



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

DIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:
Alexandre Tavadian, OSLA

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

Introduction

1. The Applicant, a staff member at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), challenges decisions dated 26 February 2014 to revoke his driving privileges and to place adverse material into his personnel file.

2. The Tribunal held an oral hearing on 21, 22 and 24 September 2015 at which the Applicant and three witnesses gave evidence.¹

Facts

3. The following facts are taken from the pleadings and documents submitted by the Parties and from the oral testimony of the witnesses.

4. The Applicant joined MONUSCO in February 2003 and currently holds a fixed term contract at the P-3 level as a Disarmament Demobilisation Repatriation Reintegration Reinsertion (DDR/RR) Officer. At the material time he was working at North Kivu and reported to Mr. Jean-Marc Tafani, then Acting Deputy Director of DDR and Officer-in-Charge (OIC) of his section at the Regional Office in Goma.

5. MONUSCO has a car pool sharing system from which staff members share vehicles for official duties, for travel to and from work and limited recreation/liberty travel. The only staff member who is specifically allocated a car is the Head of Office (HoO). From 2013 to 2014 this was Mr. Ray Torres.

6. United Nations driver's permits (DP) are issued to staff members who hold a valid national driver's license and have safe driving records. Staff members require a DP to drive United Nations vehicles but may access personal vehicles and drive in the host country without the DP.

¹ The Parties agreed that one proposed witness for the Respondent and two for the Applicant were not relevant to the issue and were therefore not called to give evidence.

7. On 26 February 2014, the MONUSCO Deputy Chief Transport Section, who was then acting as the OiC Transport Section, sent the Applicant a memorandum. The subject was “Drivers Conduct-Suspension of MONUSCO DP”. It stated:

Reference:

- a. Administrative Instruction No. 2013/151 - Advisory Committee on Traffic Safety (ACTS) dated 03 September 2013.
1. Transport section would like to inform you that your MONUSCO DP is suspended for an indefinite period with immediate effect for the following:
 - a. Your continued unjustified absence from the workplace for which administrative measures have been adopted as your absence has been considered to be in breach of UN Rules and regulations.

8. The Memorandum requested the Applicant to hand over his DP immediately to the Transport Section in Goma. He was advised that he was not authorized to operate any United Nations Owned Equipment (UNOE) and United Nations Contingent Owned Equipment (UNCOE) vehicles during the “above mentioned period” and that a copy of the report would be placed in his driver’s record file.

9. The Memorandum was copied to the Director of Mission Support (DMS), the Chief of Integrated Support Services (CISS) and Mr. Torres.

10. On 28 April 2014, the Applicant requested management evaluation of the decision.

11. The OiC Transport Section sent the Applicant an email on 12 May 2014 advising him that his MONUSCO drivers permit would be reinstated once he produced a valid driver’s license. That email was copied to the HoO and at least ten other individuals with MONUSCO email addresses.²

² Court Bundle, page 40.

12. On 2 June 2014, the Management Evaluation Unit (MEU) advised the Applicant that on 8 May 2014 it had been notified that the decision to suspend his driving privileges would be revoked, his driving privileges were fully reinstated and that he was now in possession of a valid DP. His request for management evaluation was regarded as moot. Further, MEU advised the Applicant that he had not demonstrated that any actual and potential damage had ensued from the suspension of his driver's license and therefore he was not entitled to compensation.

13. On 26 May 2014, the DMS advised MEU that “[the Applicant’s] driving privileges have been reinstated by return of his license”.³

14. On 22 August 2014, the Applicant filed this Application with the Tribunal.

15. In his oral testimony, the Applicant denied he was continually and unjustifiably absent from the workplace as alleged. He stated that between November 2013 and May 2014 he was continuously in his duty station and showing up to work to perform his functions. Throughout this time he was at the office for a full day's work and performing his duties with his unit except when he would sometimes leave the office to visit another department or office. This continued until he took authorised leave on 21 May 2014. He denied that he was doing no work at all.

16. The Applicant disputed the Administration's records of his attendance produced to the Tribunal which record that he was absent every day from January to June 2014. He said he was also marked absent starting in October/November 2013 but he saw the attendance records before they were approved and refused to sign them as he did not accept that they were correct.

17. He said he never received any communication from any official accusing him of absenteeism or from any official asking him to justify his alleged absences and that the allegation of absenteeism was completely new.

³ Ibid, page 44.

