieu of notice and termination indemnity as a disciplinary sanction for serious misconduct in the form of, *inter alia*, carrying a United Nations firearm without proper authorisation while off-duty.
3. In the impugned Judgment, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) rescinded the contested decision, set aside the sanction and ordered the Applicant to be reinstated or paid compensation in lieu at the rate of one year's net base salary. For the reasons set out below, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) grants the appeal.

Facts and Procedure

4. Mr. Paris served as a Security Officer at the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). He held a fixed-term appointment (FTA) at the FS-5 level and was based in Mopti. His appointment was due to expire on 30 June 2018, but the UNDT noted in the impugned Judgment that he was anticipating renewal when he was separated from service on 27 June 2018.
5. On 24 October 2016, Mr. Paris purchased a motor vehicle from a United Nations staff member based in Mopti, which he did not transfer into his name. The vehicle's insurance expired on 25 December 2015 and was not renewed.
6. On 21 December 2016, while off-duty, Mr. Paris drove from Mopti to Bamako in his car, carrying his service weapon, a Glock 19/G36/MP5 pistol (registration number VXB7989). He arrived in Bamako at around 4.30 p.m. and went to meet a friend at a hotel restaurant, where he consumed alcohol. After leaving the restaurant, at around 9.00 p.m., he was involved in a motor accident in which he collided with a motorcycle at an intersection. He did not stop immediately after the collision, but continued driving for a short distance and

then parked the car on the right side of the street. He was then surrounded by motorcyclists, who began to hit his car. When he saw that the crowd was gathering stones, he restarted the car and drove over a motorcycle that was blocking his car. He then stopped, got out of the car and tried escaping from the crowd. One of the motorcyclists identified himself as a policeman and put himself between Mr. Paris and the crowd. Mr. Paris believed that when leaving the vehicle, he had his service weapon in his holster on his right side. During the incident, Mr. Paris was robbed of his belongings, including his money, watch, laptop, and his passport.

7. A police patrol arrived and put Mr. Paris in a vehicle. One of the officers asked Mr. Paris to hand him his weapon. Mr. Paris signaled that the firearm could be found with the other police officer who had helped him at first. The police took Mr. Paris to the police station. From the police station, Mr. Paris called the Chief of the MINUSMA Operation Response Unit. At around 10.40 p.m., a MINUSMA Quick Reaction Team (QRT) arrived at the police station. Mr. Paris reported to the QRT that he had lost his weapon along with his other possessions during the melee. The QRT conducted an alcohol breathalyzer test at 11.17 p.m. The reading was 0.51 mg/l. Another test was conducted at 11.33 p.m. with a reading of 0.5 mg/l.

8. After Mr. Paris left the police station, he met with his friend Mr. Djibril Diallo, a member of the Mali Police, whom he had called while on the scene of the accident. He knew Mr. Diallo from when he had previously worked for the United Nations in Haiti. A few hours later, in the early morning hours of 22 December 2016, Mr. Diallo called Mr. Paris and told him that he had retrieved the weapon as well as his knapsack with some other belongings. He returned these to Mr. Paris who handed over the weapon to the MINUSMA authorities as he was due to fly to Miami. On that day, Mr. Paris was interviewed by an Investigator of the Special Investigation Unit (SIU) of MINUSMA. He did not then say where the weapon was found. In this first written SIU interview, just after the accident, Mr. Paris told the SIU that the first police officer he encountered while under attack by the crowd had asked him for his weapon. He did not hand it over as at that time he assumed he had been robbed of his weapon along with his other possessions.

9. MINUSMA SIU investigators conducted an investigation into the incident. Several witnesses, including Mr. Paris, were interviewed. At an interview on 1 February 2017, Mr. Paris was asked by the SIU Investigator to explain why he at first advised the Mali Police patrol officers that his firearm was with the first police officer who arrived on the scene. He responded that, when he walked out of the vehicle, the firearm was still on him. He said he did

not know who took it from him, but also answered that it was possible that he forgot the firearm at home i.e. the house of the friend where he rested before the incident. However, he confirmed that as far as he remembered his weapon was with him when the accident occurred and went missing with his other possessions when he was attacked.

10. Mr. Paris was asked whether he booked a room in any Bamako hotel on 21 December 2016. He said that Mr. Diallo had booked it for him and that he had dropped his luggage there. They left from there to have lunch at a restaurant at the B Hotel. Mr. Paris gave answers to a request for clarification by the Chief, Conduct and Discipline Team, on 19 May 2017. By that time, Mr. Diallo had also been interviewed and told the investigators that he met Mr. Paris that night; that Mr. Paris was accompanied by friends, and he went out with them. Mr. Diallo said he went to pick up things for Mr. Paris at his room and was given a key to do so and found the firearm there. The Chief, Conduct and Discipline Team, wrote to Mr. Paris asking why he said he lost the firearm when Mr. Diallo had said he found it in his hotel room. In his written response, Mr. Paris said he was shocked and scared that day, so he forgot he left the firearm at home prior to going to the B Hotel to eat with a friend. He also said he went home with Mr. Diallo that night and went straight to bed. To his surprise, in the morning Mr. Diallo handed him the firearm and didn't tell him anything. He thought at the time that Mr. Diallo had retrieved it from the crowd and he only found out some time later from the SIU that the firearm was at retrieved "at home".

11. A final investigation report was submitted by the SIU (SIU Report) to the Assistant Secretary-General for Field Support (ASG/DFS) on 10 February 2017. The report recommended disciplinary action against Mr. Paris, as the investigation revealed that he had not conducted himself in a manner that is expected of an international civil servant. On 21 July 2017 the ASG/DFS then referred Mr. Paris' case to the Office of Human Resources Management (OHRM) for appropriate action.

12. On 22 November 2017, OHRM sent a memorandum to Mr. Paris setting out allegations of misconduct and requesting him to respond to such allegations of misconduct. On 7 February 2018, Mr. Paris provided his comments. On 27 June 2018, Mr. Paris was informed by letter dated 21 June 2018, that the Under-Secretary-General for Management had decided to separate him from service with compensation in lieu of notice and with termination indemnity. The findings against Mr. Paris were that (i) on 24 October 2016, he purchased a car but failed to change the ownership registration and obtain insurance as a

driver; (ii) in the evening of 21 December 2016 he drove in Bamako after having consumed alcohol; (iii) he had a collision with a motorcycle yet failed to stop immediately; (iv) he ran over another person's motorcycle that was blocking his way; and (v) he carried his service weapon with him even though he was not on duty and had not obtained authorization to carry it off-duty, particularly after having consumed alcohol.

13. On 18 September 2018, Mr. Paris filed an application with the UNDT contesting the decision to separate him from service with compensation in lieu of notice and termination indemnity. On 18 October 2018, the Secretary-General filed his reply to the application.

14. On 10 September 2020, the UNDT issued the Judgment. The UNDT held that the allegations charged were either a private matter or not proven to the requisite standard. The UNDT specifically found that there was no clear or convincing evidence that Mr. Paris (i) drove while intoxicated, (ii) was in possession of the firearm after having consumed alcohol, (iii) failed to obtain clearance required for firearm possession while off-duty, and (iv) deliberately ran over the motorcycle. The UNDT held that an e-mail exchange between Mr. Paris and the MINUSMA Firearms Training Officer on 16 December 2016 in which Mr. Paris requested a holster and was told to ascertain from other staff whether such was available in Mopti was evidence that Mr. Paris had implicit permission to leave with his firearm. Accordingly, the UNDT held that the Secretary-General had failed to substantiate the full extent of the offences alleged.¹

15. The UNDT, however, found that the involvement of Mr. Paris in an accident, while driving an uninsured vehicle could have caused irreparable harm and could have brought the Organization into disrepute in breach of Staff Regulation 1.2(f), which requires staff members to conduct themselves in a manner befitting international civil servants.² The UNDT then found that given that the more serious aspects of the allegations were not established the sanction of termination was disproportionate and that it would have been more appropriate to have imposed a sanction in line with those for minor traffic offences.³ The UNDT therefore rescinded the contested decision and set aside the sanction imposed.⁴ It ordered that Mr. Paris be reinstated and be paid compensation in lieu of rescission at the rate of one year's

¹ Impugned Judgment, para. 82.

² *Ibid.*, para. 83.

³ *Ibid.*, para. 86.

⁴ *Ibid.*, para. 88.

net base salary plus interest at the US Prime Rate, from the date of the filing of his application, to the date of this Judgment, to compensate for the two-year delay in concluding the determination.⁵

Submissions

The Secretary-General's Appeal

16. The Secretary-General requests UNAT to vacate the impugned Judgment and uphold the decision to separate Mr. Paris from service. Alternatively, if UNAT agrees with UNDT that Mr. Paris can only be charged for operating his vehicle irresponsibly as a breach of Staff Regulation 1.2(f) it is requested that UNAT reduce the compensation award in lieu of rescission.

17. The Secretary-General submits that the UNDT erred in fact and law in finding that there was not clear and convincing evidence that Mr. Paris had driven while intoxicated and that the charge of driving under the influence of alcohol was not substantiated. The evidence on record was clear that Mr. Paris was under the influence of alcohol at the time of the accident. He admitted to drinking two beers to the SIU investigator. The Impaired Driving Report filled out by MINUSMA QRT at the police station indicated he participated in a breathalyzer test result of 0.51mg/l and that his eyes were glazed. Mr. Paris accordingly violated Staff Regulation 1.2(f) and the MINUSMA Code of Conduct prohibiting driving while intoxicated.

18. The UNDT further erred in concluding the United Nations did not have a policy setting out a legal breath alcohol limit in Mali. There is no requirement for the United Nations to set a limit. Driving under the influence of alcohol is behaviour not consistent with the standards of an international civil servant regardless of any legal limits. Mr. Paris was not sanctioned for violating local laws rendering the legal limits of the locality irrelevant to a misconduct analysis.

⁵ *Ibid.*, para. 89.

19. The UNDT erred in fact and law in finding there was not sufficient evidence that Mr. Paris had failed to obtain the clearance required for firearm possession while off duty and that he had carried his firearm after consuming alcohol. Staff Regulation 1.2(q) provides that staff may only use property and assets of the Organisation for official purposes and shall exercise reasonable care when utilising such property and assets. Further the Firearms Manual provides that security officials may not carry their UN issued firearms during off duty hours. In addition, the MINUSMA Standard Operating Procedures (SOPs) prohibit carrying a firearm off duty and the consumption of alcoholic beverages while carrying a weapon.

20. The Appellant argues the UNDT should not have set aside the sanction as the sanction imposed is consistent with past practice of similar conduct. Several matters involving staff members driving intoxicated resulted in termination. In turn the UNDT erred in fact and law in awarding Mr. Paris compensation. Compensation is to make a staff member whole had the decision not occurred, however, in this instance, Mr. Paris was awarded one year net base salary which exceeds what he would have received had he continued in service of his fixed-term appointment which only had three days remaining. There is no expectancy of renewal of an FTA. Furthermore, the UNDT erred in awarding interest to compensate for the two-year delay, as the delay was largely caused by Mr. Paris' insistence on having an oral hearing.

Mr. Paris' Answer

21. Mr. Paris requests UNAT to dismiss the appeal and uphold the impugned Judgment.

22. Mr. Paris submits that the UNDT did not err in finding that there was no clear and convincing evidence that he was driving while intoxicated and that the charge of driving under the influence of alcohol was unsubstantiated. The MINUSMA Code of Conduct does not specify the limit for blood alcohol concentration to determine the level of intoxication and the Malian authorities had examined and dismissed the allegations pertaining to intoxication.

23. In any event, the United Nations Manual on Road Safety Management in the Field (Effective 1 October 2016) was not applicable to Mr. Paris as it applied to those operating a UN vehicle. Mr. Paris was driving his own personal vehicle. Now, on appeal, the Administration seems to be arguing that staff members should not be driving after

consuming *any* amount of alcohol as a zero-tolerance approach which is not supported by any law and is inconsistent with the Manual which permits consumption up to a blood alcohol concentration of 0.05 g/dl. As UNAT held in *Turkey*⁶, if there is a zero-tolerance approach to alcohol consumption, then absent a clear written pronouncement, a violation of such should not result in separation from service.

24. The Appellant refers to the Impaired Driving Observation Report prepared by a MINUSMA Security Officer to support that Mr. Paris drank a “considerable amount” because his eyes were glazed and he smelled like alcohol, however the rest of the report indicated that his general appearance in 15 different factors were all “normal” and only moderate smell of alcohol. The observation was such that he was not someone who had consumed a “considerable amount” of alcohol. The Administration cannot terminate Mr. Paris on the basis of driving after drinking a considerable amount if it does not what standard to use to determine what constitutes “driving while intoxicated” pursuant to the MINUSMA Code of Conduct. There is thus no clear and convincing evidence to support that Mr. Paris committed misconduct. The UNDT correctly found there was no clear and convincing evidence that Mr. Paris was unauthorised to carry his firearm from Mopti to Bamako. The Administration argues there was no evidence Mr. Paris was authorised to carry his firearm off-duty. However, the appellant’s own witness, the Firearms Training Officer, gave evidence that the Chief Security Adviser may require officers to maintain possession of their weapon even off-duty and based on the level of risk in Mopti has recommended that security personnel including Mr. Paris be armed. Mr. Paris stated that he was authorised to carry his weapon for his own protection. And Mr. Paris’ direct supervisor reported to the SIU investigator that he recalled seeing a document indicating that all personnel coming to Bamako in transit before going on leave were considered “en service” when asked by the investigator whether Mr. Paris was authorised to have his weapon while going on leave. His direct supervisor further stated there was no specific directive in the region regarding circulation of weapons, so they relied on the Standard Operating Procedure (SOP) for management of arms. His direct supervisor’s statements were deliberately omitted and discounted from the SIU’s finding of facts because the investigator determined his direct supervisor’s statement was not precise about the rules. However, there is no evidence in the SIU Report that the investigator asked him questions seeking to clarify the rules and

⁶ *Turkey v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-955, para. 42.

procedures applied to Mr. Paris for carrying his weapon before going on leave. Thus, the UNDT correctly found that this evidence on this point appears to have been discounted unfairly. On the contrary there was ample evidence that Mr. Paris was authorised to carry his weapon from Mopti to Bamako before going on leave. Sections 3.2 and 4.9.4 of the MINUSMA SOP on Weapons and Training (Weapons and Training SOP) provide that security officers may be required to maintain possession of their assigned weapon when not on scheduled duty. The UNDT was correct to note that the Administration admitted that Mr. Paris had reason to believe he had implicit permission. The UNDT further correctly held that there was no clear and convincing evidence to support that Mr. Paris had carried his weapon after having consumed alcohol, which the Secretary-General indicated in his reply to the UNDT was the “core misconduct” that warranted separation. They relied on Mr. Paris’ statements. The first, on the night of 21 December 2016, made right after the accident, when he was in shock and running for his life from a violent mob beating him, he reported to the team leader in the QRT that his weapon was stolen because it was not with him. The second statement which Mr. Paris made was the next morning, 22 December 2016, when he said to the investigator that he had believed his weapon was stolen, however it was found by Mr. Diallo who gave it to him. In his third statement, of 1 February 2017, to the investigator, he mentioned it was possible he had left it at his friend’s house. The Appellant assumes and argues it is “probable” he had his weapon with him at the accident. However, there is ample evidence corroborating that he did not have his weapon with him at the accident. The only eyewitness at the accident stated he did not see a weapon on Mr. Paris. Mr. Paris was being beaten by the crowd and logically would have used the gun to deter the beating or defend himself, which he did not do because he did not have his weapon with him at the accident. As noted in the SIU Report, it was unclear how the weapon was lost and then found. There was an erroneous translation of Mr. Diallo’s statement that the weapon was retrieved from a “hotel” when it was actually from a “domicile”, which implies a residence or house. The sanction letter does not make any factual finding that Mr. Paris committed any misconduct by leaving his weapon at a residence. The Appellant cannot impose an entirely new charge to justify separating Mr. Paris at this stage. The UNDT correctly relied upon *Tshika*⁷ case which found that a particular charge was never put to the staff members in the charge sheet and the

⁷ *Tshika v. Secretary-General of the United Nations*, Judgment No. UNDT/2014/122.

Tribunal should not embark on analysis of what appears to be a new charge that was not the subject of an investigation.

25. The UNDT was correct to set aside the sanction imposed as it concluded that none of the charges were found to have been proven by clear and convincing evidence. Likewise, the UNDT did not err in awarding compensation. As the Secretary-General failed to prove that Mr. Paris committed misconduct by clear and convincing evidence, the UNDT correctly rescinded the decision and ordered his reinstatement.

26. Likewise, the UNDT was correct in setting compensation should the Secretary-General decide not to reinstate. Contrary to the Secretary-General's assertion that the award of one year's net base salary would not result in unjust enrichment. Mr. Paris' contract was set to be renewed beyond 30 June 2018 as evidenced by the Request for Extension of Appointment that the same Chief Security Adviser who had authorised Mr. Paris to carry his weapon had authorised and approved the recommendation for extension until 30 June 2019. Thus, he had legitimate expectation of renewal and the UNDT did not err in fact or law in concluding one year' net base salary was appropriate to place him in the position in which he would have been.

27. Regarding the award of interest (U.S. Prime Rate) from date of filing of the application before the UNDT and the date of the Judgment to compensate for the UNDT's two -year delay, this is in accordance with jurisprudence as the UNAT held in *Warren*⁸ that interest is part of the compensation in many cases. In any event it would have been even more appropriate to pay him interest from the date of his separation, rather than from the date of his application, as his pay would have been from the date of his separation had his contract been renewed. Calculating interest from the date of his separation would truly place him in the same financial position he would have been had he not been unlawfully sanctioned. Lastly, the Secretary-General argues that part of the two-year delay was caused by Mr. Paris insisting on an oral hearing. While the UNDT originally was of the view a hearing was not required, the following exchange of interrogatories was critical to unearthing exculpatory evidence.

⁸ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059, para. 10.

Considerations

28. The factual issues requiring determination are whether Mr. Paris was under the influence of alcohol and in possession of his weapon at the time of the incident.

29. Drinking and driving is conduct unbefitting of an international civil servant and is not permitted under the UN legal framework. Staff Regulation 1.2(f) provides that staff members shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status. The MINUSMA Code of Conduct also provides that: “Driving while intoxicated is forbidden.” This rule applies irrespective of the ownership of the vehicle that is driven.

30. The evidence supporting a conclusion of intoxication is incontrovertible.

31. In his interview on 22 December 2016 with an SIU investigator Mr. Paris admitted that before the accident he drank two beers with a friend at a restaurant. The Impaired Driving – Observation Report, which was filled in by the MINUSMA QRT on 21 December 2016, at the police station, indicated that Mr. Paris had been administered a breathalyser test which recorded a reading of 0.51mg/l. The MINUSMA Impaired Driving Report also indicated that Mr. Paris’ eyes were “glazed”.

32. The objective evidence of the test is not disputed. Although, the Code of Conduct does not set a test limit, this Tribunal is permitted to take judicial notice of the fact that the breath alcohol limit in most countries is between 0.24mg/l and 0.35mg/l. At 0.51mg/l, Mr. Paris was way above the conventional limit. Additionally, the fact that Mr. Paris caused an accident is indicative that he may have been under the influence of alcohol when he was driving his car. Accordingly, the evidence is clear and convincing that Mr. Paris was under the influence of alcohol when he got into his car before the accident occurred on 21 December 2016. The UNDT erred in concluding otherwise. His conduct was in violation of Staff Regulation 1.2(f) and the MINUSA Code of Conduct.

33. The UNDT found that there was not sufficient evidence showing that Mr. Paris carried his weapon after having consumed alcohol or that he had failed to obtain the clearance required for firearm possession while off-duty.

34. Staff Regulation 1.2(q) provides that staff members shall use the property and assets of the Organisation only for official purposes and shall exercise reasonable care when utilising such property and assets. Section 1.53 of the United Nations Department of Safety and Security's Manual of Instruction on Use of Force Equipment Including Firearms of 2 May 2014 (the Firearms Manual) provides that United Nations Security Officials may not carry United Nations-issued firearms during off-duty hours. Section 4.44(a) of the Firearms Manual provides that "careless and irresponsible behavior" is specifically prohibited for United Nations Security Officials while armed. The Weapons and Training SOP, further state that under no circumstances will an officer who is carrying and/or in possession of an assigned weapon consume any alcoholic beverages, and that each officer who is assigned and issued with a firearm or any other United Nations authorised weapon is personally responsible for its safe keeping. Accordingly, the United Nations legal framework requires staff members to use United Nations property only for official use and to exercise reasonable care when using such property. The legal framework also specifically prohibits Security Officers from carrying a weapon while off-duty and from consuming any alcoholic beverages while carrying and/or being in possession of his/her United Nations-issued and assigned weapon.

35. Dealing first with the question of authorisation, Mr. Paris bears the evidentiary onus to show on a balance of probabilities that he had the required authorisation to take his weapon while travelling off-duty to Bamako. The UNDT held that there was no clear and convincing proof that Mr. Paris failed to obtain clearance required for firearm possession while off-duty. In support of this conclusion, the UNDT held that the e-mail exchange between Mr. Paris and the Firearms Training Officer was evidence that Mr. Paris had implicit permission to leave Mopti for Bamako with his firearm.

36. The e-mail exchange dated 16 December 2016 between Mr. Paris and the Firearms Training Officer cannot be interpreted to amount to authorisation for Mr. Paris to leave Mopti with his weapon while off-duty. The MINUSMA Firearms Training Officer is the custodian of the MINUSMA Operational Base armory in Bamako. In the e-mail correspondence between them, Mr. Paris informed the Firearms Training Officer that he would pass by Bamako on 21 December 2016 while on leave and asked him whether it would be possible to get a normal holster, a tactical holster and a bag for the "Glock pistol 36." In response to that email, the Firearms Training Officer told Mr. Paris that he should contact

staff at his duty station in Mopti to see whether those items were available in Mopti. The e-mail by no stretch of the imagination supports an interpretation that the Firearms Training Officer was implicitly authorising Mr. Paris to carry his firearm while off-duty. Additionally, in his statement dated 30 June 2020, the Firearms Training Officer clearly stated that he did not provide authorisation to Mr. Paris and that providing such authorisation was not within his authority or functions.

37. Mr. Paris has pointed to no other evidence supporting his contention that his carrying of the weapon off-duty was authorised.

38. The UNDT appears erroneously to have interpreted a concession in the sanction letter to drop the charge that Mr. Paris did not have security clearance to drive to Bamako as including a concession that he may have had authority to carry a firearm while off-duty and relied on a provision of the Weapons and Training SOP stating that firearms *may* be required to be carried while off-duty, given the prevailing security conditions. Firstly, the concession not to pursue the charge about not having security clearance to drive to Bamako has no bearing on the requirement that the possession of weapons off-duty requires prior authorisation. Moreover, the provision that staff may on occasion be required to carry weapons off-duty, depending on the prevailing security conditions, is not a blanket approval for a staff member to carry firearms off-duty, but rather is a provision which allows for authorisation to do so to be given.

39. There is thus no evidence on record that Mr. Paris was authorised to carry his firearm while off-duty. On the contrary, the evidence on record shows that normally security guards do not carry their weapons off-duty. The UNDT accordingly erred in finding that the charge of carrying a United Nations-issued weapon while off-duty and without authorisation was not substantiated.

40. The next question is whether Mr. Paris was in possession of his weapon while he consumed alcohol. Accepting, as we have found, that he was under the influence of alcohol at the time of the incident, it is necessary to determine if he was in possession of the weapon at the time.

41. The UNDT found that there was no clear and convincing evidence that Mr. Paris was in possession of the firearm having consumed alcohol. It concluded that if the firearm was not with him at the time of the accident, even if on his own version he had consumed alcohol, he could not have breached the rule against having the firearm while consuming alcohol.

42. There is clear and convincing evidence that Mr. Paris carried his weapon at the time of the accident. In the three interviews conducted by SIU investigators, Mr. Paris consistently admitted that he carried his weapon with him when the accident occurred. In the first interview right after the accident, on 21 December 2016, at the police station, Mr. Paris stated that the crowd robbed his weapon with serial number VXB798. In his second interview, which was held the day after the accident, on 22 December 2016, Mr. Paris stated that when he exited his vehicle on 21 December 2016, the crowd grabbed him and his “weapon disappeared” In the third interview, dated 1 February 2017, Mr. Paris again confirmed that his weapon was on him when he walked out of the vehicle after the accident and that he did not know who took it from him.

43. In his witness statement dated 23 June 2020, the team leader in the QRT, stated that when he saw Mr. Paris at the police station on 21 December 2017, the night of the accident, Mr. Paris told him that “he was robbed of his weapon and other items after his traffic accident.” The team leader in the QRT also noted that, when they met that evening, Mr. Paris was wearing his holster on the right side of his body and that he carried two magazine pouches loaded with two magazines.

44. The contemporaneous Incident Report prepared and signed by the team leader in the QRT and another Security Officer of the QRT also states that when Mr. Paris stepped out of the vehicle after the accident, the crowd robbed “his weapon with serial number VXB798.”

45. In his statements of May 2017 and June 2020, Mr. Paris recanted his previous three statements in which he admitted that he was in possession of the firearm at the time of the incident. These statements were made only after the SIU had completed its investigation report and only once Mr. Paris was confronted with the SIU investigation findings that he had lost his weapon at the time of the accident and only once he came to know that Mr. Diallo told the investigators that he had found his weapon on 22 December 2016.

46. In his statement to the SIU investigators on 27 December 2016, Mr. Diallo stated that he found the firearm in Mr. Paris' room on 22 December 2016 and that he had informed him of the "bonne nouvelle" on 22 December 2016. Yet on 22 December 2016, Mr. Paris gave his second statement to the SIU investigator confirming that he had the weapon with him at the time of the accident and clearly stated: "since I exited my vehicle last night, I carried my weapon on my belt in a holster with a category 2 retention." This and the fact that he was observed immediately after the incident wearing an empty holster are strong indications that the belatedly offered version that the weapon was left in the hotel room is a falsehood, tendered conscious of the incriminating nature of the truth. This may be construed evidentially as an admission against interest confirming that he was indeed in possession of the weapon at the time of the incident.

47. The fact that Mr. Paris recanted his previous three statements only once he came to know of Mr. Diallo's evidence and once he came to know of the SIU Report, together with the fact that he failed to tell the investigators on 22 December 2016 and subsequently that Mr. Diallo had told him he had found his weapon in the room, cast significant doubt on Mr. Paris' credibility and strongly suggest that they collusively made false statements to cover up his misconduct.

48. The UNDT thus quite evidently erred by favouring Mr. Diallo's evidence and Mr. Paris' retraction of his earlier statements and the finding that there was no clear and convincing evidence that Mr. Paris was in possession of the firearm after having consumed alcohol, and that the charge of carrying a service weapon after having consumed alcohol was unsubstantiated.

49. The finding that Mr. Paris drove under the influence of alcohol while in possession of an unauthorised weapon, together with the offence of travelling without insurance, justifies the sanction of dismissal. It is within the managerial prerogative of the Organisation to hold its security officers in the field to a high standard. The Organisation legitimately prefers not to have in its employ an armed security officer who drives under the influence of alcohol in a private, unlicensed, uninsured vehicle, bearing a weapon holstered on his belt, for which he had no authorisation. The relationship of trust is undermined to the extent that the continuation of the employment relationship is rendered intolerable. The sanction of dismissal was proportional in the circumstances. The appeal of the Secretary-General must accordingly be upheld.

Judgment

50. The appeal is hereby granted and Judgment No. UNDT/2020/165 is hereby reversed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 7th day of January 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar