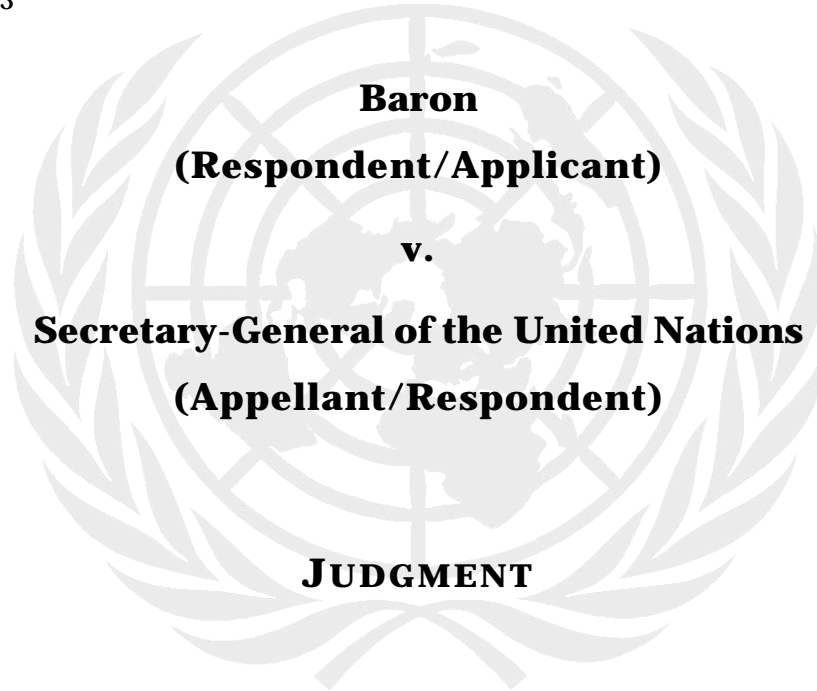




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-273



Before: Judge Inés Weinberg de Roca, Presiding
Judge Mary Faherty
Judge Richard Lussick

Judgment No.: 2012-UNAT-257

Date: 1 November 2012

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Georges Holleaux

Counsel for Appellant/Respondent: Phyllis Hwang

JUDGE INÉS WEINBERG DE ROCA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against “Interim Judgment” No. UNDT/2011/174, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 7 October 2011 in the case of *Baron v. Secretary-General of the United Nations*. The Secretary-General appealed on 17 November 2011, and Mr. Roman Baron answered on 6 January 2012.

Synopsis

2. In the present case, the Appeals Tribunal sees no reason to depart from the general rule that only appeals against final judgments are receivable.¹ Under the new system of administration of justice, the UNDT has broad discretion with respect to case management.

Facts and Procedure

3. Mr. Baron joined the United Nations Office at Geneva (UNOG) on 10 September 2002 as a Security Officer. On 1 June 2003, he was assigned to Baghdad, Iraq, to serve with the security staff of the Special Representative of the Secretary-General there. Mr. Baron was injured during a suicide truck-bomb attack on the United Nations headquarters in Iraq.

4. After he returned to UNOG in October 2003, Mr. Baron requested compensation under Appendix D to the Staff Rules. His service was subsequently terminated on 28 August 2009 for health reasons. For his service-incurred injury, Mr. Baron was awarded compensation in the amount of USD 221,483.03, equivalent to a 67 percent permanent loss of function related to spinal column impairment and post-traumatic stress disorder, as well as monthly compensation of USD 2,604.42 for permanent loss of function and the disability pension paid by the United Nations Joint Staff Pension Fund.

¹ *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062 (full bench, Judge Boyko dissenting).

5. On 8 November 2010, Mr. Baron was informed that as the Advisory Board on Compensation Claims (ABCC) had made no recommendation in support of his claim for additional compensation for permanent loss of ear, nose and throat (ENT) and pulmonary functions, the Secretary-General had decided to reject this claim.

6. Mr. Baron applied to the UNDT on 28 January 2011 to contest the decision to deny him additional compensation for permanent loss of ENT and pulmonary functions. In “Interim Judgment” No. UNDT/2011/174, the UNDT found Mr. Baron’s application receivable, despite the fact that he had not submitted the contested decision to management evaluation. Under Staff Rule 11.2 (b), Mr. Baron could appeal directly to the UNDT against “an administrative decision taken pursuant to advice obtained from technical bodies” such as the ABCC. Moreover, the ambiguity in the wording of Article 17(a) of Appendix D to the Staff Rules made the recourse procedure to the Secretary-General an option to, rather than a prerequisite for, filing an application with the UNDT.² However, the UNDT decided that, prior to ruling on Mr. Baron’s claim, a board of medical experts be established to render expert opinion as to Mr. Baron sustained a permanent loss of ENT and pulmonary functions which was attributable to his service; the medical board transmit its report to the UNDT; the Secretary-General be responsible for facilitating the organization of the work of the medical board and, the Secretary-General advance funds to defray the cost of conducting the medical evaluation. The UNDT reserved the authority to determine the final liability for such costs at a later stage.