18. He alleged that he had a difficult relationship with Mr. Tafani. In his performance appraisal for 2010-2011, Mr. Tafani rated him as “does not meet expectations”. The Rebuttal Panel replaced that assessment with “fully meets expectations” in a report that was released in October 2013. The Applicant said that from then on Mr. Tafani began using tactics to get rid of him and alleges that the revocation of his DP was one of these tactics.

19. He stated that he was not paid his salary for the period he was marked absent but was later retroactively paid a lump sum to cover the non-payment. He is contesting the amount he should have been paid in separate proceedings.

20. The Applicant told the Tribunal that before his DP was suspended he used United Nations vehicles but no particular vehicle was assigned to him. He used the vehicles to travel to and from work, to do shopping and for liberty travel. He also used them to move between offices and for attending meetings. He said he was never asked by anyone at MONUSCO to justify his misuse of an official United Nations vehicle or asked to return a vehicle. This evidence was not challenged by the Respondent under cross examination.

21. The Applicant alleged that the loss of his DP caused him humiliation and embarrassment. Colleagues were asking him questions about it. He also alleged the decision endangered his safety as he had to rely on taking local transportation such as motorcycle taxis or walking to the office. He accepted that the United Nations provides shuttle buses to transport staff members to work but said that sometimes it does not function, the drivers may be absent and it can be very late. His duty station is dangerous and United Nations staff members can be targeted by the local population.

22. Patrick Garba gave evidence. He was a P-4 DDR Officer and Deputy Team Leader in the Goma DDR/RR Section and was formerly the Applicant’s first reporting officer from 2010-2012. He was not involved in the Applicant’s performance appraisal for the year 2010-2011 but stated that he would have ranked him as “meeting expectations”. He described the Applicant’s unit as being one of the best teams he had during his time at North Kivu. At a meeting in March

2012 with Mr. Tafani he refused Mr. Tafani's instruction to change the Applicant's 2011/2012 overall rating to "not meeting expectations".

23. Mr. Garba told the Tribunal that between January 2014 and June 2014 he and the Applicant were working in two different units but they remained in contact and discussed a few work related issues during this period. He saw him at meetings and the Applicant always responded to his calls

24. In his oral evidence to the Tribunal, Mr. Tafani acknowledged that he had issues with the Applicant's performance but had not undertaken any form of performance management of him. He did not complete an evaluation of the Applicant's performance after 2011 because he alleged that the Applicant systematically refused to initiate the process. Mr. Tafani accepted that this should not have prevented him as the manager from initiating the process.

25. Mr. Tafani stated that from 13 November 2013 to 14 June 2014 the Applicant was present in Goma but was absent from his office for almost the entire working time. For example, he arrived in the office late and left early. He was seen chatting outside the medical clinic and he produced no achievements or reports. Mr. Tafani said he ensured that the attendance records accurately reflected the Applicant's unauthorised absences on the basis of advice from the MONUSCO Human Resources Section that if a person was absent for two hours without authorisation they could be marked absent for the whole day. Mr. Tafani did not initiate a process to address the Applicant's absence from his post.

26. Under questioning, Mr. Tafani was evasive about the Applicant's 2010-2011 performance review. He could not remember completing it; he could not remember the original ranking he gave the Applicant; he could not "remember exactly" the rebuttal process or its outcome. Only when pressed, he remembered that the result of the rebuttal had been communicated to him "probably in October 2013". He said that the timing of the rebuttal outcome and his decision to mark the Applicant as continuously absent from the workplace was a coincidence.

27. He told the Tribunal that the main reason for taking away the DDR vehicle from the Applicant was that he was not performing his duties and not sharing the

vehicle with colleagues. United Nations vehicles were needed for operations and it was impossible for them to get them back from the Applicant.

28. He said he had discussed the Applicant's driving privileges with Mr. Torres briefly before the suspension memorandum was issued and was surprised that Mr. Torres had suspended the driving licence because that was for the DMS and is not in the power of the HoO.

29. Mr. Tafani said that the mission security rules forbid the use of taxis for transport and that it was too dangerous for staff to walk to work due to the possibility of attack. He said "Goma is a very, very dangerous town" and that it was not easy for international staff to use the United Nations shuttle buses which were mainly for national staff who worked different hours.

