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Introduction

1. The Applicant is a staff member at the United Nations Office at Nairobi (UNON). He is a Security Officer in the Department of Safety and Security (DSS).

2. On 6 September 2014, the Applicant filed an Application with the Tribunal contesting “Procedural failure by the UNON Administration in placing Weapons Restriction”. The date on which the decision was made was stated to be October 2013 or thereabout. The Applicant states that he became aware of the decision on 14 July 2014.

Procedural history

3. On 7 October 2014, the Respondent filed his Reply.

4. On 13 October 2014, the Tribunal issued Order No. 225 (NBI/2014) requiring the Applicant to file his submissions in reply to the contents of annexes seven and nine to the Respondent’s Reply. Annex nine contained a 5 August 2014 response of the Officer-in-Charge of the Training Unit in UNON/DSS (Lieutenant W), to the Management Evaluation Unit’s (MEU) request for comments on the Applicant’s request for management evaluation. Annex seven of the Reply contained a response to the Application dated 16 September 2014 by the Deputy Chief of UNON/DSS.

5. The Parties were also required to advise the Tribunal if they wanted an oral hearing of this case or if they were amenable to the case being decided on the basis of their written

8. In accordance with art. 16.1 of the Tribunal's Rules of Procedure, the Tribunal considers that an oral hearing is not required in determining this case and that it will rely on the Parties' pleadings and written submissions.

The Issues

9. In his Application, the Applicant requests the Tribunal:

- a. to find that the UNON Administration breached the procedure for issuing Weapons Restriction;
- b. to find that the Weapons Restriction is prejudicial to the fact-finding investigation; and
- c. to award him damages equivalent to six months' salary for the procedural failure.

10. The Tribunal finds that the principle issues in this case are factual: whether the Applicant was placed on Weapons Restriction in October 2013 and, if so, did the Administration follow the correct procedure.

Facts

11. Following an encounter between a DSS Inspector and the Applicant at UNON on 4 February 2013, the Inspector instructed the Applicant to return his assigned firearm to the UNON/DSS armoury. The Applicant complied with the instruction. The firearm has not been issued to him again. At the date of this judgment he remains in service as a Security Officer.

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UNON armoury to withdraw his weapon since February 2013.

14. On 5 July 2014, the Chief, UNON/DSS published Daily Orders for UNON/DSS staff. The Orders included notice that UNON/DSS Team D (which included the Applicant) would be attending Active Shooter Training from 7 to 8 July 2014.

15. On 6 July 2014, the Applicant wrote to Lieutenant W, to inquire why he had not been issued with a firearm since 4 February 2013 when a DSS Inspector had ordered him to return it to the armoury.

16. By an email dated 13 July 2014, the Applicant requested management evaluation of a decision by the Chief

Prior to October 2013 when you failed to attend the mandatory re-qualification training, I was unaware that you had been placed on weapon restriction as such action would have come from the Chief of Security being the only person authorised to place an officer on weapon restriction.

20. Lieutenant W told the Applicant that he would schedule the Applicant for a requalification exercise as soon as the availability of the shooting range was confirmed with the host country.

21. The Applicant responded to Lieutenant W on the same day. Inter alia, he asked the following

25. On 5 August 2014, at the request of MEU, Lieutenant W sent a document to MEU with his comments and version of the facts about the allegations made by the Applicant. The Respondent submitted this document to the Tribunal as evidence in the present case.

26. In this document, Lieutenant W said that the Applicant was not placed under Weapons Restriction by the Chief, UNON/DSS between 4 February 2013 and 17 July 2014. From 4 February 2013 the Applicant did not go to the armoury to draw his assigned duty weapon. No instruction was given to Lieutenant W or to duty armourers not to issue the Applicant with his weapon. It was the Applicant's personal choice not to draw his assigned firearm.

27. Lieutenant W further stated that on 18 September 2013, he asked the Applicant why he had not been drawing his firearm for duty. In response the Applicant told him he had been dealing with offi26(t)3m f3(.)-5(-24().28 Tf 0 0 0197(t)-2m2f 0 0 0 rg C

Respondent's submissions

37. The Respondent submits that the Application is not receivable because it does not identify in a clear or concise manner the administrative decision he wishes to contest. Administrative decisions that are not precisely identified are not receivable.

38. There was no administrative decision taken on or before 14 July 2014 by the Chief, UNON/DSS, Lieutenant W and a DSS Inspector to place the Applicant on Weapons Restriction. The 14 July memorandum does not impose any Weapons Restriction but responds to the Applicant's request for advice as to whether he would be required to attend Active Shooter Training.

39. The Applicant refers to no circumstance which could reasonably lead to the conclusion that a Weapons Restriction was imposed on him on 14 July 2014. He presents no evidence that on that date he attempted to draw his weapon from the armoury and that his attempt was rejected.

40. The Applicant's claim lacks merit because, on 18 July 2014, the Chief, UNON/DSS placed him on Weapons Restriction due to his failure to abide by the mandatory annual re-qualification standard to maintain his firearm. This restriction was lawful and fully accords with the relevant procedures for the issuance and control of firearms in UNON. The relevant sections in the DSS Manual are sections 4.4, 4.16 and 4.20.

41. In addition to the DSS Manual, the UNON/DSS Standard Operating Procedure³ (SOP) regulates the carriage of firearms. Section 6 of the SOP provides that Security Officers are required to make every possible effort to maintain their Weapons Authorization Card and that all personnel are required to attend the annual Firearms Qualification Exercise. Failure to attend the exercise leads to revocation of firearms carry status and other relevant administrative procedures.

³ Approved 26 May 2012.

42. Section 12 of the SOP stipulates that members of the service are required to attend the Annual Firearms Qualification Exercise regularly to maintain their skill levels at arms, marksmanship and to help them achieve the required standard for a United Nations Firearms Permit.

43. At UNON, the host country's Firearms Bureau issues weapons permits to United Nations personnel on a yearly basis. The permits are processed in May and are valid for one year. The Chief, UNON/DSS issues a Weapons Authorization Card to security personnel who successfully pass the yearly qualification exercise for firearms. Both the host country permit and the United Nations Weapons Authorization on

complied with the time limits for requesting management review of that decision. The Application is therefore receivable.

Merits

57. The primary instrument relevant to the issues in the case is the DSS Manual. It defines the roles and responsibilities of officials in relation to firearms at United Nations duty stations, custody of weapons, certification and authority to carry firearms, and weapons administration including withdrawal of such authorisation.

58. The manual defines the “Armoury” as the secured location of the storage of United Nations weapons. The Armoury is overseen by a Weapons Custodian or Armoury Officer. DSS officers may only carry firearms and ammunition while they are on official duty unless especially authorised. When not in use on official duty, the weapons are stored at the armoury.

59. To carry a weapon on duty United Nations Security Officials must meet three conditions: to be certified after satisfactorily completing a required firearms course of technical competence

Conclusion

67. The Application is dismissed.

Costs

68. The Tribunal has considered the Respondent's submission that these proceedings are vexatious and frivolous and constitute a manifest abuse of proceedings warranting an award of costs.

69. There is a fine line between proceedings that are unmeritorious and those that amount to an abuse of proceedings. In *Gehr 2013-UNAT-294*⁸, it was held that the fact that the application was moot was so obvious that no reasonable person could have arrived at any other conclusion and that the applicant had abused the appeals process by filing an appeal that was blatantly frivolous.

70. The present case was certainly unmeritorious but does not reach the high threshold of abuse of proceedings. There will be no award of costs against the Applicant in this case but he is on notice that if he files any applications following this judgment, which are deemed to be unmeritorious, he could be open to the allegation that he has abused the process.

(Signed)

Judge Coral Shaw

Dated this 10th day of December 2014

Entered in the Register on this 10th day of December 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁸ at para. 21.