



IN THE MATTER OF:

M.M. and G.M., Applicants

v.

Chairperson of the African Union Commission, Respondent

FOR APPLICANT: *Pro se*

FOR RESPONDENT: Namira NEGM, Legal Counsel, African Union Commission

BEFORE: S. MAINGA, President, J. SEDQI, and P. COMOANE

HEARD ON: 21 July 2021, 28 October 2021, 14 March 2022

JUDGMENT

Procedural and Factual History

1. On 20 April 2020, Applicants, both Senior Internal Auditors within the Office of Internal Audit (OIA), each filed an application contesting Respondent's refusal to indemnify them for losses incurred as a result of an armed robbery they both experienced during an official mission in Johannesburg, South Africa.
2. Respondent filed his written Answer on 20 May 2020, contending that Applicants' requests for indemnification were correctly refused. Applicants submitted their respective written Observations on 19 June 2020.
3. To the extent both applications arise from the same set of facts, raise identical factual and legal issues, and most importantly challenge the same administrative decision communicated to Applicants in a single memorandum, the Tribunal has adjudicated both applications (docketed as *Case No. AUAT/2019/010* and *Case No. AUAT/2019/011*) in a single judgment.
4. At the time of filing of their respective applications, both Applicants served as Senior Internal Auditors within OIA. On 13 May 2018, they traveled to Johannesburg, South Africa together to attend a training in Financial Accounting in SAP Certification. The training was authorized and funded by the Union.
5. On arrival in Johannesburg, Applicants hired a taxicab to transport them to a lodging establishment located in the Sandton district of Johannesburg. At or about the establishment's entrance, Applicants were confronted by armed individuals who exited a vehicle that they believe followed them from the airport. In the robbery that ensued, Applicants claim \$9838 cash, Daily Subsistence Allowance (DSA) they each received from the Organization, was stolen from each along with their travel documents, laptop notebooks, cellular phone devices and other personal items of unspecified value.
6. Applicants reported the incident to law enforcement authorities in Johannesburg and appended to their applications a police report reflecting their joint description of the robbery, which classified the incident as "airport following – armed robbery." Applicants also notified various officials of Respondent and were swiftly advanced \$7,000 each to allow them meet personal expenses during the training, which lasted through 25 May 2018.
7. Upon return from the training and through their reporting officer, OIA Director, Applicants petitioned the Chairperson to exercise his discretion to waive recovery of the \$7,000 advance they each received after the robbery. On 15 January 2020, Respondent's Chief of Staff advised the OIA Director that the Chairperson had refused the request and that Applicants be notified accordingly. Applicants aver that they received the Chief of Staff's refusal memorandum on 23 January 2020.

8. On 21 February 2020, Applicants jointly wrote to the Chairperson asking him to reconsider his decision on account of: (a) Staff reg. 3.4, invoking Respondent's duty of care; and (b) Staff reg.13(b) authorizing indemnification to staff members under specified conditions. The Chairperson did not respond to their request. On 20 April 2020, Applicants severally filed their applications with the Tribunal.
9. Applicants ask the Tribunal to order Respondent to indemnify them each in the amount of \$9,838 as well as the value of the personal belongings they lost in the robbery. They also ask for damages on account of psychological harm they suffered but left the amount open to the Tribunal's discretion.
10. Respondent asks the Tribunal to dismiss both applications in their entirety. Respondent asserts that Applicants do not meet the requirements for indemnification under Staff reg. 13(b) and Respondent did not breach his duty of care under Staff reg. 3.4. Respondent further contends that in any case the Travel Policy explicitly excludes loss of personal property, cash advance, ticket or personal funds from the list of indemnifiable items.
11. Applicants counter that Respondent failed to provide safer non-cash options to carry travel advance funds, to provide travel insurance or to coordinate with any of the offices it has in South Africa to transfer the funds for collection by Applicants on arrival. Applicants further counter that the Travel Policy cannot override the superior text of Staff reg. 13(b). Finally, Applicants assert that they saved Respondent further loss by proceeding with the scheduled training to conclusion despite the traumatic incident.
12. Following preliminary review of the applications in July 2021, the Tribunal asked each side to comment on the applicability of Staff reg.13(b) in matters involving loss to staff members. Respondent submitted his views on 4 August 2021. Applicants commented on Respondent's submissions on 13 August 2021. The parties' helpful submissions were carefully considered by the Tribunal.
13. Upon review of the documentary record, the Tribunal is satisfied that the facts and issues have been presented adequately in the pleadings and determines this matter without the need to invite the parties for an oral hearing.

Discussion

14. Applicants premise their pleas primarily on Staff regs. 3.4 and 13(b). They first argue that Respondent failed to consider arranging for electronic money cards as opposed to cash, failed to purchase travel insurance or alternatively failed to consider direct transfer of the DSA funds to one of the Union offices located in Johannesburg. However, Applicants fail to point out that any of these procedures were mandated in some form in a policy, directive or laws of the Union.
15. On the issue of duty of care, the Tribunal takes notice that following the incident, Respondent quickly replenished Applicants' personal funds with an advance of \$7,000 each, the subsequent recovery of which Respondent permitted to be made through affordable repayment plans. Judging this matter from the perspective of personal responsibility and common sense, the Tribunal is not persuaded that Respondent was expected to do more under the circumstances. In the absence of any facts triggering Staff reg. 3.4, the Tribunal does not find it necessary to further examine the doctrine of duty of care for the purposes of this judgment.
16. The Tribunal next considers the applicability of Staff reg.13(b), which provides:

The Union shall, where appropriate, indemnify a staff member against any loss suffered by him or her in the course of proper discharge of his or her official duties.
17. The Tribunal understands for Staff reg. 13(b) to be applicable the loss must be incurred during the discharge of official duties. On this record, it is undisputed that Applicants were the victims of armed robbery resulting in loss of substantial cash and personal valuables. Applicants' claims, corroborated by an incident report issued by South African police, have not been factually controverted by Respondent.
18. The Tribunal further accepts that Applicants traveled to Johannesburg at the expense of the Union to participate in a professional training fully sponsored by the Union. They were no doubt in Johannesburg on official travel and consequently in the discharge of their official duties. Both elements of Staff reg. 13(b) were thus fulfilled. However, not every loss that occurs during official travel is indemnifiable. Such broad interpretation would render the phrase 'where appropriate' redundant against the interpretational maxim of giving effect to every word and phrase in a legal text and the need to avoid an interpretation that would imply that the drafters did not intend for a particular word or phrase to have any effect.

19. In its assessment of the appropriateness requirement, the Tribunal has considered the representations that robberies such as happened to Applicants are common occurrences in Johannesburg. However, the Tribunal does not accept that every day, ordinary urban criminalities faced by the general public could satisfy the appropriateness test. To hold otherwise would unreasonably extend the scope of Staff reg.13(b) to include such incidents, for instance, as street robbery during a morning commute to work or even to a conference venue.
20. Certainly, the Tribunal's analysis would be different if circumstances of fault by Respondent were proven or Respondent caused Applicants to undertake official activities in environments of unusually high risk of violence, hazard or danger. Respondent simply did not expose Applicants to unusual danger during their training trip to Johannesburg. In the circumstances, Respondent properly declined to indemnify Applicants under Staff reg. 13(b), a mechanism not designed to serve as a proxy for personal property insurance.
21. Having found the contested decision otherwise lawful, the Tribunal does not find it necessary to address whether Respondent properly invoked the Travel Policy to refuse Applicants' claims. The applications are DENIED.

Date: 20 April 2021

/signed/

SYLVESTER MAINGA, PRESIDENT
JAMILA B. SEDQI
PAULO D. COMOANE

Secretary: _____