30. Ray Torres, who is the Director of Political Affairs for MONUSCO and was the Head of Office for Goma from 2013 to end of 2014, said in his evidence that it was he who took the decision to suspend the Applicant's DP and did so in accordance with the United Nations Transport Manual. He said that at the relevant time the Goma field office faced problems with the allocation and use of United Nations vehicles and he was called on to reduce the number of cars in the car pool while keeping the same level of activity. He had meetings about the allocation of vehicles and decided to take vehicles from people who were not using them for work purposes, such as the Applicant. His reason for deciding to suspend the Applicant's DP was that he was not working or performing any functions and was using a vehicle from the Electoral Unit where he was not employed.

31. Mr. Torres denied that this was a punitive measure. His motivation was to ensure the proper management and use of United Nations vehicles.

32. He said that the Transport Section told him which staff members were using which vehicles and he was asked to make sure that the Applicant no longer used a United Nations vehicle.

33. Mr. Torres never supervised the Applicant but knew he was not working because he had been told that by Mr. Tafani and the head of the DDR programme for North Kivu. He also said that he had personally seen the Applicant sitting outside the medical clinic, drinking tea outside the compound of the Electoral Unit every day at approximately 4pm and talking to people. He did not see him at meetings or interacting in a working relationship with others.

34. In his oral evidence, Mr. Torres said that it was evident to him that the Applicant was retaining vehicles beyond the scope of the authorisation given to him so his authorisation was withdrawn to avoid him using vehicles for private purposes only. In his written statement submitted before the hearing he stated that the Applicant was reluctant to relinquish a car however under questioning from the Tribunal he accepted that he had never requested the Applicant to return a car and never received a complaint that he would not share a vehicle.

35. The suspension letter was prepared and signed by the acting Chief Transport Officer, an experienced manager on whom Mr. Torres relied. The letter was placed in the Applicant's driving file maintained by the Transport Section of MONUSCO and not on his official status file.

36. Mr. Torres did not recall that the suspension was later revoked by the DMS.

37. From this evidence the Tribunal makes the following findings:

- a. The relationship between the Applicant and his direct supervisor, Mr. Tafani was strained.
- b. There was no systematic objective review of the Applicant's work performance after 2011.
- c. Mr. Tafani commenced marking the Applicant as absent from work shortly after the result of the Applicant's successful rebuttal of Mr. Tafani's performance appraisal of him was announced.

- d. Whether the Applicant was absent without authority from work for the period of November 2013 to June 2014 is in dispute. These matters are the subject of separate proceedings.
- e. The Applicant was reimbursed for the salary withheld due to his alleged unauthorised absences although the amount is in dispute.
- f. The Applicant was never questioned, formally or informally about the use of United Nations vehicles or about his conduct as a driver.
- g. The decision to suspend the Applicant's DP was taken by Mr. Torres based on information given to him by Mr. Tafani.
- h. The Applicant's DP was reinstated after review by the MEU.

Submissions

38. At the conclusion of the evidence the Parties made oral and written submission which are summarised below.

Applicant's submissions

39. The memorandum containing the contested decision contains the legal basis for the decision - MONUSCO Administrative Instruction No. 2013/15 (Advisory Committee on Traffic Safety (ACTS) dated 3 September 2013. There is no inherent power to suspend a DP. The decision is unlawful because:

- a. It is based on an instrument that is *ultra vires*. MONUSCO Administrative Instruction No. 2013/15 was not promulgated in accordance with para 4.2 of ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances).
- b. Pursuant to section D.5.3 of the DPKO Surface Transport Management in the Field (the Transport Manual), the method for cancellation of a DP is decided upon locally by the DMS. The Transport Manual was violated because the decision maker was not the DMS but the Head of Office.

c. The DP was suspended for improper and extraneous reasons. The Administration cannot suspend his driving privileges for prolonged or frequent absences from work this reason.

d. Chapter X of the staff rules provides a range of disciplinary or administrative measures that could have been imposed on the Applicant after providing him with due process rights. Suspension of driving privileges is not an administrative measure.

e. Administrative Instructions relating to the abandonment of post (ST/AI/400), performance management and development (ST/AI/2010/5), and recording of attendance and leave (ST/AI/1999/13) provide a range of tools for dealing with staff members who are frequently or consistently absent without authorisation.

f. If the real reason for the suspension was the misuse or refusal to return a United Nations vehicle there was no evidence that the Applicant was advised of this or that a request for return was made of him. The Applicant was not prevented from obtaining the keys nor was he asked for the return of the keys to any vehicle. The Applicant's alleged performance issues were unfounded. They have been formally rebutted.

g. The wording of the decision strongly suggests it was a punitive measure designed to humiliate and show authority over the Applicant.

