



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SYRJA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY

Counsel for the Applicant:

Nicole Washienko, OSLA

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Alister Cumming, ALS/OHRM

Introduction

1. The Applicant, a Security Officer with the Opération des Nations Unies en Côte d'Ivoire (ONUCI), filed an Application with the Tribunal contesting a decision of the United Nations Claims Board (UNCB) to deny his claim for compensation for personal effects looted and/or destroyed at his residence in Daloa following post-election violence in Côte d'Ivoire (Contested Decision).

2. The parties requested that the case should be decided on the papers without an oral hearing. The Tribunal decided that an oral hearing was not necessary.

Procedural history

3. The Applicant filed the current Application on 19 March 2014 and the Respondent submitted a Reply on 24 April 2014 in which he challenged the receivability of the Application.

4. The Applicant filed his response to the Respondent's assertion of non-receivability on 29 May 2014.

5. The Tribunal ordered the Respondent, by Order No. 224 (NBI/2015) dated 26 June 2015, to provide further evidence regarding the delegation of the Secretary-General's authority in staff rule 11.2(b) to the Management Evaluation Unit (MEU). The Respondent complied with Order No. 224 on 2 July 2015.

6. The Applicant filed his observations on the Respondent's response to Order No. 224 on 8 July 2015.

7. In response to the Tribunal's orders, the parties filed additional evidence in the form of sworn witness statements and policy documents.

8. In Judgment No. UNDT/2015/092, the Tribunal found the Application dated 19 March 2014 was receivable.

Facts

9. The facts are taken from the signed and attested witness statements (including annexes) of the Applicant; the Chief of the Claims Unit of ONUCI and Secretary of the Local Claims Review Board (LCRB); the Secretary of the UNCB; the Regional Administrative Officer (RAO), Daloa with ONUCI; and a Security Officer formerly stationed with ONUCI in Daloa. This evidence was supplemented by the responses of the Applicant and the Respondent to questions from the Tribunal.

10. The Applicant has been employed by the United Nations since 1993 and holds a permanent appointment. In 2007, he was transferred to ONUCI in its south-west headquarters (SE-HQ) at Daloa, Cote d'Ivoire, where he serves as a Security Officer.

11. On 7 December 2010, the Applicant completed, signed and dated a form containing an inventory of his personal effects which were located at the duty station. The total value of these effects was USD8,120.

12. The end of the form stated:

It is your personal responsibility to update your inventory regularly. An unsigned or undated form is not valid. Keep in mind that in case of loss of personal effects, only your inventory, duly filed with Personnel, and the values indicated therein, will be taken into consideration by the Claims and Property Survey Unit for possible reimbursement.

13. The Applicant submitted the form to an administrative assistant in the Office of the RAO in Daloa who, according to Mission policy, would sign the lists and send them to the Human Resources (HR) section at HQ-Abidjan for further action.

14. The RAO confirmed that the Applicant's inventory list dated 7 December 2010 was forwarded to him by his administrative assistant and that it was his signature which appears at the bottom of the form, but it was not stamped by his office. The RAO could not confirm the date the form was seen by him before sending it to Abidjan.

15. There is no evidence that that inventory list was transmitted by the RAO or his office to HR in Abidjan. It was not signed by HR.

16. On 25 February 2011, during a series of violent post-election demonstrations, armed vandals broke into and looted the Applicant's residence in Daloa. They destroyed anything they could not carry away. The Applicant lost everything except the clothes he was wearing.

17. At the time the Applicant and other ONUCI staff members were at the Mission's compound having been advised not to return to their residences.

18. The Applicant reported this incident. His claim was investigated by the ONUCI Special Investigations Unit (SIU).

19. On 24 March 2011, the Applicant made a compulsory statement about the incident and the loss of his personal effects. He stated:

I have completed the inventory list and updated it several times and provided it to the RAO office in the SW-HQ in order to get it to be approved and forwarded to the Personnel section ONUCI HQ in Abidjan as advised by procedure. Even my inventory list was updated recently in December 2010.

He also referred to two other lists he had made since the incident.

20. On 28 March 2011, the SIU concluded its investigation into the Applicant's claim. It recommended that he be compensated for the items looted according to United Nations Rules and Regulations. The SIU report included a copy of the Applicant's inventory list dated 7 December 2010 as well as the two inventories completed after the violence.

21. On 1 April 2011, the Applicant submitted claims for reimbursement of expenses for the loss and/or damage to personal effects at his residence at Daloa to the value of USD12,120. To this claim he attached two inventory lists. The first was the list he had submitted to the RAO on 7 December 2010 to the value of \$8,120.

22. The second was a list the Applicant prepared after the looting and provided to SIU on 26 March 2011. This was headed “Inventory of Other Private Items” and listed items to the value of USD4,000 that had not been included in his first list.

23. The Applicant says that the first list contained all the high value items in his residence such as computers, DVDs and other electronics, whereas the second list included lesser value effects such as bed linen, sneakers and his personal medications which he had lost in the attack on his residence.

24. On 25 August 2011, the Applicant sent an interoffice memo to the Chief of General Services ONUCI-Abidjan in which he described his claim, gave reasons for submitting the second inventory, providing photos of his looted residence and asking for it to be dealt with without further delay. He again attached the 7 December 2010 inventory.

25. On 28 September 2011, the LCRB deferred the Applicant’s case until such time as he provided an inventory list stamped by the HR section prior to the events.

26. On 21 November 2011, the Applicant was advised by the Claims/Property Survey Assistant that his case would be re-reviewed and finalized only if he could provide the inventory list that had been stamped by the HR section.

27. The Applicant protested that he had already provided the inventory list, which had been signed and stamped by the RAO in accordance with official policy. He stated: “In the case that somebody else is not taking care of his duties why should I be victimized?”

28. On the same day, the Chief of General Services, ONUCI, wrote to the Applicant advising him that it was the responsibility of a staff member to ensure that the inventory list reaches the HR section. He stated: “That you submitted a document to the RAO does not necessarily absolve you of that responsibility. You should follow up”. He went on “It is now evident that you have not submitted your PE Inventory list to Personnel section as is required by the Rules”.

29. The Applicant replied *inter alia*:

I strictly followed all procedures rules and policies and I provided my inventory list to the RAO's Office and the RAO signed and stamped the document and then, as far as I know, the RAO forwarded the document along with other documents to Abidjan.

We should all remember how the situation was in the country from December 2010 to April 2011; UN flights were not operating properly, roads were totally blocked, all unessential movement was restricted (sic) and the whole mission was paralysed. In this point of view it was impossible for me or anybody else to go to Abidjan bringing the lists to the personnel section in order to ensure it reaches there.

30. The Applicant requested that the Chief of General Services forward his case to UNHQ to be considered by UNCB and to include the inventory list signed and stamped by the RAO.

31. In October 2012, the Secretary of the LCRB who was stationed at Côte d'Ivoire visited Daloa and informed the staff members that she would recommend that the requirement for stamped inventories of personal effects be waived for all post-electoral related claims so as to ensure fairness and equality in the treatment of all the claimants. In her statement to the Tribunal she said that she also recommended that compensation be awarded on the basis of reasonableness and requirement for mission life. She told the staff members that, as per the procedure, her recommendations would be made to the Local Property Survey Boards (LPSB) for the Chief of Missions Support's (CMS) review and review by the Controller "with whom lies the final decision".

32. According to the Applicant's statement, the Secretary of the LCRB also recommended that in accordance with the practice previously undertaken in other United Nations Missions, Daloa staff members should ask a close friend, relative or colleague to sign a statement confirming that all alleged losses had indeed been stolen or destroyed.

33. In light of this recommendation, the Applicant submitted a statement from his friend, a radio officer at ONUCI, who stated that he had known the Applicant for many years and confirmed that he had had all the items on his inventory lists

before his villa was attacked and he lost all of them when his villa was looted and destroyed.

