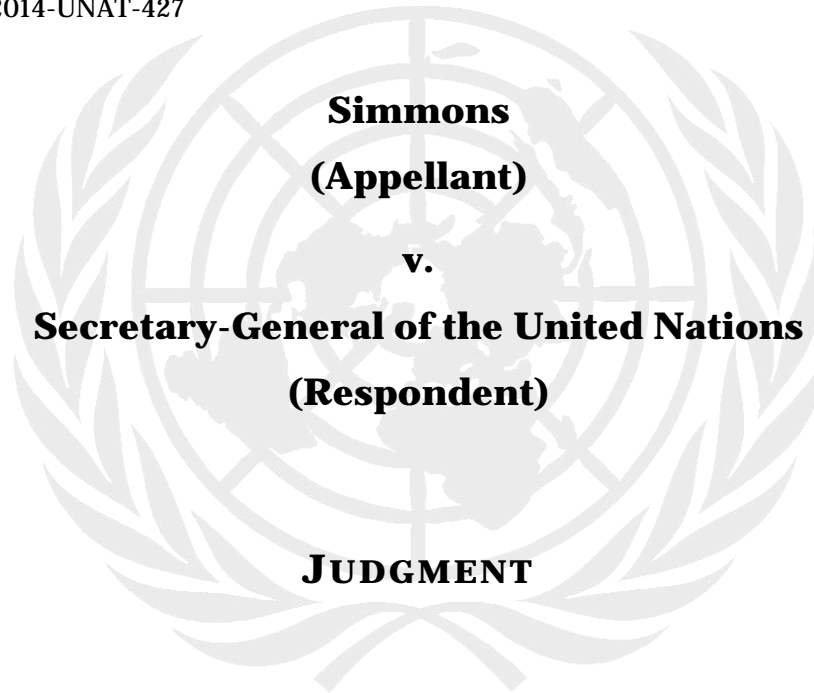




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-427



**Simmons
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Inés Weinberg de Roca, Presiding Judge Sophia Adinyira Judge Rosalyn Chapman
Case No.:	2013-484
Date:	2 April 2014
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Wambui Mwangi

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Sheryl Simmons against Judgment No. UNDT/2013/059, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 26 March 2013, in the case of *Simmons v. Secretary-General of the United Nations*.

Facts and Procedure

2. This appeal arises from a vehicular accident in which Ms. Simmons was involved in the afternoon of 29 July 2009. At that time, she was a Programme Budget Officer with the Office of Programme Planning, Budget and Accounts (OPPBA) in New York. She resided in the Bronx, New York, approximately 10 miles north of her office in Manhattan.

3. According to Ms. Simmons, on 29 July 2009, she left work at 4:30pm. Approximately 12 minutes later, at 4:42pm, she stopped her car at a red traffic light at the intersection between 2nd Avenue and East 15th Street, when another car crashed into her car, causing damage to the rear end of the vehicle. The intersection is approximately 1.7 miles south of Ms. Simmons' office. Ms. Simmons was taken by ambulance to Bellevue Hospital, where she was treated for injuries sustained in the accident.

4. On 13 October 2009, Ms. Simmons met with the Secretary of the Advisory Board on Compensation Claims (ABCC) for information as to how to file a claim in respect of the accident. On 20 October 2009, she filed an Appendix D claim.

5. In an e-mail dated 1 December 2009, the Secretary of the ABCC advised Ms. Simmons that her claim would be considered by the ABCC at its next meeting on 10 December 2009. The Secretary of the ABCC asked Ms. Simmons to confirm her 13 October 2009 statement that the accident occurred at the intersection of 2nd Avenue and East 15th Street, and that she was in that vicinity to pick up her son from camp on East 14th Street before proceeding to her residence in the Bronx.

6. In an e-mail dated 2 December 2009 to the Secretary of the ABCC, Ms. Simmons confirmed that the accident took place 12 minutes after she had left the office on her commute home from work. Ms. Simmons stated that the police report, the statement that she had given to the United Nations Safety and Security Service, her written statement and

the medical evaluation formed adequate information in assisting the ABCC during its deliberation of her case.

