

Breach of Contract

UNITED STATES OF AMERICA

-vs-

NEW, Michael G.

SPC, USA, xxx-xx-xxxx

Headquarters and Headquarters Company,

1st Brigade, 3d Infantry Division

APO Army Europe 09226

Motion to Dismiss:

Breach of Contract

COMES NOW Specialist Michael G. New, through undersigned counsel, and moves to dismiss the Charge and its Specifications on the grounds set forth below:

That the order issued on 2 October 1995 by LTC Stephen R. Layfield and again on 4 October 1995 by CPT Roger H. Palmeteer "to wear the prescribed uniform for the deployment to Macedonia, i.e., U.N. patches and cap" was an unlawful order in that said order was issued in breach of Specialist New's enlistment contract.

Dated: December 6, 1995

By:

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UNITED STATES OF AMERICA

-vs-

NEW, Michael G.

SPC, USA, 450-73-3242

Headquarters and Headquarters Company,

1st Brigade, 3d Infantry Division

Preliminary Memorandum in Support of Motion to Dismiss: Breach of Contract

(1)

Specialist Michael G. New has been charged with disobedience of "a lawful order issued by LTC Stephen R. Layfield on 2 OCT 95 and CPT Roger H. Palmeteer on 4 OCT 95, to wear the prescribed uniform for the deployment to Macedonia, i.e., U.N. patches and cap. ..." Attached to, and in support of, this charge are the sworn statements of LTC Layfield, CPT Palmeteer, and CPT Francisco Z. Marroquin. LTC Layfield has sworn that he "issued a lawful order to my Task Force Able Sentry for all TFAS soldiers to wear the U.N. accouterments on our U.S. uniform. ..."

The order to Specialist New to wear the U.N. patches and cap is unlawful because it violates Specialist New's contract of enlistment by detailing him to a United Nation's peacekeeping operation as a Task Force Able Sentry soldier and not as a soldier in the United States Army. Indeed, the very purpose of the order to wear U.N. insignia was to change each soldier deployed to Macedonia into a U.N. soldier:

The U.N. will send to the troop contributor a minimum amount of berets, scarves, metal hat badges and shoulder patches to insure that each individual may be given an initial issue. ... The purpose of this is for the troops assigned to UNPROFOR to arrive in the Mission Area dressed as United Nations troops. United Nations, Troop Contributing Nations, Para. 626, p. 6-8 (November 1994).

Upon enlistment in the United States Army, Specialist New agreed to perform all the duties of the office of a member of the United States Army, not all the duties of the office of a member of Task Force Able Sentry, the duties of which are determined by the United Nations Security Council, not by the United States President and Congress according to the United States Constitution. For example, Specialist New was provided with a set of rules of engagement identifying him as "U.N. personnel and subjecting him to U.N. rules."

Detailing Specialist New to the Task Force Able Sentry of UNDEPPRO in FYROM operates de facto as a change of oath of office as it would place Specialist New under the command of a foreign officer "who exercises operational control over Task Force Able Sentry to carry out a mission defined by the United Nations Security council," not by the United States President as commander-in-chief of the United States Armed Forces. Hence, Specialist New would be subject to deployment orders of a foreign officer within the mission area as defined by the Security Council. See Pribble, Support to Multilateral Peace Operations II.4.b. (7 Feb. 1995) ("Operational Central ... is a subset of command. It ... includes the authority to assign tasks to U.S. forces already deployed by the President and led by U.S. officers at the unit level.")

At the time that Specialist New signed his enlistment contract, he executed an oath to defend the Constitution of the United States against enemies foreign and domestic and to obey orders of the President and other military officers also bound by oath to uphold the Constitution. Deployment of Specialist New to Task Force Able Sentry would place him under the command of foreign officers who have not taken an oath to uphold the Constitution of the United States.

To place Specialist New under the authority of officers not bound by the same oath of office is a breach of New's enlistment contract. As a breach of contract, the order deploying Specialist New to Macedonia is unlawful. The order to wear U.N. insignia, the lawfulness of which depends upon the lawfulness of the deployment, is also unlawful. The charges against Specialist New should, therefore, be dismissed.

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FOOTNOTES

[1] This memorandum is preliminary in nature. Completion of discovery is necessary to be fully equipped to argue the Motion to Dismiss.