Submissions

Secretary-General’s Appeal

7. The Secretary-General submits that, as the UNDT exceeded its jurisdiction or competence in holding Mr. Baron’s application receivable on a procedural ground, his appeal against the UNDT’s “Interim Judgment” is receivable.

² Article 17 of Appendix D to the Staff Rules provides: “(a) Reconsideration of the determination by the Secretary-General of the existence of an injury or illness attributable to the performance of official duties, or of the type and degree of disability *may* be requested within thirty days of notice of the decision” (emphasis added).

8. The Secretary-General maintains that the inferences drawn by the UNDT from the text of Article 17(a) of Appendix D to the Staff Rules are legally unsustainable. If the word “must” rather than “may” had been used in Article 17(a), then staff members would be required to challenge the Secretary-General’s determination in every case, even when they are satisfied with it. It is therefore unreasonable to expect the Organization to include mandatory language in a provision that would compel such an absurd result or to require the Organization to accept that the use of the word “may” automatically confers a non-obligatory character on the administrative remedy established in Article 17(a).

9. The Secretary-General also maintains that it is not clear how any ambiguity in article 17(a) should lead the UNDT to the conclusion that Mr. Baron’s direct application was receivable, given that the UNDT recognized that the intent of the Secretary-General was to establish the administrative remedy in Article 17(a) as a prerequisite for filing an application with the UNDT. In the view of the Secretary-General, the UNDT’s conclusion is contrary to the general principle that administrative remedies should be exhausted before initiating litigation.

10. The Secretary-General further maintains that the UNDT exceeded its competence by taking it upon itself to make decisions in connection with a medical board that would normally fall within his prerogative. The UNDT’s decision was contrary to the jurisprudence of the Appeals Tribunal. The UNDT had no legal basis to order a medical board since Mr. Baron never requested a reconsideration of the decision as communicated to him on 8 November 2010.

Mr. Baron’s Answer

11. Mr. Baron maintains that the present appeal is not receivable because the UNDT has issued an “Interim judgment” without disposing of the merits of the case. This type of decision, interlocutory in nature, can only be appealed together with the subsequent judgment on the merits, in accordance with the jurisprudence established by the Appeals Tribunal in *Bertucci* and *Tadonki*.³

12. Furthermore, Mr. Baron submits that the UNDT correctly concluded that he could apply directly to the UNDT to contest the decision of the Secretary-General to deny him additional compensation, because the principle of exhaustion of internal remedies is nowhere set forth in either the Statute or Rules of Procedure of the UNDT or the provisional Staff Regulations or Staff

³ *Bertucci*, 2010-UNAT-062; *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

Rules, and also because Article 17(a) of Appendix D to the Staff Rules makes the request to the Secretary-General for reconsideration only an option, and further because Staff Rule 11.2(b) explicitly exempts his case from the requirement of management evaluation.

13. Mr. Baron requests that the Appeals Tribunal order the Secretary-General to pay him USD 10,000, as legal costs as the appeal by the Secretary-General has prolonged the proceedings and it would be unfair for him to absorb the expenses necessary to defend his case on appeal.

Considerations

14. Mr. Baron requested an oral hearing. The Tribunal considers that a hearing at this preliminary stage of the proceedings is not necessary and would unduly delay the delivery of the Judgment.

15. In the present case, the Appeals Tribunal sees no reason to depart from the general rule that only appeals against final judgments are receivable.⁴

16. Under the new system of administration of justice, the UNDT has broad discretion with respect to case management. Article 19 of the Rules of Procedure of the UNDT provides that the Dispute Tribunal may, at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and do justice to the parties. In the instant case, the UNDT applied Staff Rule 11.2, which departs from the requirement of management evaluation where the decision is taken pursuant to advice from technical bodies.

17. Relying on the principle set forth in our *Khambatta* Judgment,⁵ we hold that appeals against decisions taken in the course of proceedings, including orders imposing interim measures, are non-receivable, even where the UNDT has committed an error of law or fact. Accordingly, the present appeal is not receivable.

⁴ *Khambatta*, 2012-UNAT-252; *Bertucci*, 2010-UNAT-062.

⁵ *Khambatta*, 2012-UNAT-252.

Judgment

18. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Weinberg de Roca, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar