



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

Judgment No. 2015-UNAT-600

**James
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Rosalyn Chapman Judge Richard Lussick
Case No.:	2014-680
Date:	30 October 2015
Registrar:	Weicheng Lin

Counsel for Mr. James:	Self-represented
Counsel for Secretary-General:	Noam Wiener

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment on Receivability No. UNDT/2014/135, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 19 November 2014 in the case of *James v. Secretary-General of the United Nations*. On 24 November 2014, Mr. Mike James filed his appeal, and on 26 January 2015, the Secretary-General filed his answer.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant is employed by [the United Nations Mission in Liberia (UNMIL)] on a fixed-term appointment (FTA) as a Civil Affairs Officer at the NO-B level.

... On 25 January 2008, the Ophthalmologist at the Level III Hospital, which was run by the Jordanian Military contingent (JORMED III) of UNMIL, diagnosed the Applicant as having a mature cataract in his right eye. The Ophthalmologist discussed the prognosis and complications of surgery with the Applicant and then recommended that the Applicant be transferred to a Level IV hospital for cataract surgery.

... The Applicant was admitted to the Korle-Bu Teaching Hospital (Korle-Bu) in Accra, Ghana, on 20 February 2008 for cataract surgery and discharged on 26 February 2008. On 11 March 2008, the UNMIL Medical Services Section referred the Applicant to JORMED III for “complication after cataract surgery”. According to the Applicant, as a result of the complications, he returned to Korle-Bu where a second surgical procedure was performed on him.

... The Applicant was treated at the 37 Military Hospital in Accra on 15 June 2012 based on a referral from JORMED III.

... On 9 July 2012, the Applicant informed the UNMIL Chief Medical Officer (CMO) that he was convinced his eye condition would be further aggravated by continued use of computers as required by his job with UNMIL and as a result, he had decided to seek early retirement as of 31 December 2012. He then requested compensation for the loss of his eye.

... On 23 July 2012, the Applicant filed a claim for compensation under Appendix D [of the Staff Rules] with the [Advisory Board on Compensation Claims (ABCC)] for the loss of one eye and diminishing vision in the other eye. He indicated in the claim form that the cataract in his right eye was exacerbated by his intensive use

¹ Impugned Judgment, paras. 8-24 (internal footnotes omitted).

of computers for work purposes and that his injury was caused by “professional error” on the part of the eye doctor during the cataract surgery.

... On 9 August 2012, the ABCC forwarded the Applicant’s claim to the Director of the Medical Services Division (MSD) of [the Office of Human Resources Management (OHRM)] for review and advice.

... By an email dated 14 November 2012, the UNMIL CMO requested that the Applicant make himself available for a final medical evaluation by a senior ophthalmologist in Accra.

... On 27 November 2012, the Commander of the 37 Military Hospital convened a medical board (37 Military Hospital Medical Board) in Ghana to examine and report on the condition of the Applicant. The report of the 37 Military Hospital Medical Board, which was finalized on 13 December 2012, indicated that the Applicant had “pseudophakic bullous keratopathy” in his right eye, an immature cataract in the left eye, glaucoma and “refractive error”. The 37 Military Hospital Medical Board concluded that it could not make a determination as to compensation because there was no evidence that the Applicant’s cataract was caused by his work with computers. The findings of the 37 Military Hospital Medical Board were shared with the Applicant on 18 December 2012.

... On 2 January 2013, the Applicant wrote to the [Assistant Secretary-General (ASG)]/OHRM seeking special consideration for compensation for the loss of his eye and immediate separation from UNMIL on grounds of health disability.

... By a memorandum dated 9 January 2013, MSD informed ABCC that there was no evidence that the Applicant’s cataracts were caused by prolonged use of computers and that his condition was most likely due to age as he was 54 at the time of the onset. MSD concluded that since the condition was not service-incurred, there was no need to address questions relating to disability and permanent loss of function.

... On 25 January 2013, the ASG/OHRM responded to the Applicant’s letter of 2 January. She advised him that:

- a) MSD had sent a medical opinion to the ABCC for consideration;
- b) The medical board convened by the 37 Military Hospital was the hospital’s internal procedure to be able to provide a medical report regarding the status of his eye. This medical board was not convened at the request of the United Nations and did not comprise of doctors selected by UNMIL;
- c) She did not have the capacity to seek special consideration for him in matters pertaining to the administration of the disability provisions of the Pension Fund.

... On 27 January 2013, the Special Entitlements Unit of the Department of Field Support (DFS) informed the Human Resources Office of UNMIL (UNMIL HRO) of

MSD's findings and conclusion that the Applicant's illness was not found to be directly related to the performance of his official duties. This was communicated to the Applicant on 28 January 2013.

... The Applicant wrote to the ASG/OHRM again on 6 and 7 May 2013. On 23 May 2013, the Director of MSD responded to the Applicant on behalf of the ASG/OHRM. She reiterated that the 37 Military Hospital Medical Board was part of the hospital's internal procedures and had not been convened under the authority of the United Nations. She assured him that the Report of the 37 Military Hospital Medical Board had not been submitted to the ABCC and had not been considered by it during its deliberations. She then advised him that if his medical condition prevented him from performing his duties, MSD could recommend his case to the Pension Fund for consideration.

... The Applicant responded to the Director of MSD on 27 May, disagreeing with her response of 23 May and reiterating his request for compensation and separation.

... At its 463rd meeting on 11 June 2013, the ABCC considered the Applicant's claim for compensation under Appendix D and concluded that his injury was not service-incurred.

... On 16 July 2013, the Controller, on behalf of the Secretary-General, approved the ABCC recommendation of 11 June 2013 to deny the Applicant's request that his illness (bilateral cataracts and loss of vision in the right eye due to corneal damage) be recognized as service-incurred.

3. On 10 August 2013, Mr. James filed an incomplete application with the UNDT, which he completed on 25 September 2013, "challenging the 'rejection of [his] claim for compensation for loss of one eye' by the [ABCC]", as well as "UNMIL's alleged negligence in referring him to a sub-standard medical facility for cataract surgery".² Mr. James sought the following remedies:³

a) An "unequivocal declaration" that UNMIL is fully responsible for the failed cataract surgery, "which resulted in the loss of [his] right eye";

b) An "unequivocal declaration" that he is fully entitled to benefits under Appendix D of the United Nations Staff Rules [...] for the loss of his right eye, and rescission of the decision by "the UN authorities" to deny him such benefits;

c) A declaration that pursuant to Appendix D, he is also entitled to compensation for the physical and emotional suffering imposed by this injury, compensation for loss of career, and full reimbursement of all medical and other directly related expenses he has incurred as a result of his injury;

² *Ibid.*, para. 1.

³ *Ibid.*, para. 2.

d) Monetary compensation in the amount of USD 2.25 million as full compensation for: the injury to his right eye, reimbursement of medical and other expenses incurred in the process of managing the injury, compensation for the disfigurement to his face, loss of career and for the physical and emotional injuries he has suffered as a result of his injury and the refusal by UNMIL Administration to accept responsibility for his condition.

4. On 25 October 2013, the Secretary-General submitted a reply in which he asserted that the claims raised in the application were not receivable. On 16 January 2014, the UNDT issued Order No. 006 (NBI/2014), granting Mr. James permission to submit comments solely on the issue of receivability raised in the Secretary-General's reply. Mr. James filed his comments on 17 January 2014.

5. By Order No. 248 (NBI/2014), the UNDT instructed Mr. James to submit copies of his e-mails to the ASG/OHRM dated 6 and 7 May 2013 and ordered the Secretary-General to submit his comments and any relevant documentation on paragraphs five and six of Mr. James' comments of 17 January 2014.

6. On 19 November 2014, the UNDT issued Judgment on Receivability No. UNDT/2014/135. The UNDT identified the following three issues for determination: (a) whether Mr. James' negligence claim was receivable; (b) whether Mr. James' claim for separation on health grounds was receivable; and (c) whether Mr. James' claim that the Secretary-General erred in rejecting his claim for compensation under Appendix D was receivable.

7. The UNDT found that Mr. James' negligence claim as well as his claim for separation on health grounds were not receivable under Article 8(1)(c) of the UNDT Statute as Mr. James had failed to file a request for management evaluation. The UNDT further found that Mr. James' Appendix D claim was not receivable because Mr. James had not requested reconsideration of the Controller's decision to reject his claim, as required by Article 17(a) of Appendix D. However, finding that the Controller's decision of 16 July 2013 had not been communicated to Mr. James, the UNDT ordered that the Secretary-General formally notify Mr. James of that decision no later than 28 November 2014 and granted Mr. James 30 days from the date of receipt of the Controller's decision to decide whether to seek reconsideration of his claim in accordance with Article 17(a) of Appendix D.

Submissions

Mr. James' Appeal

8. Mr. James contends that his referral to the Korle-Bu Hospital and the decision not to separate him immediately from service for health reasons were based on the advice of a technical body as set forth in Staff Rule 11.2(b). He was therefore not required to request management evaluation before applying to the UNDT.

9. Mr. James further contends that the UNDT should have ruled that Mr. James' obligation to submit the contested decisions for management evaluation or reconsideration in the case of the Appendix D claim was fulfilled when he asked for the ASG/OHRM's intervention. Even if the ASG/OHRM was not regularly authorized to evaluate disputed administrative decisions, she created a false impression of authority when she responded to Mr. James' queries. The UNDT should have determined that his requirement to submit the contested decisions to the Management Evaluation Unit (MEU) had been satisfied.

10. Mr. James claims that the UNDT Case Management Orders and Judgment were biased in favour of the Secretary-General, and he gives three examples of alleged bias, namely: (a) the apparent inaccuracy in the wording of UNDT Order No. 248 (NBI/2014), which was a deliberate attempt by the UNDT to prejudice his rights; (b) the UNDT's refusal to permit him to submit additional pleadings on the merits in response to the Secretary-General's reply; and (c) the UNDT's refusal to sanction the Secretary-General for failing to communicate to Mr. James the Controller's decision of 16 July 2013 and for lying under oath in this regard.

11. Finally, Mr. James makes multiples claims regarding the merits of the case.

12. Mr. James requests that the Appeals Tribunal overturn the UNDT Judgment, find the Secretary-General liable, and award appropriate relief.

The Secretary-General's Answer

13. The UNDT correctly concluded that Mr. James' claims were not receivable because he had neither submitted the contested decisions for management evaluation nor initiated procedures in accordance with Article 17 of Appendix D for reconsideration of his Appendix D

claim. The contested decisions were not exempt from management evaluation, as they were not decisions made pursuant to advice from a technical body under Staff Rule 11.2(b). Moreover, the UNDT correctly concluded that Mr. James' correspondence with the ASG/OHRM could not substitute the obligation to request management evaluation or reconsideration under Article 17 of Appendix D. Consequently, the Secretary-General requests the Appeals Tribunal to affirm the UNDT's holding on receivability.

14. The Secretary-General submits that Mr. James' claims that the UNDT Case Management Orders and Judgment were biased in favour of the Secretary-General are unsubstantiated. The three examples given by Mr. James do not reveal any lack of impartiality on the part of the UNDT. The inaccuracy in Order No. 248 (NBI/2014) does not prove any bias in favour of the Secretary-General and there was no proof that the inaccuracy in the wording of the text was intentional. As to the UNDT's refusal to permit Mr. James to submit additional pleadings on the merits, the latter failed to provide any evidence that the UNDT's decision violated the UNDT Statute or Rules of Procedure, that it deviated from its usual practice regarding additional pleadings, or that it applied its discretion based on inappropriate motives. Finally, although the UNDT ruled that Mr. James' application regarding the decision to reject his Appendix D claim was not receivable, the UNDT ultimately ruled in his favour. The UNDT's decision regarding the 16 July 2013 decision can therefore not be an example of bias against Mr. James.

15. The Secretary-General reserves his right to respond to Mr. James' substantive claims.

16. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety and affirm the UNDT Judgment.

Considerations

Alleged bias in case management orders

17. Mr. James submits that the UNDT Case Management Orders were biased in favour of the Secretary-General. Firstly, Mr. James alleges an apparent inaccuracy in the wording of UNDT Order No. 248 (NBI/2014), which he contends was a deliberate attempt by the UNDT to prejudice his rights. The relevant part of the original version of UNDT Order No. 248 (NBI/2014) reads: "Pursuant to Order No. 006 (NBI/2014), the Applicant was granted leave and submitted his response to the Respondent's Reply on 17 January 2014." The language

suggests that Mr. James' 17 January 2014 filing was a response to the Secretary-General's reply, when it was in fact filed pursuant to UNDT Order No. 006 (NBI/2014) which allowed him to only respond to the narrow issue of receivability.

18. We note that following a notice sent by Mr. James to the UNDT, the UNDT immediately amended the text to state: "Pursuant to Order No. 006 (NBI/2014), the Applicant was granted leave to file a response on the issue of receivability that had been raised by the Respondent in his Reply. He submitted said response on 17 January 2014."⁴ We find that the immediate response and correction following Mr. James' complaint demonstrate the inaccuracy in the text was unintentional, and do not prove any bias in favour of the Secretary-General.

19. Secondly, Mr. James alleges that the UNDT refused to permit him to submit additional pleadings on the merits in response to the Secretary-General's reply. There is no provision in the UNDT Statute or Rules of Procedure granting parties the right to submit additional pleadings. However, under Article 19 of the UNDT Rules of Procedure, the UNDT has the discretion in the management of its cases to make or issue any order that includes the filing of additional pleadings. Article 19 provides: "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 to do justice to the parties." The UNDT has broad discretion with respect to case management and is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties.⁵ The Appeals Tribunal has consistently held that it will not lightly interfere with the discretion of the UNDT in the management of cases vested in it by its Rules of Procedure.⁶

20. Mr. James has failed to establish that the UNDT made any errors in procedure or that its decision was motivated by bias warranting a reversal of the Judgment. We note that following the submission of the Secretary-General's brief, the UNDT exercised its discretion to provide Mr. James with an opportunity to submit pleadings on the issue of receivability that was raised in the brief and, on the other hand, refused Mr. James' request to file

⁴ *James v. Secretary-General of the United Nations*, UNDT Order No. 248 (NBI/2014), para. 4.

⁵ *Pérez-Soto v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-329, para. 20, citing *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23.

⁶ *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354, para. 8.

additional pleadings on the merits that had been adequately addressed in his initial pleadings. We find no fault in the exercise of the UNDT's discretion on the filing of those additional pleadings.

21. Mr. James' third example is the UNDT's refusal to sanction the Secretary-General for failing to communicate to him the Controller's decision of 16 July 2013, and for lying under oath in this regard. At the time the UNDT Judgment was issued, the Controller's decision had not yet been communicated to Mr. James. The UNDT therefore ordered the communication of the Controller's decision to Mr. James no later than 28 November 2014.

22. The Judgment of this Tribunal, which relates only to the decision contained in the e-mail dated 27 January 2013 from DFS' Special Entitlements Unit of DFS forwarded to Mr. James on 28 January 2013 by UNMIL HRO, is without prejudice to any action that Mr. James may pursue regarding the decision of 16 July 2013, in accordance with Article 17(a) of Appendix D. At this point in time, the Controller's decision is outside the scope of the appeal before us and we, therefore, decline to rule on any aspect of it.

23. For the foregoing reasons, this ground of appeal is dismissed.

Alleged errors in finding Mr. James' claims not receivable

24. Mr. James contends that the UNDT erred in finding that his claims of negligence and separation on health grounds were not receivable because he was required to request management evaluation of these claims under Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2(a) but failed to do so. He contends that the related decisions were based on the advice of technical bodies, namely the ABCC, the MSD and the Medical Board, and he was therefore not required to request management evaluation as set forth in Staff Rule 11.2(b).

25. However, the Appeals Tribunal has previously established that a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D.⁷ Similarly, the responses that Mr. James viewed as negative decisions on his request for separation on health grounds were not decisions based on the advice of technical bodies. He was therefore required to

⁷ *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, para. 27.

submit a request for management evaluation of these decisions before proceeding with his application to the UNDT.

26. Pursuant to Staff Rule 11.2(a), a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent Regulations and Rules pursuant to Staff Rule 11.1(a) shall, as a first step, submit to the Secretary-General in writing a request for management evaluation of the administrative decision.

27. Under the UNDT Statute, the Dispute Tribunal is not competent to hear and pass judgment on a claim that has not been the subject of an administrative decision and thereafter, management evaluation. Under Article 8(1)(c) of the UNDT Statute, an application shall be receivable if “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”.

28. We have consistently held that a timely request for management evaluation is a mandatory first step in the appeal process, in the absence of which an application to the Dispute Tribunal is not receivable.⁸ In the present case, the UNDT correctly found that Mr. James had failed to submit a request for management evaluation and, accordingly, his application on this matter was not receivable.

29. Mr. James further contends that the UNDT should have ruled that Mr. James’ obligation to submit the contested decisions for management evaluation or reconsideration in the case of the Appendix D claim was fulfilled when he asked for the ASG/OHRM’s intervention. Even if the ASG/OHRM was not regularly authorized to evaluate disputed administrative decisions, she created a false impression of authority when she responded to Mr. James’ queries.

30. However the ASG/OHRM is not the appropriate authority to decide upon a request for management evaluation. Staff Rule 11.2 expressly directs staff members as a first step, to submit a request for management evaluation to the Secretary-General. The MEU is the office mandated to receive management evaluation requests pursuant to ST/SGB/2010/9.

⁸ *El-Shobaky v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-564, para. 23, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521; *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300; and *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-299.

Accordingly, the UNDT correctly concluded that Mr. James' correspondence with the ASG/OHRM cannot substitute his obligation to request management evaluation.

31. Finally, Mr. James makes multiple claims regarding the merits of the substantive case, which are not admissible as the impugned Judgment addresses only the receivability issue.

32. We find no merit in this appeal.

Judgment

33. The appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Lussick

Entered in the Register on this 30th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar