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Case No.: UNDT/NBI/2023/025

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Introduction
1. The Applicant is a former Field Security Guard, at G-3 level, working with the
United Nations Organization Stabilization Mission in the Democratic Republic of the
Congo (“MONUSCO”), based in Kalemie duty station.1
2. On 2 March 2023, he challenged a decision dated 22 August 2022 by the Under-Secretary-General, Department of Management Strategy, Policy and Compliance
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16. By Order No. 140 (NBI/2022) issued on 3 October 2022, the Tribunal granted
the Applicant’s SOA and suspended the contested decision.
17. On 5 October 2022, the Respondent appealed Order No. 140 (NBI/2022), on
the ground that the UNDT had exceeded its competence.
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18. On 10 October 2022, OIOS informed the Office of Human Resources (“OHR”)
of a revised estimate of the potential financial loss caused by the Applicant in the
amount of USD2,332.60 instead of USD1,931.37 as initially estimated.
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 The
following day, on 11 October 2022, OHR instructed MONUSCO to release the
Applicant’s P.35 and PF.4 forms.
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19. On 17 October 2022, the Applicant filed a motion for execution of Order No.
140 (NBI/2022). On 19 October 2022, the Respondent filed a reply challenging the
motion for execution of Order No. 140 (NBI/2022) on the ground that the matter was
moot because instructions to process thrd��─ h beantrs P.35 and PF4 for!䀀s had 怕怄耀em�　
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theȕmotionȰfҠr eѐeѠutionȃof Or԰er No.ȃ40ȃ(NBI/2022) as being2mpot asȕt�!耀հr ࠰as nm�　 On`　n`　Np退em�!耀հ`　202nn`　the`　Opင쀀ted`　Nations`　Jiot`　Staհf`　Pension`　FunŰ 13 �`�0�
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23. On 1 December 2022, the Management Evaluation Unit (“MEU”) upheld the
contested decision.
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24. On 2 December 2022, the Applicant received his pension benefits in the amount
of USD40,660.53 from the UNJSPF.
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Issues for determination
25. The Tribunal will determine:
a. whether the Organization’s decision to delay the issuance of the
Applicant’s P.35 form was lawful; and
b. whether damages should be awarded to the Applicant to compensate for
harm caused by the decision to delay the issuance of his separation information
to the Pension Fund in a timely manner
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34. The Applicant asserts that the claim for moral damages is appropriate in this
case even in the absence of additional medical documentation. In Civic
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, the United
Nations Appeals Tribunal (“UNAT”) ruled that the testimony of staff members
themselves are sufficient in attesting the impact of Administration’s illegal decision
that led to disappointment, demoralization and anxiety, and negatively impact staff
member’s physical health to constitute compensable non-pecuniary damage. It is
further affirmed that there is no need for medical expertise to conclude that continuous
anxiety can be harmful to one’s health.
35. By way of remedies, the Applicant requests:
a. Interest on the one-time pension withdrawal settlement at the US Prime
Rate from the date of his separation until the date UNJSPF received his P.35
and PF.4 forms; and
b. USD5,000 in compensation for moral damages for the pain and
suffering caused by the contested decision.
Respondent’s submissions
Issue I: Whether the Organization’s decision to delay the issuance of the Applicant’s
P.35 form was lawful.
36. The Respondent contends that the contested decision was reasonable. The
Applicant had already been interviewed by OIOS before he separated from the
Organization on 30 June 2022. He was well aware of the serious fraud allegations
against him. Therefore, the contested decision was also reasonable pending the OIOS
investigation. The Organization must be able to rely on the OIOS Memorandum and
OIOS’ assessment of the financial loss as it secures its financial interests from fraud.
The OIOS is an independent investigating entity and it only initiates an investigation
following a preliminary assessment indicating that such is warranted. In this regard, it
should be noted that when OIOS issued its Memorandum and financial loss estimate,

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 Civic 2020-UNAT-1069.

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OIOS had already interviewed the Applicant. In addition, OIOS had a reasoned report
on the Applicant’s claims from the Fraud Investigation Unit (“FIU”) of Cigna, the
administrator of the medical insurance, concluding that the Applicant had been unduly
reimbursed.
37. The available information indicated that the Applicant submitted false claims
to Cigna for a total staggering amount of USD100,919.85. These claims involved 76
hospital admissions of the Applicant and his insured dependents. On at least six
occasions, Cigna received invoices for overlapping or connecting admissions (i.e.,
admissions where the patient is simultaneously admitted in two hospitals or is
hospitalized immediately after or shortly upon being discharged from another hospital).
During the nine purported hospitalizations, the Applicant was at work according to his
own UMOJA records, which are certified as true and accurate. These records
established with a high probability the Applicant’s misconduct.
38. Cigna prevented a major part of the financial loss to the Organization by not
reimbursing the full amount of USD100,919.85. Nevertheless, as noted, OIOS
estimated the financial loss to the Organization at USD10,931.37, which exceeded the
Applicant’s final entitlements of USD7,076.81. It would be inappropriate to second-guess OIOS’ assessment now, with the benefit of hindsight, knowing that OIOS later
revised its initial estimate of the financial loss to USD2,332.60 following its further
review of the matter as the investigation progressed. This fact was unknown at the time
of the contested decision and should not be held against the Organization; what matters
is that the Organization acted immediately when this new information became available
to the Organization. Besides, the evidence still indicates fraud by the Applicant and a
high probability of financial loss, even with the adjusted estimate of the size of that
financial loss.
39. In support of his case, the Respondent seeks to rely on Aliko
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, where UNAT
held,

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 Aliko 2015-UNAT-539, para. 40.

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form and associated PF.4 notification within a day of learning from OIOS about the
revised amounts regarding the estimated financial loss caused by the possible
misconduct of the Applicant.
48. Finally, the Respondent contends that, in view of the foregoing, the contested
decision was reasonable and supported by an adequate legal basis.
Issue II: Whether financial compensation and moral damages should be awarded to
the Applicant.
49. The Respondent argues that according to Fosse
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 and Rehman
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, there can be
no remedy granted, without any evident legal wrong or any causal link between a
wrong (an unlawful decision) and the alleged harm. Further, there can be
“compensation for harm only if such harm is ‘supported’ by evidence”. It is, therefore,
incumbent on the claimant to submit specific evidence. These requirements are not met
in the present case. There is no legal wrong. The contested decision is reasonable and
supported by an adequate legal basis. Further, the Applicant has failed to provide the
specific evidence capable of sustaining an award of damages.
50. The Respondent opines that the Applicant’s reference to Civic is misplaced and
misrepresents UNAT’s jurisprudence. Also, in Civic, the UNAT held that
“corroborating evidence, other than the staff member’s testimony, is needed to support
the claim”
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 of moral damages. In the absence of any evidence and reasonable factual
basis for moral harm, the Applicant’s claim for moral damages must fail. Besides a
lack of evidence of moral harm, the very premise of his claim is not credible. It cannot,
without more, be assumed based on bare assertions that the Applicant lacked the
financial means to provide food and shelter to his family and that his family “struggled
to survive.” This applies a fortiori considering the Applicant’s 12 years of service with
the Organization.

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 Fosse 2022-UNAT-1305, para. 52.
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 Rehman 2018-UNAT-882, para. 17-18.
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 Civic 2020-UNAT-1069, para. 77.

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51. Based on the above, the Respondent requests the Tribunal to reject the
application.
Considerations
Issue I: Whether the Organization’s decision to delay the issuance of the Applicant’s
P.35 form was lawful.
52. As noted above, this is one of 10 similar cases pending before the Tribunal
arising from the Organization’s decision to withhold final entitlements and the
processing of pension paperwork for national staff whose appointments were not
renewed due to the closure of the Kalemie duty station of MONUSCO in 2022. The
contested decision was made on 22 August 2022.
53. The issue of fraud arose as a result of an exercise by the Organization’s medical
insurance provider, Cigna. According to the record,
As part of an overall DRC approach for the UN MIP medical plan,
Cigna’s Fraud Investigation Unit (FIU) has initiated a targeted exercise
to flag and monitor individual files, where possible collusion and abuse
of the medical plan is suspected. The individual files were identified on
the basis of certain parameters….
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54. The specific parameters used to flag files was redacted from the exhibit, so the
Tribunal has no evidence about how files were identified as being cases “where
possible collusion and abuse … is suspected.”
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55. By at least January 2021, Cigna reported these “allegations of possible medical
insurance provider (“MIP”) fraud” to the Investigations Division of OIOS. As a result,
OIOS began investigations into these allegations.
56. Under the Cigna exercise, the Applicant’s file was flagged and “systematically
monitored since being flagged.”
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 It is unclear in the record as to what that systematic

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 Reply, annex 1j, p. 3.
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 Id. (Emphasis added).
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 Id.

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what he was told about the allegations, the status of the investigation to that point, and
his response.
65. On 21 July 2022, OIOS recommended withholding the Applicant’s separation
entitlements and delaying issuance of his pension paperwork “should the Organization
wish to recover sums from the Applicant.” And on 22 August 2022, the Organization
adopted this recommendation in the disputed decision.
66. The record in this case lacks any evidence whatsoever of the nature of the
alleged fraud, how the Organization suffered any financial loss, and how any alleged
financial loss was calculated. The case consists of a series of black boxes.
67. The first black box is the Cigna exercise. The Tribunal has not been told what
parameters were used in identifying cases to be examined, nor what the exercise and
systematic monitoring disclosed.
68.

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this case consists of a single conclusory statement “(OIOS) received allegations of
possible medical insurance provider (MIP) fraud …” And the assessment of financial
loss is merely another conclusory statement that “Possible maximum USD liability for
the Applicant” was USD10,931.37.”
71. In essence, the USG/DMSPC was presented with the same paucity of evidence
that was given to this Tribunal.
72. This is in marked contrast to the evidence provided to the Organization in Loto.
There, UNAT observed that the OIOS memorandum and the Code Cable “provided a
detailed description of the unsatisfactory conduct, the names of the implicated staff
member(s), and specifics as to where and when the unsatisfactory conduct occurred….
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determination is being made. Obviously, moreover, the Administration must act
swiftly.”
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74. In this case there is no evidence in the record to show the probability of
indebtedness, nor the basis for estimating its value. Moreover, the record shows no
specific notice given to the Applicant.
75. The Respondent states that since the Applicant had been interviewed (ten days
before his separation), he “was well aware of the serious fraud allegations against him.”
Again, the Respondent did not present any evidence to the Tribunal or to the
USG/DMSPC regarding what was told to the Applicant when he was interviewed.
Thus, there is no indication that he was given sufficient notice to make an informed
decision about whether to offer a kind of surety.
76. Finally, the Administration certainly did not act swiftly in this case. OIOS was
notified of the allegations a year and a half before the Applicant was separated when
his duty station closed. It interviewed the Applicant days prior to his separation and
then waited three more weeks before recommending that the pension paperwork be
delayed. The USG/DMSPC, in turn waited another month before making the decision.
And, of course, a final investigation report has yet to be completed in the subsequent
year. 癖ndC����뀅圐��唖��MeB̐ҀR葶嘀嘀 yeĕ怄쀀nctkso be com倀�ˀUeoverro�esslud rion�唀rtibunal or朦䀀䔀stlre separairety.
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82. To be sure, ST/AI/155/Rev.2 does authorize the USG/DMSPC to delay
issuance of the pension paperwork under certain circumstances. However, as explained
above, those circumstances were not present in this case and the delay was improper.
83. Both this Tribunal and UNAT have consistently determined that appropriate
remedy for delays in paying monetary entitlements is the award of damages.
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August and the stragglers in September. Nor is it clear if there were particular
processing problems for any of these other staff members. What is clear, however, is
that MEU’s approximation of two months is less than the 3.5 months that the
Respondent now claims to be acceptable, and just half of the 4 months that occurred in
this case.
88. We also know that ST/AI/155/Rev.2 contemplates a much speedier process. It
directs executive and administrative officers to comple怀h 㭠켐�᠄禙抁鈀ጀ㨀e �!耄䀀ls癖 ࠖŖ ؀�̀nion�茠㄀嘀 ttpRespondemՠs l]��ᄲ䞙阁嘀圀刀n	䀀�clဂ쀀 c̐рff饠ᕠ葶嘀̀m of䠀xe��圓��刀-�!退 n�ՠ xs�rm쀀�먀䦰怀e刀n�ՠeo��Ԡ c%䝥怅耀t葀ĠAI/on��ጤ禙怀s l]��ᄸtRespondes祩 tt䄰MSШᤠİΠs%㈃စ nth n�茠㄀嘀pm��倀顇敠րtme���褁嘈䝥怀　mbt�Ӏs뎃‱nita tth� ଀ 㬀�-Ӏlpm��倀顇敠s%㈃စ n䀀�cl怀�. Wsn���ፀ�褁嘀ē⑹饢ၲRespondee�rfcl-֠on�嘀䬀ram쀀�Ր ՀԠn%̀e

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Conclusion
97. In light of the Tribunal’s findings, the application succeeds in part.
98. The decision to delay issuance of pension paperwork is found to be unlawful.
99. The Respondent shall pay to the Applicant four months of interest on the money
that was due to him, calculated at the US prime rate.
100. The Applicant’s claim for other financial and moral damages is denied.
101. All other Applicant’s claims are denied.

(Signed)
Judge Sean Wallace
Dated this 12
th
 day of September 2023

Entered in the Register on this 12
th
 day of September 2023

(Signed)
Eric Muli, Officer-in-Charge, Nairobi