UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/062
Judgment No.: UNDT/2015/107
Date: 6 November 2015
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

ADUNDO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Didier Sepho

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a Security Officer at the S-2 level with the Security and Safety Service ("SSS"), Department of Safety and Security ("DSS"), contests the decision to place him on weapons restriction, and under the supervision of a Senior Security Officer, because of his refusal to undergo retraining pursuant to a Notice of Counsel issued for dereliction of duty. The Applicant requests that the Tribunal order rescission of the decision, removal or deletion of the Notice of Counsel from his file, as well as compensation for distress.

2. The Respondent submits that the Applicant's claims are not receivable because the matters complained of are not final administrative decisions impacting on the Applicant's terms of appointment but rather intermediate steps in the performance management process. In regard to the weapons restriction, the Respondent submits that the Applicant has no right under his terms of appointment to be issued a service weapon and he may continue to perform his duties with or without such a weapon.

Factual background

3. In a joint submission dated 15 September 2015, the parties submitted a list of agreed facts. These facts form the basis of the background set out below, supplemented, where necessary and relevant, by further factual findings of the Tribunal.

4. On 8 July 2014, the Applicant was assigned to Post 33—General Assembly/Visitors Area—at the United Nations Headquarters in New York.

5. Lieutenant Glenn Roberts, a Senior Security Officer and front line supervisor, reported that he witnessed the Applicant's absence from the Post for

approximately three minutes. He prepared and signed an SSS In-Service Performance Record document that day. The subject line of the document reads: "RE: Dereliction of Duty; Post 33".

6. The In-Service Performance Record appears to be a *pro forma* document that allows the SSS to establish a written record of the Service's efforts to correct performance issues through one of four methods: verbal counselling, formal counselling, a Performance Notice, or a Notice of Counsel. Each of these four options is briefly summarized on the form next to a corresponding check box. On the document signed by Lieutenant Roberts and dated 8 July 2014, the box for Notice of Counsel is checked. The standard summary for Notice of Counsel reads:

> Issued for serious breach of security, or negligent performance that could be referred for disciplinary proceedings. A Notice of Counsel will be reflected in an individual's e-Performance Report.

7. The narrative section of the Notice of Counsel concluded by stating:

> Officer Adundo, I am issuing this performance notice for dereliction of duty which is against "Ops-20, 20.03 (Post Deportment), Primary Responsibility on Post—Rule #1," which reads in part: "While on post/assignment, the officer will be held accountable for any breach of security or other lapse in security that could have been reasonably prevented had the officer been performing their assigned duties properly. Officers are expected to remain alert, engaged and professional whenever so detailed.

8. On 10 July 2014, Inspector Donald Patterson requested that the Applicant sign the Notice of Counsel. He refused.

9. By email dated 11 July 2014 to Mr. Bryan Black, Assistant Chief, SSS, the Applicant provided an explanation for his alleged dereliction of duty while stationed at Post 33. He stated that he heard strange sounds coming from the projector room adjacent to the auditorium and was verifying whether the machinery was running properly in accordance with his duties in regard to

fire, smoke detection and gas leakages. He stated that neither Lieutenant Roberts nor Inspector Patterson listened to his explanation or allowed him to view the video footage of the incident. He further stated that he considered the Notice of Counsel an act of harassment and retaliation for previous proceedings that he brought before this Tribunal. Finally, he requested that a transparent and independent body review the matter.

10. On 21 July 2014, Mr. David Bongi, Chief, SSS, requested that Special Assistant Noel Heffernan conduct an independent review of the events that gave rise to the issuance of the Notice of Counsel.

11. On 11 August 2014, Mr. Heffernan wrote to Mr. Bongi to inform him that closed-circuit television video footage confirmed that for a period of three minutes the Applicant was behind a wall where he could not view the Post 33 area. Mr. Heffernan concluded that the finding of dereliction of duty was reasonable in the circumstances, as the Applicant had breached an operating procedure by leaving his post unmanned. Mr. Heffernan recommended that the Applicant be given remedial instruction. He also suggested that consideration be given to downgrading the Notice of Counsel to a Performance Notice. Mr. Bongi rejected the suggestion in a hand written annotation on the memorandum the next day.

12. On 13 August 2014, the Applicant met with Mr. Black and was informed of the outcome of Mr. Hefferman's review and that he would be referred for retraining.

