



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Hafida Lahiouel

BERTRAND

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**

Nicole Washienko, OSLA

Mariam Munang, OSLA

**Counsel for Respondent:**

Jonathan Croft, ALS/OHRM, UN Secretariat

Cristiano Papile, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 12 May 2016, the Applicant, a former Security Officer, Security Operations Unit, United Nations Stabilization Mission in Haiti (“MINUSTAH”), filed an application contesting the imposition of a disciplinary sanction consisting of separation from service with compensation in lieu of notice and with termination indemnity, under staff rule 10.2(a)(viii).

2. The sanction was based on a finding that the Applicant had engaged in misconduct on 14 September 2015, when he left a hand-held radio and a Heckler & Koch MP5 9 mm submachine gun with two magazines and approximately 60 rounds of ammunition unattended in a UN vehicle that he had been operating, and these items were stolen when an unknown person or persons broke into that vehicle while the Applicant waited in a restaurant for a take-out meal.

3. The Applicant submits that the sole issue for determination in this case is whether the imposed disciplinary measure was proportionate to the misconduct. The Applicant states that he does not dispute that the facts on which the disciplinary measure was based have been established or whether the established facts legally amount to misconduct. The Applicant submits that the sanction imposed on him was unduly harsh, absurd and disproportionate because the Administration failed to properly consider relevant mitigating factors. The Applicant requests retroactive reinstatement and that the disciplinary measure of separation from service with compensation in lieu of notice and with termination indemnity be replaced with a written censure. In the alternative, the Applicant requests one year’s net base salary.

4. On 7 June 2016, the Respondent filed a reply to the application. The Respondent submits, *inter alia*, that the Organization considered relevant mitigating factors when making the contested decision and that the disciplinary measure imposed on the Applicant was proportionate and appropriate.

5. This case was assigned to the undersigned Judge on 14 July 2016.

### **Case management**

6. Article 16.2 of the Tribunal's Rules of Procedure states that "[a] hearing shall normally be held following an appeal against an administrative decision imposing a disciplinary measure."

7. However, as the Applicant states in his application, he does not dispute the facts on which the disciplinary measure was based or whether the established facts legally amount to misconduct. The Applicant contests solely the proportionality of the imposed disciplinary sanction.

8. It would appear that there is no need to hear any oral evidence as there is no dispute regarding the material facts that formed the basis for the finding of misconduct. Therefore, the parties need to state their views as to whether a hearing should be held in this case or whether the matter should be decided on the papers before the Tribunal. In the event the parties agree that this matter may be dealt with on the papers, they will be provided with an opportunity to file closing submissions, following which the Tribunal will render its judgment on the papers before it.

**Orders**

9. On or before **Thursday, 11 August 2016**, the parties shall confer to discuss whether a hearing should be held in this case.
  
10. By **5:00 p.m., Thursday, 18 August 2016**, the parties shall file one of the following:
  - a. if the parties agree that this matter should be decided on the papers, they shall file their respective closing submissions; or
  
  - b. if either or both parties request a hearing, they shall file a joint submission listing the witnesses they intend to call, summarizing the oral evidence they intend to introduce, and proposing hearing date (or dates) in September 2016.
  
11. Thereafter, the Tribunal will issue further orders as it deems appropriate.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 28<sup>th</sup> day of July 2016