40. The Applicant had no opportunity to respond to the adverse material being placed on his driver's file.

41. He suffered reputational harm and danger to his safety caused by the suspension of his DP. The reputational harm was caused by the Administration belittling him publicly. The letter which rescinded the decision to suspend was copied to a long list of persons who had nothing to do with the matter.

42. The Applicant's evidence about the reputational harm he suffered was given under oath. It was not discredited. It was corroborated by documentary evidence.⁴

43. The evidence of safety and security issues caused by the suspension of his DP was given under oath by the Applicant. It was confirmed by the evidence of one of the Respondent's witnesses which established that he was placed in a precarious situation by the three month suspension of his DP.

Respondent's submissions

44. The Respondent accepted that MONUSCO Administrative Instruction No. 2013/15 was not promulgated but submitted that it was not an AI but a low level internal document setting up a committee to give advice on traffic offences. The Respondent does not suggest that the Applicant drove carelessly.

45. The AI does not address the issue that is the substance of the decision and was not the legal basis for it but it was an aid to the inherent powers of the Administration because it recognizes that in certain circumstances a DP can be suspended.

46. The Manual on Surface Transport Management in the field, effective 1 February 2014 is the legal basis for the decision. The CTO manages and regulates the use and assignment of vehicles. Since the DP grants permission to use a United Nations vehicle, the CTO has the inherent discretion to suspend DPs as part of his responsibilities.

47. On the evidence before the decision maker at the time of the Applicant's absence without authorisation for almost two months it was lawful for the Administration to accept that the Applicant was not attending to his official functions and was not sharing his vehicle with other staff. United Nations vehicles are provided to staff to perform their official functions and when a staff member fails to do this there is no reason for them to have a vehicle.

⁴ Ibid, page 40.

48. The Administration acted rationally and properly in exercising its discretion. The Applicant failed to use United Nations vehicles for the performance of official duties and he failed to coordinate his use of United Nations vehicles with other staff. For these reasons his use of United Nations vehicles was withdrawn. Since the purpose of issuing a DP is to evidence that a staff member has authority to use United Nations vehicles, a staff member who is not authorised to use United Nations vehicles has no business holding a DP.

49. Administrative measures include everything that is not disciplinary, such as performance management and withdrawing salaries.

50. On remedies, the Respondent submitted that the amendment to article 10.5(b) of the Tribunal's Statute requires the Applicant to present compelling and objective evidence of harm. The Applicant did not show that he suffered sufficient inconvenience to warrant an award of damages.

51. It was well known that the Applicant suffered reputational damage as a result of his poor performance but he created that. The root cause of his problems was his poor performance.

52. There was no ulterior motive for the decision and it was not designed to humiliate the Applicant.

53. Counsel for the Respondent advised the Tribunal that the report had been placed on the Applicant's driving file and had since been removed.

Considerations

54. The principle issue is whether, given the facts before the decision maker, it was within his lawful discretion to suspend indefinitely the Applicant's DP.

55. It is inherent to the Tribunal's powers to review the validity of a decision and to control abuse of the discretionary powers of the Secretary-General that reasons are given for an administrative decision.⁵The Tribunal may interfere with

⁵ *Obdejin* 2012-UNAT-201.

the exercise of administrative discretion if it finds that the reasons given for the decision breached the principles of administrative law which include unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality.⁶

56. The memorandum to the Applicant advising him of the suspension of his DP expressly referred to MONUSCO Administrative Instruction No. 2013/15 and is the best evidence that the Administration relied on at the time the decision was made.

57. The MONUSCO AI advised staff of the establishment and constitution of an Advisory Committee on Traffic Safety (ACTS), an advisory body to the DMS on matters arising from damage to, or improper or careless use of United Nations vehicles. ACTS is responsible for enforcement of road safety in the Mission and implementation of corrective measures for improper use of vehicles and traffic violations.

58. That AI has not been promulgated pursuant to ST/SGB/2009/4. The question is whether this renders the contested decision null and void as alleged by the Applicant.

59. Pursuant to ST/SGB/2009/4, an Administrative Instruction is a rule, policy or procedure intended for general application and prescribed for the implementation of the financial regulations and rules, the staff regulations and rules or the Secretary-General's bulletins, and must be duly promulgated⁷.

60. The MONUSCO AI is of general application to the extent that it applies to all MONUSCO personnel but it was not expressly issued for the implementation of any specific rule or ST/SGB. Therefore it is not subject to the ST/SGB/2009/4 requirement that it be duly promulgated.

61. The Tribunal holds that the status of the AI is more akin to an inter-office memorandum or information circular than an Administrative Instruction. It is a

⁶ *Sanwidi* 2010-UNAT-084.

⁷ Sections 1.2 and 4.1 of ST/SGB/2009/4.

public pronouncement of policy and procedures applicable and binding on the administration and staff of the Mission. The lack of formal promulgation of the AI does not render the contested decision null and void.

62. The DPKO Manual for Surface Transport Management dated 1 February 2014 which was referred to by the Respondent during the hearing as the legal basis of the decision, has no provisions for withdrawal or suspension of a DP.

63. The DPKO Manual was issued on 1 February 2014, less than a month before the decision. Neither the Manual nor the allegation of misuse of vehicles was referred to in the official letter of suspension sent to the Applicant. The Tribunal finds that the evidence of the HoO that he was acting in accordance with the Transport Manual was an *ex post facto* justification and highly improbable.

64. In contrast, the MONUSCO AI states that the authority to issue and withdraw MONUSCO drivers permits lies with the DMS who may delegate it to the Transport and Safety Sections respectively.

65. Annex 2 of the AI contains a “MONUSCO Driver’s Infraction table and Applicable Corrective measures”. The infractions are classed from 1-3. They range from illegal or incorrect parking in the MONUSCO compound (Class 1) to offences such as driving under the influence of alcohol and drugs or causing a major accident (both Class 3) through a range of traffic. The corrective measures are imposed according to the class of the infraction and whether it was a first, second or third violation.

66. The corrective measure of withdrawal of a DP may be imposed for specific offences for defined periods (30, 90, 180 days) or permanently.

67. Annex 3 of the MONUSCO AI contains additional information relating to specific categories of violations, infraction or accidents and ends with the following statement: “Temporary withdrawal of a MONUSCO Drivers Permit will be reviewed on receipt of SIU report”.

68. The Tribunal finds that the purpose of the MONUSCO AI is to ensure that corrective measures are taken in case of traffic offences in United Nations vehicles by staff members with DPs. There is no provision in the AI for a corrective measure to be imposed for unjustified absence from the workplace such as was alleged in the 26 February 2014 memorandum to the Applicant.

69. The Administration did not identify any breach of the infractions listed in the AI to justify withdrawal of the Applicant's driver's permit.

70. The Tribunal does not accept the Respondent's submission that the Administration has inherent discretion to use the power of suspension of a DP for purposes other than those in the AI. The Administration cannot invoke an unwritten inherent discretion to depart from applicable policies and procedures in reliance on the mantra of "responsible management". In this case, having referred to the AI as the reason for the decision in the memorandum to the Applicant, the Administration was bound to comply with its provisions.

71. The Respondent's case was that the suspension was not punitive but an exercise of managerial discretion to control the use of the United Nations vehicle fleet at MONUSCO because the Applicant failed to use United Nations vehicles for performance of official duties and he failed to coordinate his use of the vehicle with other staff. This submission was predicated on the basis that if the Applicant had been absent from work as alleged he could not have been using the vehicle for official duties.

72. The Tribunal holds that the memorandum advising the Applicant of the suspension of his driver's permit has all the characteristics of a punitive measure. Its subject is "Driver's conduct". It refers to administrative actions for continued unjustified absence from the workplace and it refers to a breach of United Nations Rules and Regulations although it does not specify which of these has been breached. It purports to impose a measure derived from the list of corrective measures in MONUSCO Administrative Instruction No. 2013/15.

73. Staff rule 10.2(b) refers to administrative measures short of disciplinary action that may be taken against a staff member who has failed to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other administrative issuances. They include, but are not limited to, written or oral reprimand, recovery of monies owed to the Organisation and administrative leave.

74. Such administrative or non-disciplinary measures cannot be imposed on a staff member without an investigation and the due process rights specified in staff rule.10.3.

75. As the Applicant had not been subject to performance management or objective investigation in relation to the allegations of absenteeism he was unfairly deprived of due process and there was no proper evidential basis for the official reason given at the time of the decision to suspend his DP.

76. The Transport Manual confers overall management of the United Nations vehicle fleet to the CTO but pursuant to the MONUSCO AI, the DMS has the sole authority and discretion to issue or withdraw DPs. In this case the impugned decision was made without authority by the HoO.

77. Finally, the Tribunal finds that there is a high probability that one of the motivations for the decision to suspend the Applicant's DP was Mr. Tafani's reaction to the rebuttal of the Applicant's performance assessment. His decision to mark the Applicant continually absent from work shortly after the rebuttal outcome defies coincidence. As the HoO relied on Mr. Tafani's reports of the Applicant's absenteeism in the absence of any performance management or investigation to justify the suspension of his DP his decision was tainted by the ill motivation.

Conclusions

78. The Tribunal finds that the decision to suspend the Applicant's DP was unlawful. It was an arbitrary exercise of a wrongly assumed discretion, it was taken without authority and it was unfair and ill motivated.

79. The placement of the report of the suspension on the Applicant's drivers file was consequently unjustified. Nevertheless, the Tribunal accepts the Respondent's assurance that no such report was placed on the Applicant's personnel file and that it has since been removed from his driver's file. It does not amount to a substantive breach of the Applicant's rights.

Remedies

80. The unlawful decision in this case was the indefinite suspension of the Applicant's DP. The Tribunal may award compensation for damage which is directly linked or reasonably attributed to that decision.

81. The Applicant claims monetary compensation for damages arising from humiliation, violations of his fundamental employment rights, suspension of driving privileges in a Hardship E duty station, and other moral damages.

82. The Respondent submitted that the amendment to art. 10.5(b)⁸ of the UNDT Statute requires the Applicant to produce "compelling and objective evidence of harm". However, the amendment does not use the words "compelling and objective evidence". It states that the Dispute Tribunal may order "[c]ompensation for harm, supported by evidence".

83. Further, the contested decision in this case was dated 26 February 2014 and the Application was filed on 22 August 2014. Both of these dates predate the amendment of the Tribunal's statute. The amendment could apply to an award of compensation in this case only if it is applied retrospectively.

84. In *Nogueira* 2014-UNAT-409 and reiterated in *Hunt-Matthes* 2014-UNAT-444, the United Nations Appeals Tribunal (Appeals Tribunal) recalled the general principle of law against retrospective effect/application of laws.

85. An award of compensation to a staff member who has been harmed as a consequence of an unlawful decision is a substantive right conferred by statute.

⁸ General Assembly resolution 69/203.

Any changes to that right apply to decisions made after the promulgation of the amendment but do not have retrospective effect.

86. In *Asariotis* 2013-UNAT-309, the Appeals Tribunal referred to the nature of evidence which the UNDT can rely on in assessing moral damages where such damage is found to have occurred.

(ii) An entitlement to moral damages may also arise where there is evidence produced to the Dispute Tribunal by way of a medical, psychological report or otherwise 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 and where the UNDT is satisfied that the stress, harm or anxiety is such as to merit a compensatory award.

We have consistently held that not every breach will give rise to an award of moral damages under (i) above, and whether or not such a breach will give rise to an award under (ii) will necessarily depend on the nature of the evidence put before the Dispute Tribunal.

87. The Tribunal holds that sworn testimony given at an oral hearing which is available for cross examination may provide sufficient evidence to support a claim for moral damages but such evidence must be credible and reliable.

88. The Tribunal rejects the Applicant's claim for humiliation and reputational damages arising from the suspension of his driver's permit. His evidence on this was generalised and vague. The letter revoking the suspension was copied to numerous others but this is not sufficient to support even an inference that his reputation was damaged by the suspension.

89. However, the Tribunal finds credible the Applicant's sworn evidence that as a result of the suspension, his safety and ability to carry out his usual activities were compromised for the three months before it was reinstated. The reliability of this evidence was supported by the fact that the duty station has the highest hardship classification⁹. In addition, as attested to by one of the Respondent's witnesses, the use of taxis is a breach of mission rules and all other methods of

⁹ See ST/IC/2015/14.

transport, apart from sharing with other staff members, are regarded as either dangerous or impracticable.

90. In these circumstances the inevitable and direct consequence of the unlawful suspension of the Applicant's driver's permit was that his ability to travel safely to and from work in a highly dangerous situation was compromised.

91. For these reasons the Tribunal awards the Applicant the amount of USD500 for each month he was deprived of the DP making a total of USD1500.

92. The total sum of compensation is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Coral Shaw

Dated this 16th day of November 2015

Entered in the Register on this 16th day of November 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi