
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/075

Judgment No.: UNDT/2017/044

Date: 22 June 2017

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

KISIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Alister Cumming, ALS/OHRM, UN Secretariat

the administration to allow the Applicant to be present at the retrieval of the alleged CCTV video of the incident and to review the CCTV video of the incident from the original recording source in a witnessed manner.

2. In response, the Respondent claims that the application has no merit because the Applicant is not entitled to compensation for the damage to his vehicle under ST/AI/149/Rev.4 (Compensation for loss of or damage to personal effects attributable to service).

Factual and procedural history

3. The factual background of the present case is the same as that in *Kisia* UNDT/2016/040 issued on 25 April 2016 in Case No. UNDT/NY/2014/061, where this Tribunal set forth the facts as follows:

On 27 July 2013, the Applicant was involved in an accident at the main entrance by security post no. 103 at the United Nations Headquarters in New York where his car collided with a so-called same date, the Applicant reported the accident to a number of United Nations colleagues, including a Sergeant of the Special Investigation Unit [] [presumably, a Security Officer] st he Assistant Chief of [the Security and Safety Service SSS] .

By email of 31 July 2013, the Applicant sought the advice of the Chief of SSS and provided his views on the 27 July 2013 accident.

By email of 11 August 2013 to the SIU Sergeant, copied to the SSS Chief, the Applicant sought a status update on his

2013, the Applicant requested USD2,277.53 in compensation for the alleged damages to his car from the 27 July 2013 accident.

By an investigation report dated 28 October 2013, a Senior regarding the 27 July 2013 accident.

4. In *Kisia*

compensation for damages to his vehicle back to the UNCB for a new examination, including on receivability for the following reasons (see paras. 48, 49, 51, 52, 53 and 54):

The Tribunal, after reviewing the content of the contested decision, finds that instead of making her own final and reasoned

proposed that, with the concurrence of the Secretary-General, the case be remanded for instituting the required procedure as per para. 46 of *Kisia* UNDT/2016/040. The Applicant stated that he would request compensation for the procedural delay. Counsel for the Respondent answered that,

was not necessary.

and, in this decision, she stated as follows to the Applicant:

With regard to your claim which was remanded to the UNCB
by [the

all the documents on record were relevant and that the parties had no further evidence, the Tribunal stated that the case would thereafter be ready for determination on the papers before it and instructed the parties to file their closing statements by 26 April 2017. The Applicant reiterated his request to be compensated for the delay in proceedings in addition to the remedies indicated in the application, alleging that his due process rights were violated by the delay in the issuance of the 6 March 2017 decision and its reasoning.

27. By Order No. 63 (NY/2017) dated 30 March 2017, the Tribunal ordered: (a) the Respondent to provide the written reasoning for the 6 March 2017 decision of the ASG/Controller, signed by her by 17 April 2017; and (b) the parties to submit their closing statements, also addressing, as part of their submissions on the requested relief, the additional remedy indicated by the Applicant during the CMD by 26 April 2017.

28. On 17 April 2017, the Respondent filed the ASG/Controller's signed written reasoning for her 6 March 2017 decision.

29. On 26 April 2017, both parties filed their closing statements.

Applicant's submissions

30. be summarized as follows:

- a. ST/AI/149/Rev.4, which regulates compensations for losses to personal properties of staff members attributable to work, like Appendix D to the Staff Regulations and Rules, is a workers' compensation system guided by staff regulation 6.2 as a superior law^{3/BT1 0 0 1 179.531 a/9(f)] 57p3(nt)-8n1(subm)-2 195.26h}

grounds of alleged negligence on the part of the Applicant was improper and unlawful and, if anything, the Applicant s

the UNCB and improper review, analysis and interpretation of an electronic CCTV video data, the decision and the recommendations of the board are unlawful;

o. Nothing stopped the Chief SSS from following proper procedure and from according the Applicant his due process rights as per ST/SGB/2004/15. The Chief SSS had a personal interest in covering the truth, having allowed for unsafe conditions and breaching regular safety order at the entrance without any warning for seven days before the Applicant's incident. The Chief SSS should have been held responsible for this, having been informed about the unsafe conditions as was correctly reported in post log book entry. The Chief SSS improperly used the investigation of the incident, the CCTV videos and the passwords under his care to avoid his culpability;

p. Instead of carrying out its own independent and fair review of the Applicant's claim, the UNCB was improperly influenced by the investigation report that was biased and incompetently prepared. The improper recommendations of the Chief SSS and the medical reports submitted by the Applicant were diverted by the Secretary of the Advisory Board on Compensation Claims to the UNCB in order to expose the extent of injury suffered by the Applicant and with a view not to subsequently offer him compensation for his injuries review was never fair and the recommendations and decision are without any fairness and are therefore unlawful;

similar to the words before being told to go inserted into the log book entry regarding the incident, indicating that the investigation was never free and fair and lacked credibility. Such investigation should therefore never have been relied on;

r. It was unclear why the investigator recommended that entry barrier systems should be replaced as soon as they were disabled, indicating that they had been disabled and had created unsafe conditions violating the regular safety order. On the contrary, the investigator found that the Applicant, who was not responsible for the replacement of the disabled barrier systems on the entrance, had a responsibility which was rightly that of the Chief SSS who had acted negligently. The investigation was improperly used to cover facts and to mislead the UNCB and the Administration;

s. The alteration of the log book regarding the incident entry was unlawful;

t. The Applicant rights under Staff Regulation 1.2(c) were violated when he was directed through and exposed to known unsafe conditions violating regular safety order on the entrance which led to his incident;

u. The failures of the Chief SSS and the investigator to allow him to review and comment on the findings of the investigation before such reports were submitted to the UNCB were improper and violated his rights;

v. The review of his claim and the recommendations were shrouded by ulterior motives, procedural illegalities and due process violations, rendering the decision unlawful on its previous recommendations and *Kisia* UNDT/2016/040 was improper;

31. In his closing submissions, the Applicant further states that the failure of the ASG/Controller to take a separate, reasoned and distinct decision from

- g. The UNCB considered that the barrier was a device that rises up from

compensation in the event of loss or damage to their personal effects determined to be directly attributable to the performance of official duties on behalf of the United Nations.

34. ST/AI/149/Rev.4 (Compensation for loss of or damage to personal effects attributable to service) issued on 14 April 1993, secs.1-5 , 12-16 and 18 provide that:

Purpose

1. Staff rules 106.5, 206.6 and 306.4 [today replaced by staff rule 6.5] provide that staff members shall be entitled, within the limits and under the terms and conditions established by the Secretary-General, to reasonable compensation in the event of the loss of or damage to their personal effects, determined to be directly attributable to the performance of official duties on behalf of the United Nations. The purpose of the present instruction is to define the terms, conditions and limits governing such compensation and to set forth the procedure for the submission and examination of claims in connection with such loss or damage.

2. The present instruction shall apply to incidents occurring on or after 1 January 1993. It cancels and supersedes administrative instruction ST/AI/149/Rev.3 of 17 November 1988.

Conditions for the entitlement

3.

4. No compensation shall be paid for any loss or damage which was:

(a) Caused by the negligence or misconduct of the claimant; or

(b) Sustained by a private vehicle which was being used for official business, including travel in connection with home leave, when such use of a private vehicle was solely at the request of and for the convenience of the staff member.

5. Staff members should note that no compensation shall be paid for the loss of or damage to personal effects, except as provided under the Staff Rules and paragraph 3 of the present instruction. Otherwise, such loss or damage shall be the sole responsibility o

- (iii) The original cost of the article and the date of purchase or acquisition;
 - (iv) The replacement cost of the article and supporting documentation on both price and comparability of the proposed replacement article;
- (b) All the circumstances pertinent to the loss or damage and the action taken by the claimant in respect thereof (see para. 12 above), including:
- (i) Statements signed by any other person or persons in a position to furnish information relating to the loss or damage, including copies of reports of investigations into the loss or damage;
 - (ii) Personal insurance coverage, if any, the action taken to claim under that coverage and the results thereof;
 - (iii) In the case of travel by common carrier (air, rail, etc.), a copy of the lost property report and information on any reimbursement claimed from the carrier;
 - (iv) In the case of damage, the cost of repair supported by a copy of the invoice and receipt.

15. On receipt of a claim, the executive officer/chief administrative officer shall:

- (a) Examine the claim and ascertain whether all required information and material as set forth in the present instruction have been provided and, if necessary, request such further information or material as may be required or as he or she considers desirable;
- (b) Provide any additional information on the causes and circumstances of the loss or damage including copies of any investigation reports on the incident which may be available;
- (c) As appropriate, certify and provide supporting documentation:
 - (i) With regard to paragraph 11, as to the dependency status of the staff member;
 - (ii) With regard to subparagraph 3 (c), that the staff member was in official travel status;

- (d) Supply a copy of the inventory filed by the staff member in accordance with the applicable security plan, as appropriate;
- (e) Provide other pertinent observations including information regarding the replacement cost claimed as appropriate;
- (f) Forward the claim, other relevant documents, and his or her comments thereon to the Secretary of the Claims Board.

Consideration of claims

16. All claims shall be examined by the Claims Board in accordance with its terms of reference, set out in annex I/Amend. 2 to the Secretary-General's Bulletin ST/SGB/Organization. The composition of the Board and its administrative arrangements are announced periodically in information circulars. At locations away from Headquarters, local claims review panels may be established, as authorized by the ASG/Controller.

18. The Claims Board shall act in an advisory capacity to the ASG/Controller and shall transmit its recommendation regarding the settlement of each claim to the ASG/Controller.

Receivability framework

35. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (

an accident that occurred on 27 July 2013 at the United Nations Secretariat building security post no. 103 in New York. The ASG/Controller

the conclusion that [the Applicant] was negligent and that his claim should therefore be denied. I therefore decided to deny the claim.

5. While I reached my own decision on the claim, it bears noting that, pursuant to the relevant legislation (ST/AI/149/Rev.4), the UNCB is charged with drawing conclusions and interpreting fact and law. I therefore accord its recommendations appropriate deference and consider carefully its judgment.

51. These reasons are to be considered part of the contested decision made on 6 March 2017.

52. The Tribunal notes that, as results from the reasoning of the contested decision, the ASG/Controller decided in accordance with art.12 and 14(b)(ii) of ST/AI/149/Rev.4 was not receivable due to the lack of action to file a claim under his personal insurance coverage and considers that this part of the contested decision is legally correct and in accordance with the UNCB recommendation.

53. The Tribunal further notes that, in para. 4 quoted above, the ASG/Controller provided reasons not only regarding the non-receivability of the application, but also on the merits of the application being not receivable pursuant to arts. 12 and 14(b)(ii) of ST/AI/149/Rev.4 due to the lack of action taken to file a claim under his personal insurance coverage and on the substance pursuant to art. 4(a) of ST/AI/149/Rev.4 because of his own negligence.

54. The Tribunal underlines that a claim for damages cannot be rejected both on receivability and on its merits and that only a receivable claim can be reviewed and determined on the merits. Since the Tribunal has established that the part of the UNCB recommendation, nonetheless, even had the board found the claim to be receivable, the board recommends against compensation and hereby reiterates its grounds for such recommendation from its recommendation at its 343

identified above (in comparison, in *Benfield-Laporte*, the Appeals Tribunal, for instance, upheld a six-month delay, notably USD500 per month).

Conclusion

62. In light of the foregoing, the Tribunal DECIDES:

a. The application is granted in part;

b. The 6 March 2017 decision to reject claim is upheld, except the following part of the reasons provided on 11 April 2017 and which was based on an recommendation:

4.

In particular, I noted the investigation report and the security video. I also noted that [the Applicant] had provided an explanation of the events. I was aware that Article 4(a) of ST/AI/149/Rev. 4 provides that compensation shall not be paid for loss or damage caused by the clai

c. The Applicant is awarded USD 3,500 compensation for the approximately seven months procedural delays attributable to the Administration in the present case. The sum above shall bear interest at the U.S. Prime Rate effective from the date this Judgment becomes executable until payment of said award. An additional five per cent shall be applied to the U.S. Prime Rate 60 days from the date this Judgment becomes executable.

(Signed)

Judge Alessandra Greceanu

Dated this 22nd day of June 2017

Entered in the Register on this 22nd day of June 2017

(Signed)

Morten Albert Michelsen, Registrar, New York, Officer-in-Charge