13. On 14 August 2014, Mr. Bongi issued Chief's Directive 2014-06 on Corrective Performance Training. The Directive stated that where an officer's performance caused a breach of security or unsafe conditions, the officer will not be reassigned to that post until retraining had been successfully completed.

14. On 19 August 2014, the Applicant received an official duty assignment for retraining. The same day, Sergeant Ellis Maronie from the Training and Development Unit ("TDU") of SSS notified Mr. Mathew Sullivan, Inspector Operations, SSS, that the Applicant had attended a TDU classroom that morning and stated that he was not going to take part in retraining because it would "serve as a sign of guilt" in relation to the Notice of Counsel. The Applicant further stated that he was being harassed and that he had submitted a written rebuttal to the Notice of Counsel and was awaiting a written response. He would not take part in any retraining until he received such a response.

15. By email dated 19 August 2014, Mr. Bongi informed the Applicant that his refusal of the direction from his chain of command to attend training called into question his fitness to be armed. Therefore, with immediate effect, he would be placed on weapons restriction and co-assigned under the direct supervision of a supervisor or Senior Security Officer. He was also informed that any allegation against a supervisor under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) could be submitted to the Head of Department.

Procedural background

16. This case was assigned to the undersigned Judge on 24 July 2015.

17. A case management discussion ("CMD") was held on 3 August 2015. The parties agreed that it would be useful to engage in discussion to explore the possibility of achieving an amicable alternative resolution of this dispute.

18. On 3 August 2015, with the consent of the parties, the Tribunal ordered a stay of proceedings until 12 August 2015 to enable the parties to engage in discussions. On 12 August 2015, the parties informed the Tribunal that they had been unable to reach a resolution.

19. By Order No. 188 (NY/2015), dated 18 August 2015, the Tribunal informed the parties that a hearing on the merits was considered necessary to hear evidence from the Applicant and any witnesses that he proposed to call, as well as the Chief of the SSS, Mr. Bongi, and any witnesses that the Respondent proposed to call. The parties were ordered to appear at a hearing beginning Monday, 21 September 2015.

20. On 25 August 2015, the Respondent filed a request for postponement of the hearing, stating that Mr. Bongi and the Acting Chief of the SSS, Mr. Michael Browne, were not available to attend the scheduled hearing and would not be available until November 2015. They would be providing leadership, operational support, and oversight of the security management system of the Organization during September and October, which are busy months for the SSS because of the General Assembly and related meetings.

21. Since Mr. Bongi was unavailable, the Tribunal issued Order No. 196 (NY/2015), dated 26 August 2015, ordering the parties to inform the Tribunal whether they were willing, in order to avoid delay, for the case to be determined on the basis of the documents on file and, if so, to file a joint statement indicating the principal issues in the case, the uncontested relevant facts, the factual issues in dispute, and the applicable legal principles and authorities, including any differences between the parties on the application of the law.

22. By joint submission dated 31 August 2015, the parties indicated that they were agreeable to the case being determined on the basis of the documents on file. On 15 September 2015, they submitted a joint submission on relevant issues, facts and law.

23. Having considered the parties' closing submissions, the Tribunal issued two further orders requesting information from the parties and held a CMD on 28 October 2015.

Relevant law

24. Article 2.1(a) of the Dispute Tribunal's Statute provides:

> The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual …
>
> > (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance;

25. ST/AI/2010/5 (Performance Management and Development System) provides, so far as it is material to this case:

> **Section 10**
>
> **Identifying and addressing performance shortcomings and unsatisfactory performance**
>
> 10.1 … When a performance shortcoming is identified during the performance cycle, the first reporting officer, in consultation with the second reporting officer, should proactively assist the staff member to remedy the shortcoming(s). Remedial measures may include … additional training … provision for coaching and supervision by the first reporting officer in conjunction with performance discussions, which should be held on a regular basis.
>
> **Section 15**
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> **Rebuttal process**
>
> 15.1 … Staff members having received the rating of "consistently exceed performance expectations" or "successfully meets performance expectations" cannot initiate a rebuttal.
>
> 15.7 The rating resulting from an evaluation that has not been rebutted is final and may not be appealed. However, administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved by way of informal or formal justice mechanisms.

26. The United Nations Department of Safety and Security Manual of Instruction on Use of Force Equipment Including Firearms ("the DSS Weapons MOI") provides, so far as it is material to this case (emphasis added):

> **Withdrawal of Authorization to Carry Weapons**
>
> 2.30 The authority to carry firearms by United Nations Security Officials is comprised of two components, the authorization by the United Nations and by the Host Country. If either component is revoked, either temporarily or permanently, the Security Official may no longer carry a firearm in that location for the duration of the revocation.
>
> **Revocation of Authorization by United Nations**
>
> 2.33 Security Officials shall adhere to the strictest practice for handling and safeguarding their issued weapons. Any breach of the United Nations Use of Force Policy, Weapons Carry Policy or unit SOP may result in the withdrawal of the [Weapons Authorization Card] by the [Chief Security Advisor/Chief of Security/Chief Security Officer]. Security Officials carry a weapon on the authority of the [Chief Security Advisor/Chief of Security/Chief Security Officer]. The [Chief Security Advisor/Chief of Security/Chief Security Officer] may rescind authorization to carry weapons/firearms whether on a temporary or permanent basis, by placing the Security Official on Weapons Restriction.
>
> **Weapons Restriction**
>
> 2.34 Security Officials may have restrictions placed upon their carrying a weapon by the [Chief Security Advisor/Chief of Security/Chief Security Officer]. A Weapons Restriction may be applied where the following has occurred;
>
> l. as determined by the [Chief Security Advisor/Chief of Security/Chief Security Officer] any behaviour, statement or act made by the Security Official which brings into question the Security Official's fitness to be armed.
>
> **Duration of Weapons Restrictions**
>
> 2.35 In every case where a Security Official is placed on Weapons Restriction by the Chief Security Advisor/Chief of Security/Chief Security Officer, the concerned Security

> Official *shall be notified in writing of the expected duration.*
>
> 2.36 Supervisors shall not use the duration of Weapons Restrictions as a punishment for misconduct where normal investigative or disciplinary procedures are applicable.
>
> **Long Term Withdrawal of Authorization**
>
> 2.38 In the event that a Security Official's firearms permits, either the Host Country or UN is removed [sic] with no prospect of it being reinstated or if the Security Official is judged to be unlikely for the foreseeable future to meet the fitness-for-duty requirement, the [Chief Security Advisor/Chief of Security/Chief Security Officer] shall reassign the Security Official to duties that do not require the carriage of a firearm …

Consideration

Notice of Counsel and retraining requirement

27. The Respondent submits that the issuance of a Notice of Counsel and the requirement that the Applicant participate in a retraining programme are intermediate or preparatory steps in the performance management process in SSS rather than final administrative decisions. He submits that the issuance of a Notice of Counsel can only be contested in the context of a final administrative decision adverse to the Applicant, such as a completed performance appraisal. The Respondent submits that completion of a retraining programme also forms part of the performance management process.

28. The Appeals Tribunal has stated that what constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision (*Andati-Amwayi* 2010-UNAT-058, para. 19).

29. The Tribunal notes that, according to the Notice of Counsel issued to the Applicant, such a document "*will be reflected* in an individual's e-

Performance Report" (emphasis added). By Order No. 271 (NY/2015), dated 20 October 2015, the Tribunal ordered the Respondent to answer a number of questions in relation to the legal status and effect of a Notice of Counsel. The Respondent filed a response on 23 October 2015 and the Applicant filed comments on that response on 27 October 2015.

30. In his response dated 23 October 2015, the Respondent stated that a Notice of Counsel is issued in the context of performance management under the terms of ST/AI/2010/5 (Performance Management and Development System). He stated that the first step in managing a performance shortcoming is to notify the staff member of the shortcoming. A Notice of Counsel is not placed on a staff member's Official Status File, but is instead held on an SSS working file for the purpose of performance management. The policy considerations were explained as follows:

> The Performance Notice/Notice of Counsel template establishes a consistent approach in the management of a large workforce where supervisors do not enjoy the luxury of fixed worked [sic] stations and consistent administrative hours or administrative support. SSS is a dynamic environment for both supervisors and officers. SSS supervisors are normally tasked with first and second reporting officer duties for a larger number of subordinate officers than comparable supervisors throughout the United Nations System. Further, unlike other departments and sections within the Organization, staff in SSS work various shifts at various times and are directly supervised by a range of supervisors. As a result, all supervisors are not immediately aware of the performance history of a staff member and/or whether they are engaged in remedial measures to address performance issues. For this reason, it is important that these matters be reflected in a working file in order that a range of managers can be made aware of any performance issues current at any particular time. Ultimately, the template developed allows for a user-friendly means by which performance management can be implemented in a transparent and consistent manner, so that "like" performance matters are always similarly managed across SSS.

31. The Respondent further stated:

> The Performance Notice is only relevant for the reporting period in which it occurred. Accordingly, if the matters referred to in a Performance Notice are not incorporated in the staff member's end of year assessment then there will be no other reference to the performance shortcoming in the staff member's record.

The Tribunal assumes that the Respondent intended to refer in this paragraph to a Notice of Counsel, which was the measure applied in this case, and was referred to throughout the rest of the Respondent's submission, rather than a Performance Notice.

32. There is no reference to the Notice of Counsel in the Applicant's electronic performance appraisal system ("e-PAS") report for the performance cycle 2014–2015, which was produced in evidence. Further, the Applicant received an overall rating of "successfully meets performance expectations" for this performance cycle. The Tribunal notes that, in accordance with sec. 15.1 of ST/AI/2010/5, a staff member who receives an overall rating on their e-PAS report of "successfully meets performance expectations" or "consistently exceed performance expectations" cannot initiate a rebuttal. Section 15.7 states that "[t]he rating resulting from an evaluation that has not been rebutted is final and may not be appealed".

33. The Tribunal finds that the Notice of Counsel in this case is, for all practical purposes, extinguished. It formed no part of the Applicant's performance appraisal for the 2014–2015 performance cycle and will not be referred to in any subsequent e-PAS. In addition, in a submission filed on 30 October 2015, the Respondent confirmed:

> The Notice of Counsel itself would not be part of the decision making process in promotion exercises. The notice would only be used if it was reflected in the e-performance being considered in the officer's promotion.

34. The Respondent noted that the Applicant's performance appraisal for the relevant period has been completed and there is no reference to the Notice of Counsel. Finally, the Tribunal notes that the Respondent has repeatedly stated that the Notice of Counsel has not and will not be placed on the Applicant's Official Status File.

35. The Tribunal finds that this Notice of Counsel was not reflected in the Applicant's e-PAS and was not placed on the Applicant's Official Status File. The Tribunal concludes that the Notice of Counsel issued to the Applicant has not, in and of itself, affected his legal rights. Nor has the decision to order him to attend retraining. Having found that his legal rights were not affected by the decision to issue the Notice of Counsel and to order him to attend retraining, it is not necessary for the Tribunal to consider the Applicant's other submissions in relation to this issue.

Weapons restriction

36. The Respondent submits that the Applicant has no right under his terms of appointment to be issued a service weapon and that he may continue to perform his duties with or without a service weapon. Therefore, the decision to place the Applicant on weapons restriction is not an appealable administrative decision.

37. The Tribunal rejects this submission. The weapons restriction has direct legal consequences. The Applicant is no longer authorized to carry a service weapon and this affects his ability to perform the full range of functions that he had hitherto been performing. The ambit of his duties and responsibilities has been circumscribed to a significant degree. For example, email correspondence from December 2014 shows that the Applicant was informed that he could not work an overtime shift that he had previously been scheduled to work because he is not authorized to carry a weapon.

38. Section 2.33 of the DSS Weapons MOI states that the Chief of Security may rescind authorization to carry weapons/firearms on either a temporary or permanent basis by placing an official on weapons restriction. However, in accordance with sec. 2.35 of the DSS Weapons MOI, an official who is placed on weapons restriction "shall be notified in writing of the expected duration". Mr. Bongi's email of 19 August 2014, informing the Applicant that he had been placed on weapons restriction, did not indicate the expected duration of the restriction as required by sec. 2.35 of the DSS Weapons MOI.

39. In a submission dated 23 October 2015, the Respondent stated that the weapons restriction is still in force and will remain in force pending the outcome of an ongoing internal investigation. The Tribunal sought further clarification at the CMD held on 28 October 2015 and, by Order No. 280 (NY/2015), dated 29 October 2015, ordered the Respondent to state when, or under what conditions, the weapons restriction on the Applicant is to be lifted and to provide the Tribunal with a copy of any written record providing notification of this information to the Applicant.

40. In a submission dated 30 October 2015, the Respondent stated:

> In this case, the fact that the applicant made and took an affirmative step or action by refusing a direct order makes the withdrawal of his weapon effectively 'self-imposed'. As a security professional, the Applicant is fully aware that the only way to restore his weapon status is to take action that will once again assure the Chief of SSS that he is ready to obey lawful commands. While he maintains his disobedience to orders of the Chief of SSS he cannot be issued with a weapon. The Applicant is fully aware that this is the condition upon which he is, and will remain, on weapons restriction.

41. The Respondent did not provide any written record of this information being notified to the Applicant as ordered by the Tribunal by Order No. 280 (NY/2015). The Respondent has therefore failed to show that the Applicant was

informed in writing of the duration of the weapons restriction and/or the circumstances under which the restriction would be lifted.

42. Keeping the duration of the weapons restriction open is contrary to sec. 2.35 of the DSS Weapons MOI. The use of the word "shall" in sec. 2.35 indicates that this requirement is mandatory. The Tribunal finds that in failing to stipulate the expected duration of the weapons restriction, as required by sec. 2.35 of the DSS Weapons MOI, Mr. Bongi took a decision that is inconsistent with the very MOI under which he purported to act.

43. In the joint submission dated 15 September 2014, the Respondent contends that the refusal by the Applicant to attend remedial training was:

> in violation of the most fundamental obligation of any security officer, that is, to follow the direction of the chain of command. Security managers must have the utmost confidence that their orders will be followed. When security officers who are entrusted with security duties decide not to follow a lawful instruction, regardless of any justification, the security system can break down with dire consequences.

44. It is clear from the way in which the Applicant's conduct has been described in this submission that the DSS considered that there had been a serious breach of discipline, which put at risk the security system of the UN. In the circumstances, the DSS had the choice of dealing with the infringement either as a performance related matter under ST/AI/2010/5 or a disciplinary matter in accordance with ST/AI/371 (Revised disciplinary measures and procedures) as amended by ST/AI/371/Amend.1.

45. The Tribunal finds that the imposition of a weapons restriction without limitation of time is not only wholly disproportionate but is inconsistent with sec. 2.36 of the DSS Weapons MOI, which provides that supervisors shall not use the duration of weapons restrictions as a punishment for misconduct where

normal investigative or disciplinary procedures are applicable. Since the Respondent took such a serious view of the Applicant's conduct, the correct procedure would have been to set up a fact-finding enquiry in accordance with ST/AI/371 and amended by ST/AI/371/Amend.1, with all the safeguards provided by the proper implementation of the procedure.

46. It is clear that the Applicant refused to carry out a direct order from his chain of command. It is not for the Tribunal to state what sanction or measure, if any, should be imposed. As the Chief of the SSS, Mr. Bongi was entitled to impose a weapons restriction in accordance with the DSS Weapons MOI. However, in doing so, he was obliged to comply with secs. 2.35 and 2.36 of that policy. The Tribunal finds procedural error and procedural impropriety in the manner in which the DSS Chief dealt with the Applicant and in particular by placing him on weapons restriction without indicating in writing the duration of the restriction or the conditions upon which his authorization to carry a weapon would be restored.

Remedy

47. The decision, communicated by email of 19 August 2014, to place the Applicant on weapons restriction without any limitation of time is rescinded. The Respondent is ordered to review the sanction in light of this Judgment and the requirements of sec. 2.35 and 2.36 of the DSS Weapons MOI. The Applicant will be well advised to consider whether his interests are best served by continuing to maintain his refusal to attend retraining.

48. The Applicant requested compensation for the distress and hardship caused by the violation of his rights.

49. The Appeals Tribunal has consistently held that not every breach will lead to an award of moral damages. Compensation may only be awarded if it has been

established that the staff member actually suffered damages. The Tribunal may thus award compensation for actual pecuniary or economic loss, non-pecuniary damage, stress and moral injury (see, for example, *Antaki* 2010-UNAT-095, para. 20-21). Whether or not a breach will give rise to an award of moral damages will necessarily depend on the nature of the evidence put forward before the Dispute Tribunal (*Andreyev* 2015-UNAT-501, para. 33). The Appeals Tribunal has stated that "compensation must be set by the UNDT following a principled approach and on a case by case basis" and "[t]he Dispute Tribunal is in the best position to decide on the level of compensation given its appreciation of the case" (*Solanki* 2010-UNAT-044, para. 20, affirmed in *Rantisi* 2015-UNAT-528).

50. An entitlement to moral damages may arise where there is evidence of harm, stress or anxiety caused to the employee which can be directly linked or reasonably attributed to a breach of his or her substantive or procedural rights. This may take the form of a medical or psychological report, or other evidence (*Asariotis* 2013-UNAT-309, para. 36). In some cases there will be medical evidence and in other cases there will be oral evidence, which may be tested at the hearing.

51. However, the Tribunal considers that it will be undesirable for the jurisprudence to develop in a way that requires medical evidence to be presented in every case or, in the absence of such evidence, for the Dispute Tribunal to be precluded from making an assessment unless there is a hearing. In this case, both parties agreed that the case should be decided on the basis of the documents. The Applicant claims compensation for the distress caused by the violation of his rights. Not all such claims require supporting *medical* evidence. The Tribunal of first instance will have to decide this question on the basis of the totality of the evidence and may need to draw appropriate inferences from the primary facts that have been established.

52. Medical evidence is not required by the Tribunal to find that the Applicant suffered moral damage. In this case, the primary fact relating to the assessment of compensation is the finding that harm in the form of distress has resulted as a direct consequence of the failure to indicate a specific period for the weapons restriction, in breach of sec. 2.35 of the DSS Weapons MOI. Further, the imposition of the weapons restriction has circumscribed the duties that the Applicant may perform.

53. A proper assessment of an award for moral damages should follow the following steps:

a. There should be a finding as to whether or not the Applicant did in fact suffer such damage.

b. If he did not, there would be no basis for such an award.

c. If he did, it will be important for the Tribunal to make a factual determination of the level of damage, bearing in mind that feelings of upset, stress, anxiety, psychological damage and all such components that either singly or cumulatively make up what has been referred to as "moral damages" are at varying levels of severity. At one end of the continuum lies a minimal level and at the other end a level of extreme severity. Between these two extremes is the appropriate level and the task of determining this level is properly entrusted to the Tribunal, which may have seen or heard the individual giving evidence and describing his feelings and emotional state. Alternatively, where there has not been a hearing the Tribunal would have to examine the documentary evidence and be prepared to draw such inferences as are appropriate from the primary facts to arrive at a reasonable assessment.

d. The Tribunal has to be satisfied that the damage as described was attributable to action taken by the Respondent.

e. Where the unlawful act was performed maliciously or was highhanded and without due regard for the legitimate concerns and feelings of the staff member it is bound to have aggravated the feelings of distress and will accordingly attract a higher award.

f. The Tribunal has to take into account that the assessment arrived at should be appropriate for the harm suffered. To award a paltry sum will discredit the policy underlying such awards as will an excessive award. Accordingly, the Tribunal has to bear in mind the principle of appropriateness and proportionality.

g. Finally, the Tribunal will remind itself that it has no power to award exemplary or punitive damages and that the award must be truly compensatory.

54. The Tribunal does not consider that an award for moral damages should be linked to the staff member's grade or status. Instead a principled approach should be adopted in that an assessment should first be made of the extent of damage suffered by the individual. The next step is to place a monetary value on the hurt without regard to the status of the individual. The Tribunal assesses the degree of moral damage to the Applicant as being towards the lower end of the scale for such awards.

55. In this case, the Tribunal may legitimately infer that the imposition of a restriction on carrying a firearm, without limitation of time, has caused the Applicant a significant degree of distress for which compensation is warranted in the sum of USD5,000.

Conclusion

56. The application succeeds in part.

57. The decision, communicated by email of 19 August 2014, to place the Applicant on weapons restriction without any limitation of time is rescinded.

58. The Respondent is ordered to review the sanction in light of this Judgment and the requirements of sec. 2.35 and 2.36 of the DSS Weapons MOI.

59. The Respondent is ordered to pay to the Applicant the sum of USD5,000. The amount shall be paid with interest at the United States prime rate with effect from the date that this Judgment becomes executable until payment of the said amount. An additional five per cent shall be added to the United States prime rate 60 days from the date this Judgment becomes executable.

(Signed)

Judge Goolam Meeran

Dated this 6th day of November 2015

Entered in the Register on this 6th day of November 2015

(Signed)

Hafida Lahiouel, Registrar, New York