7. In response to another request from the Secretary of the ABCC for confirmation of her 13 October 2009 statement that she was in the area around 2nd Avenue and East 15th Street in order to pick up her son from camp, Ms. Simmons stated that she had nothing further to add and reiterated that she was on her way home from work when the accident happened.

8. The ABCC reviewed Ms. Simmons' claim on 10 December 2009 and 23 April 2010, but decided to seek additional information from Ms. Simmons prior to making a recommendation. On 26 May 2010, the Secretary of the ABCC advised Ms. Simmons of the ABCC meetings and asked her to provide "[d]ocumentary evidence from the school/day camp confirming that [her] child had been enrolled there and in attendance on the date of the accident, i.e. on 29 July 2009".

9. In an e-mail dated 27 May 2010, Ms. Simmons expressed her "complete shock" that the ABCC had not taken a decision, but now required further documentation. She stated that she did not make the statement imputed to her. She reiterated that her son "was indeed in the vicinity of [her] work place" on the date of the vehicular accident, and that "[she] had to pick him up on 2nd Avenue in Manhattan" before proceeding home to the Bronx, but was not able to do so due to the accident.¹ Ms. Simmons submitted a supplementary statement to the ABCC on 7 June 2010.

10. The ABCC met again on 25 June 2010 to review Ms. Simmons' claim. Prior to that meeting, it had requested an advisory opinion from the Office of Legal Affairs, which it received on 14 April 2010. In that regard, the ABCC noted that Ms. Simmons had failed to provide the information it had requested about her son's enrolment in school or in camp on 29 July 2009. On the basis of the information available, the ABCC concluded that the injuries Ms. Simmons sustained as a result of the accident on 29 July 2009 could not be recognized as attributable to the performance of her official duties on behalf of the United Nations as, at the time of the accident, Ms. Simmons had not been travelling via the most direct route possible between her office and her residence. The ABCC therefore

¹ In paragraph 14 of her appeal to the Appeals Tribunal, Ms. Simmons states that she "never mentioned to the Secretary of the ABCC anything about [her] son being enrolled in any official school/day camp during the summer" of 2009.

recommended that Ms. Simmons' Appendix D claim be denied. On 17 August 2010, the Controller approved this recommendation on behalf of the Secretary-General.

11. Ms. Simmons appealed. In Judgment No. UNDT/2013/059, the Dispute Tribunal dismissed her application. It noted that "Appendix D does not specifically provide for compensation in a situation such as that of the Applicant. However, under the practice of the ABCC, staff members are entitled to compensation when commuting via the most direct route to and from work." The Dispute Tribunal found that "it was reasonable for the ABCC to require from the Applicant an explanation supported by appropriate documentation, if available, about her trip from work to home since she was not travelling via the most direct route", but Ms. Simmons "consistently refused to provide all the information requested". The UNDT further found that "the ABCC was correct in rejecting the Applicant's claim for compensation for injuries suffered from the car accident".

12. On 15 May 2013, Ms. Simmons filed a request seeking a thirty-day extension of the time limit for appealing the UNDT Judgment. On 28 May 2013, the Appeals Tribunal issued Order No. 135, in which it rejected Ms. Simmons' extension request, but exceptionally granted her five working days to file her appeal, in view of the fact that the time limit had lapsed that day.

13. On 3 June 2013, Ms. Simmons filed an appeal, and the Secretary-General answered on 5 August 2013.

Submissions

Ms. Simmons' Appeal

14. Ms. Simmons submits that the UNDT erred in fact when it failed to find that staff members within 10-12 minutes of leaving the United Nations, particularly those who reside in another borough, could not be considered as not on official duty regardless of the route within the city limits. She also submits that the UNDT erred when it considered irrelevant factors in passing judgment on her application. Ms. Simmons asks "who is to say that my son had to be enrolled in an ... official school/day camp during the summer, for the benefit of the ABCC to apply the test for 'official duty' to approve my claim?" In this connection, Ms. Simmons notes that no attestation for educational enrolment and attendance is required for the period July-August. She

stresses that the fact that she had to pick up her son after work “does not mean that [she] was not on a direct route to [her] home from work”.

15. Ms. Simmons also submits that the UNDT erred in fact and in law when it rejected her application because of her alleged refusal to provide further information as to why she did not adopt a direct route on her way home from work. In her view, the ABCC’s request for additional information about her son’s school or day camp was excessive and unlawful.

16. Ms. Simmons maintains that the UNDT erred in law when it failed to apply the law or to observe statutory process in respect of official duty and eligibility in Appendix D, and when it failed to award compensation for emotional stress caused by the Respondent’s breaches of the Staff Regulations and Rules and the violation of her contractual and due process rights. Ms. Simmons states that she is ready to provide the Appeals Tribunal with any appropriate documentary evidence and authorizes this Tribunal to exercise its inherent investigatory jurisdiction to request the release of her medical records in the possession of the Medical Service.

The Secretary-General’s Answer

17. The Secretary-General submits that the UNDT applied the relevant legal framework to Ms. Simmons’ case. The Dispute Tribunal first referred to Articles 2(a) and 2(b) of Appendix D of the Staff Rules, which do not address the circumstances of Ms. Simmons’s accident. The Dispute Tribunal then recognized the ABCC’s practice to allow compensation for injuries sustained during travel to and from work by the most direct route. In the view of the Secretary-General, the Dispute Tribunal correctly found that the accident did not occur on the most direct route from Ms. Simmons’ office to her residence, irrespective of the reason for the deviation or if it was within city limits, noting that she was driving south from her office, whereas she resided north of her office. In this connection, the Secretary-General submits that the present case is distinguishable from the *Fernandez-Lopez* case rendered by the former United Nations Administrative Tribunal.²

18. The Secretary-General also submits that the Dispute Tribunal correctly found that it was reasonable for the ABCC to request further information from Ms. Simmons, who had an obligation to respond to such requests, so as to enable it to make an informed determination as to the eligibility of her claim. Ms. Simmons could have provided evidence of where her son was

² Former United Nations Administrative Tribunal Judgment No. 254, *Fernandez-Lopez* (1980).

situated at the time, even if it was not an official school/day camp, but chose not to do so, to either the ABCC, the UNDT or the Appeals Tribunal. Under the circumstance, it was reasonable for the Dispute Tribunal to conclude that the ABCC was correct in rejecting Ms. Simmons' claim for compensation.

19. The Secretary-General further submits that the Dispute Tribunal correctly declined to award Ms. Simmons compensation for "emotional stress" in the absence of a breach of her due process rights, any other legal, procedural or factual error, or evidence of harm attributable to the Administration.

20. The Secretary-General therefore requests that this Tribunal affirm the UNDT Judgment and reject the appeal in its entirety.

Considerations

21. Article 2 of the Statute of the Appeals Tribunal establishes that:

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

22. The facts in this case are not disputed.

23. Ms. Simmons appeals on errors of law and fact, maintaining that the Organization is liable for accidents which occur on the way home, either directly or by a detour.

24. The UNDT Judgment very clearly states that the applicable law found in Appendix D establishes principles and definitions governing compensation for injuries "as a direct result of travelling by means of transportation furnished by or at the expense or direction of the United Nations in connexion with the performance of official duties; provided that the[se]

provisions [...] shall not extend to private motor vehicle transportation sanctioned or authorized by the United Nations solely on the request and for the convenience of the staff member”.

25. The ABCC accepts that it has in the past allowed compensation claims for injuries sustained during travel to and from work by the most direct route, including by private vehicle. However, this practice cannot be authorized and/or expanded by the courts to cover injuries sustained during travel to and from work by an indirect route.

Judgment

26. We affirm the UNDT Judgment, as there is no error of law or fact. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Chapman

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar