

**UNITED NATIONS DISPUTE TRIBUNAL**



requested that Vivo Energy personnel should falsify fuel pump delivery records to show that more fuel was put into United Nations vehicles than was actually dispensed at Vivo Energy Fuel Stations in Bamako<sup>5</sup>

7 Upon receipt of the information stated above, OIOS stated its own investigation of the case and produced a report on 4 October 2019<sup>6</sup>

8 There was a wide spread scheme of false fuel transactions. OIOS investigated similar reports of possible misconduct involving other 17 national staff members at MINUSMA and two Individual Contractors<sup>7</sup> Further, OIOS interviewed 11 Vivo Energy employees, 9 of them confirmed that they colluded with about 15 national staff members at MINUSMA to commit fraudulent fuel transactions, from which both benefitted monetarily.<sup>8</sup> In addition, the Vivo Energy personnel explained that the fuel scheme had been committed exclusively by Malian nationals, since the start of the contract between the United Nations and Vivo Energy in late 2015<sup>9</sup>

9 The OIOS established that the false fuel transactions scheme involved the following actions. When a MINUSMA driver arrived at a Vivo Energy station, a Vivo Energy employee first scanned the bar codes of the fuel pump, the driver's United Nations identification and the United Nations vehicle. After pumping the fuel in the United Nations vehicle, the Vivo Energy employee would manually alter the fuel volume requested by the MINUSMA driver on the fuel pump display, photograph the displayed volume and confirm it manually, via a scanning device. When entering the false fuel volume manually, the pump display would not show the price but would remain blank. The Vivo Energy employee would also fill out the transaction log sheets with the inflated fuel volume which the MINUSMA driver would sign<sup>10</sup>

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<sup>5</sup> Reply, annex 2, (OIOS investigation report), para 2

<sup>6</sup> OIOS investigation report, 4 October 2019

<sup>7</sup> Reply, annex 1, para 4 OIOS investigation report, para 11.

<sup>8</sup> OIOS investigation report, para 18

<sup>9</sup> *Ibid*, para 23

<sup>10</sup> OIOS investigation report, paras 1924; also Manabu Nafointerview transcript, 4 September 2017, lines 139-144 (Doc. 117).

**10** At the time, the price per 20 litres of fuel was West African CFA Franc (“CFA”) 12000. A MINUSMA diver would receive CFA 10000 (at the time, approximately USD 17) per 20 litres of fuel that was fraudulently added, leaving CFA 2000 (approximately USD 34) for the assisting Vivo Energy employee. Vivo Energy then charged the United Nations the inflated amounts.<sup>11</sup>

**11** OIOS found the Applicant to have systematically participated in the reported fraud scheme.<sup>12</sup> Eleven (11) Vivo Energy employees were interviewed. Three of the interviewees, namely, Mr. Manabu Nafu, Mr. Issaka Kane and Mr. Cheickne Kante identified the Applicant as one of the MINUSMA divers involved in the false fuel transactions from the photo arrays.<sup>13</sup> Mr. Nafu stated that the Applicant used to request him to inflate the fuel volume with 20 to 30 litres above the fuel volume actually dispensed to the vehicle that the Applicant was diving. Messrs. Kane and Kante did not provide specific details about the Applicant’s involvement in the fraud.<sup>14</sup>

**12**

Upon comparing the 13 identified transactions with the photos contained in MINUSMA's EFMS records, OIOS found that for nine of these transactions the photos of the pump display showed the fuel volume but not the price

14 OIOS, moreover, noted overconsumption for the United Nations vehicle registration number UN 2392 when driven by the Applicant. OIOS established that

**formal allegations of misconduct. The Applicant was informed that on one or more occasions between October 2016 and January 2017, (i) he participated in a scheme by which volumes of fuel pumped into United Nations vehicles were inflated in the**

**21** The Applicant further contends that the administration favoured inculpatory evidence and ignored potential exculpatory factors

**22** As a remedy, the Applicant, requests the Tribunal to direct the Administration to change its decision separating him from service because he did not commit the fraud  
**Respondent's submissions**

**23** The Respondent's position is that there is clear and convincing evidence that, between September 2016 and February 2017, the Applicant took part in a scheme whereby fuel volumes that were charged to the Organization were inflated above the actual volumes dispensed in the United Nations vehicles, that he intentionally falsified official records entrusted to him by virtue of his functions with the Organization and non-totally benefited from his actions

**24** The Respondent denies that there were flaws in the investigation process. The Applicant has not provided any evidence to demonstrate that the Organization failed to discharge its duty of conducting a fair and unbiased investigation<sup>28</sup>

**25** The Respondent requests the Tribunal to dismiss the Application in its entirety.

#### **Considerations**

**26** It is well-established case law that the role of the UNDT in disciplinary cases is to perform a judicial review of the case and assess the following elements

- a** Whether facts giving rise to the disciplinary measure were established by clear and convincing evidence;
- b** Whether the staff member's due process rights were observed;
- c** Whether the facts amount to misconduct; and

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<sup>28</sup>Reply, para 38







the reading at the end of use Transactions nos 1-8 presents such discrepancies

33 The same table further shows that on two transactions<sup>39</sup> discrepancies between the time of refuelling according to the EFMS Vivo Energy transactions sheets<sup>40</sup>, and the time of the start and end of use of the vehicle recorded in the CarLog system entries that are not amenable to manipulation. The Tribunal agrees that such discrepancies also can only be explained by fraud involved in the fuel transactions covered, since genuine transactions could only have taken place while the vehicle was in use. The Tribunal notes that an explanation for an apparent lack of chronology in certain transactions in a similar case UNDT/NBI/2020001, that is, that CarLog had a time stamp one hour earlier due to the change of time, does not apply here, as in both instances the time of the start of the use of the vehicle and the end of it and the alleged refuelling fall within the same hour and discrepancies concern minute values which defy chronology.

34 The Applicant contests the evidence of three Vivo Energy employees, Messrs Karte, Naford Kare, who identified him as a participant in the scheme. He maintains that since the three witnesses confessed to having participated in a scheme that defrauded the Organization, it undermines the credibility of their testimony. On this point, the Tribunal agrees that ethical stance of the witnesses is questionable, this however, does not automatically render them inattestable. The Applicant did not provide any reason for which any one of the witnesses would want to falsely implicate him, let alone why would the three of them conspire to do so.

35 The Tribunal further finds that the method of identification applied in the investigation, albeit clearly inferior to a live parade, was not objectionable in light of the accepted standards.<sup>41</sup> The record demonstrates that the witnesses were shown photographs of both male and female locally recruited staff members, with all photos having been taken against the same background. All photos were numbered and anonymized.

<sup>39</sup> Respondent's annex RS 1, transactions No 2

<sup>40</sup> Respondent's annexes RS 2 and RS 4

<sup>41</sup> , 2014 UNAT-480 para 56 , 2017 UNAT-741, paras 26-28



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random That the Applicant was also identified by two other witnesses, adds to the probability that his identification was reliable

**39** Based on the totality of evidentiary material, EFMS transaction records, Vivo Energy transaction logs, and the identification by witnesses heard in the investigation, the Tribunal is satisfied that the Applicant's participation in the fraudulent scheme has been shown by clear and convincing evidence

**40** The Applicant faults the conduct of the investigation on the ground that the investigator favored inculpatory evidence and ignored potential exculpatory factors. The Tribunal notes that the Applicant does not allege any specific procedural right to have been infringed nor any exculpatory fact ignored. All the specific contentions of the Applicant have been addressed under the heading of sufficiency of evidence; the Tribunal, therefore, needs not entertain procedural matters any further.

**41** The sanctioning letter invokes violation of staff regulations 1.2(b) and 1.2(q) and staff rules 1.2(i) and 1.7

**42** Staff regulation 1.2(b) requires staff members to "uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status". Participation in a fraudulent scheme is clearly irreconcilable with the concept of integrity. Staff regulation 1.2(q) provides that staff members "shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets"

**43** The Tribunal agrees with the Respondent that the Applicant improperly used United Nations property for his personal gain in a matter affecting financial interests

**of the Organization. Accordingly, the Tribunal finds that the Applicant's acts constituted a misconduct.**

**44 The Respondent maintains that through his actions, the Applicant undermined the trust and confidence placed in him by the Organization, which are essential for the continuation of the employment relationship. Moreover, whereas there is no link between this case and the global pandemic of Covid 19 on an  basis, the Organization considered the pandemic in mitigation. Accordingly, the imposed sanction was not the most severe at the Organization's disposal.<sup>45</sup>**

**45**

or dismissal in accordance with staff rule 102(a).<sup>47</sup> Therefore, the Tribunal finds that the disciplinary measure of separation from service with compensation of notice and with 25% of the termination indemnity in accordance with staff rule 102(a)(viii) was proportionate to the offence committed.

## **JUDGMENT**

**48** The application is dismissed.

**Judge Agnieszka Klorowicka-Milat**

**Dated this 28<sup>th</sup> day of February 2022**

**Entered in the Register on this 28<sup>th</sup> day of February 2022**

**Eric Muli, Legal Officer, for  
Abera Kwakye Beko, Registrar, Nairobi**

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<sup>47</sup> eg, 2018 UNAT 8; UNDT/2020014; UNDT/2021/004; UNDT/2019001; moreover, ST/IC/2016/26; ST/IC/2015/22; ST/IC/2008/41; ST/IC/2005/51 and ST/IC/2002/25 (Practice of the Secretary-General in disciplinary matters and cases of criminal behavior).