34. In the LCRB's report dated 28 November 2012, the Secretary of the LCRB determined that the loss of his entire inventory of personal effects was directly attributable to the performance of official duties and the events were beyond his control and could not have been prevented by him.

35. In relation to compensation, the Secretary of the LCRB noted that the Applicant had provided a copy of his inventory list, which was not stamped by the HR section prior to the incident. He had submitted a separate list of all his personal belongings lost during the crisis. The Secretary of the LCRB found no reason to doubt the genuineness of those documents.

36. The Secretary of the LCRB suggested that the requirement for stamped inventory lists be waived for all post electoral related claims and, in lieu of these lists, recommended that compensation be conditional on the provision of proof of ownership such as payment receipts or a witness statement from a colleague, friend or supervisor.

37. The Secretary of the LCRB proposed that the items be reviewed on the basis of reasonableness and requirement for mission life. She suggested that the ONUCI compensation matrix be used to compliment ST/AI/149/Rev.4 (Compensation for loss of or damage to personal effects attributable to service) and recommended applying a 10% depreciation rate to all items except those purchased in 2010.

38. The recommendation of the Secretary of the LCRB, which was accompanied by the analysis of the claim list according to the matrix, recommended that the Applicant be compensated in the full and final amount of USD6,525.

39. As the recommended amount exceeded the Mission's local delegation of authority granted by the Controller to settle staff member claims, the Secretary of

the LCRB recommended that the claim be forward to UNCB for final review and approval by the Controller.

40. In about February 2013, the Applicant was asked to complete additional forms for UNCB. He submitted a claim form which deleted some items he had earlier claimed for but had subsequently found. The revised total of his claim was USD11,710.

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

42. In response to questions from the Tribunal, the Respondent added that each case was reviewed on its merits based on the documentation submitted and the information provided. UNCB considered the witness statement of the radio officer as to proof of ownership of every item claimed on the inventory but did not deem it to have sufficient probative value to outweigh the absence of an inventory list submitted prior to the incident. UNCB also deemed that the inventory list that the Applicant submitted directly to the UNCB with an illegible signature, an illegible title and no stamp, was not credible.

43. The Tribunal was also advised that when UNCB finds that there is little or no corroboration or proof of ownership, rather than recommend denying a claim in its entirety, it makes an assessment of what is the minimum required in the duty station. It does this based on what the staff members on the UNCB who have “various levels of seniority” consider to be necessary.

44. The minutes of the UNCB meetings on 17 April 2013 and 5 August 2013 reveal that the Applicant’s claim was considered as one of eight post-election claims by international staff members. At the first meeting, the UNCB expressed

general concerns including whether inventory lists were all dated and stamped after the incident and whether the LCRB's method of assessment of the claims could be considered to be in violation of the ST/AI. The claims were deferred to obtain explanations.

45. The 5 August 2013 minutes stated:

Timing and stamping of inventories

The board noted [the Secretary's] response in her 23 April email that all inventory lists were dated and stamped after the incident. Therefore due to the lack of adequate corroboration and proof of items....with regard to international staff members the board recommended approval of only necessary for mission life, such as a few changes of clothes, one cell phone, one laptop, minimal appliances, minimal cash and no recreational equipment.

The Board recommended the payment of \$2654.67 to the Applicant calculated as follows

Total claim at replacement value	\$12120
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Less:

Excess over maxima: (\$2736.66)	
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Depreciation:	(\$1703.67)
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Disallowed:	(\$5025.00	(\$9465.33)
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46. On 19 December 2013, the Applicant received the decision of the Claims Board. It stated:

According to the information provided by ONUCI, all inventory lists were dated and stamped after the incident and hence, due to lack of adequate corroboration and proof of ownership, the UNCB recommended approval of only the minimum necessary for mission life, such as few changes of clothes, one cell phone, one laptop, minimal appliances, minimal cash and no recreational equipment. The Controller therefore approved on 10 December 2013, that you be compensated in the final amount of US\$2,654.67.

47. In response to a request for information from the Tribunal, the Applicant advised that he had medical insurance at the time of the incident. Since making his claim he has been reimbursed by his medical insurance provider for 80% of his out of pocket medication expenses, that is USD1,150. He therefore reduced his claim for medication from USD1,150 to USD250.

Submissions

Applicant's submissions

48. The Contested Decision was unlawful because UNCB and the Controller failed to consider material facts relating to the Applicant's inventory list that was stamped and signed by the RAO. Contrary to the determination of UNCB, the Applicant had obtained a signed and stamped list from the RAO approximately two and a half months prior to the event in question.

49. The decision was unlawful to the extent that it was based on the failure of the Applicant to produce an inventory list stamped by the HR section and/or to provide such a list to the HR section.

50. The Applicant has consistently adhered to all requirements in the ST/AI for presenting a claim for his personal effects. Including notifying the relevant authorities with evidence the day after the incident and making an appropriate claim with copies of reports, investigations and inventories.

51. The Applicant has a legitimate expectation to the funds he claimed based on the promise of the Secretary of the LCRB that his claim would be reimbursed even in the absence of inventory lists provided before the violence.

Respondent's submissions

52. The Respondent denies that the Applicant obtained a stamped and signed list from the RAO's office approximately two and a half months before the event in question. Accordingly, there was no inventory list dated and received in advance of the incident in the possession of the Administration.

53. In the absence of that evidence, the Controller was entitled to have regard to the other evidence submitted by the Applicant. The letter from a colleague was produced after the events in anticipation of the Applicant's claim. The Controller was entitled to give little weight to the evidence produced by the Applicant.

54. The Controller had regard to the provisions of ST/AI/149/Rev.4. Compensation was restricted to the items reasonably required for day-to day life in the Mission area.

55. The Applicant was not given an express promise that he would be reimbursed for all his losses and he had no legitimate expectation.

Issues

56. In determining whether the decision to award the Applicant less than the compensation he claimed was lawful the following issues arise:

- a. Did the decision-maker consider all material facts including the inventory list dated 7 December 2010?
- b. Was the decision based on the Applicant's failure to produce a pre-incident inventory list stamped by the HR section and if so was this proper?
- c. Did the decision-maker apply the correct criterion for assessing the amount of compensation to the Applicant?
- d. Did the Applicant have grounds for a legitimate expectation that his claim would be reimbursed in full based on an express promise?

Legal framework

57. Staff Rule 6.5 provides that staff members are entitled to "reasonable compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of duties on behalf of the United Nations".

58. This rule is implemented by ST/AI/149/Rev.4 which defines the conditions and limits governing such compensation and sets out the procedure for the submission and examination of such claims.

59. Paragraph 8 of the AI states that there is no compensation for articles that “cannot be considered to have been reasonably required by the staff member for day-to-day life under the conditions existing in the duty station”.

60. Paragraph 9 sets maximum limits for specified personal and household items and paragraph 10 states that no compensation will be paid for more than one of these items.

61. Pursuant to paragraphs 12-14, a claimant is required to notify the appropriate United Nations authorities and other authorities of loss or damage as soon as possible. A claim to the LCRB is to be made within two months of the discovery of loss and damage and shall include copies of investigation reports and a signed statement by the claimant which included details of the lost or damaged article and the circumstances pertinent to the loss and damage.

62. In the case of field missions the Chief of the Claims Unit (the Secretary of the LCRB) is responsible for the presentation of cases in accordance with the Department of Field Support Guidelines for Claims for Field Missions (DFS Guidelines). The Secretary of the LCRB is responsible for ensuring that all pertinent details relating to each claim or case have been obtained and comprehensively complied with in each case file.

63. The UNCB acts in an advisory capacity to the Controller.

64. Processing of claims by UNCB is covered by the “Guide to the UNCB: Claims for loss or damage to personal effects directly attributable to service (the Guide).

65. The Guide sets out conditions under which loss or damage is or is not deemed to be attributable to service as well as limitations and other factors considered.

66. Paragraph 4 states that:

Compensation is not payable for items which are not reasonably required for the particular conditions at the relevant duty station. For example, if accommodation at the duty station is at a military

camp or barracks, it would not be considered reasonable to have antiques, porcelain or valuable art. In addition, no compensation is payable for the loss of or damage to animals, motorcycles, boats, jewelry, negotiable instruments, tickets or documents.

67. The DFS Guidelines states at paragraph 5.2.5 that the claimant shall provide *inter alia* a copy of the most recent inventory list submitted to the mission's HR section.

68. A power point presentation of a security briefing for the Sector West security section, annexed to the Application (Annex 3) covers the topic of inventory lists of personal effects as follows: "Everybody should complete this inventory list and bring it to RAO's office in SW-HQ-Daloa. The list should be updated whenever needed".

Issue 1

Did the decision-maker consider all material facts including the inventory list dated 7 December 2010?

69. The Administration has a duty to act fairly, justly and transparently in dealing with its staff members.¹ It is a basic tenet of fair and just dealing that a decision-maker must take into account all material facts.

70. In the absence of any evidence to the contrary the Tribunal proceeds on the basis that the decision-maker accepted the recommendations of the UNCB and did not enquire further into the reasons behind those recommendations.

71. The decision letter of 19 December 2013 stated that: "According to the information provided by ONUCI, all inventory lists were dated and stamped after the incident and hence, due to lack of adequate corroboration and proof of ownership the UNCB recommended approval of only the minimum...."

72. This letter, the minutes of the UNCB meetings and the evidence of the Secretary of the UNCB show that the UNCB acted on the understanding that in spite of its date, the 7 December 2010 inventory had been prepared after the event

¹ *Hersh* 2014-UNAT-433.

and that there was no evidence of the Applicant's personal possessions that predated it.

73. The evidence to the Tribunal established that such evidence did exist and was available to the UNCB.

74. In March 2011, the Applicant provided SIU with his inventory list dated 7 December 2010 that had been signed by him and the RAO. On its face it had been prepared and submitted by the Applicant to the RAO before the post-electoral violence in February 2012 in accordance with the Mission's policy at the relevant time was that staff members arriving in the sector were to submit their inventory lists to the Office of the RAO for signature and subsequent transmission. The RAO signed the 7 December list in accordance with this policy.

75. The Applicant referred to the 7 December 2010 inventory and attached it to a sworn declaration in which he was warned that if he stated anything he knew to be false he may be liable to administrative and/or disciplinary action. While noting that the 7 December inventory had not been stamped by the HR office, the Secretary of the LRCB found no reason to doubt the genuineness of the inventories submitted by the Applicant with his claim.

76. The minutes of its deliberations dated 5 August 2013 show that UNCB, in reliance on the last email it had received from the Secretary of the LCRB, considered all the inventories of the claimants together and did not refer to the Applicant's 7 December 2010 inventory.

77. This inventory was a vital piece of evidence that was material to the Applicant's claim as the UNCB based its recommendations on the lack of corroboration and of proof of items taking into account that the inventory lists were stamped and dated after the incident.

78. The Tribunal finds that the UNCB did not take into account all material facts relating to the Applicant's claim for compensation.

Issue 2

Was the decision based on the failure of the Applicant to produce a pre-incident inventory list stamped by the HR section and if so was this proper?

79. The UNCB decided that the inventory lists submitted by the Applicant in support of his claim were dated and stamped after the loss. This decision was based on the advice of the Secretary of the LCRB that the claimant had provided a copy of his inventory list which was not stamped by the HR Office prior to the incident.

80. There is no written rule, regulation or policy that an inventory list must be filed by the claimant personally with the HR section or be stamped by HR in order for a claim for compensation to be reviewed or finalized² or that it is the responsibility of a staff member to ensure that the inventory list reaches the HR section.³

81. The only written requirement of a claimant for compensation is to provide a copy of the most recent inventory list submitted to the mission's HR section.⁴

82. According to the evidence of the RAO, the Applicant and the power point presentation, the Mission policy was for staff members to submit their inventories through the RAO who was responsible for transmitting them to the HR Section.

83. In the case of a claim for loss of property, an inventory list that had been dated and stamped by the HR section before the date of loss of property would be the best evidence of ownership. The Applicant was unable to produce such a document. However he was able to produce a document that on its face predated the incident and had been signed by the RAO.

84. The Respondent initially denied that the 7 December 2010 inventory had been received and signed by the RAO. This was only corrected when the RAO confirmed in the course of the Tribunal's proceedings that he had received and

² As asserted by the Claims/Property Survey Assistant.

³ As asserted by the Chief of General Services.

⁴ DFS Guidelines, paragraph 5.2.5.

initialed it. The Tribunal finds that the Applicant met his obligation to provide a pre-incident inventory to the RAO.

85. In light of the mission policy on the submission of such inventories the Administration was incorrect not to take into account the Applicant's pre-incident inventory.

Issue 3

Did the decision-maker apply the correct criterion for assessing the amount of compensation to the Applicant?

86. The UNCB decided that the inventory lists submitted by the Applicant in support of his claim were dated and stamped after the loss and accordingly in the absence of corroboration and proof of loss recommended approval of the "minimum necessary for mission life".

87. There is no written policy or rule that empowers the UNCB to invoke that test for approving compensation. That test does not conform with the entitlement of staff members either under staff rule 6.5 to "reasonable compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of duties on behalf of the UN" or paragraph 8 of ST/AI/149/Rev. 4 which refers to articles reasonably required by the staff member for day-to-day life under the conditions existing in the duty station.

88. The UNCB has the power to determine its own rules of procedure but it is bound by paragraph 1 of ST/AI/149/Rev. 4 to act in accordance with the terms, conditions and limits governing compensation.

89. As stated in *Hersh*, the Administration has a duty to act fairly, justly and transparently in dealing with its staff members and to follow its own Regulations and Rules.

90. If, as it did in this case, UNCB recommends the payment of compensation, the level of that compensation must be in accordance with the regulations and rules of the Organization.

91. The Tribunal holds that the test of “minimum necessary for mission life the UNBC life was arbitrary and not in compliance with ST/AI/149/Rev. 4.

Issue 4

Did the Applicant have grounds for a legitimate expectation that his claim would be reimbursed in full based on an express promise??

92. The evidence established that the Applicant did not receive an express promise from the Secretary of the LCRB that they would be reimbursed for all their losses. The Tribunal is satisfied that she advised him and other claimant of what she would recommend but not of the ultimate decision by the Controller.

93. The Applicant’s claim of legitimate expectation is rejected.

Conclusions

94. The Contested Decision is unlawful for the following reasons:

- a. The decision-maker did not take into account a material fact, namely that the Applicant had submitted an inventory of personal items that pre-dated the incident; and
- b. The UNCB recommended an award of compensation on the basis of a test that did not conform to that required by the Staff Rules and ST/AI/149/Rev. 4.

95. As the UNCB is a technical body for the purposes of staff rule 11.2(b)⁵, it is appropriate for the case to be remanded to it to reconsider the Applicant’s claim for compensation⁶ in light of the findings in this judgment. A remand will also give the parties an opportunity to discuss and attempt to reach agreement on other remedies sought by the Applicant.

96. If the parties are unable to reach an agreement by 29 February 2016 the Tribunal will make a determination on remedies based on the evidence and submissions already before it.

⁵ *Syrja* UNDT/2015/092.

⁶ *Karseboom* 2015-UNAT-601.

(Signed)

Judge Coral Shaw

Dated this 6th day of January 2016

Entered in the Register on this 6th day of January 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi