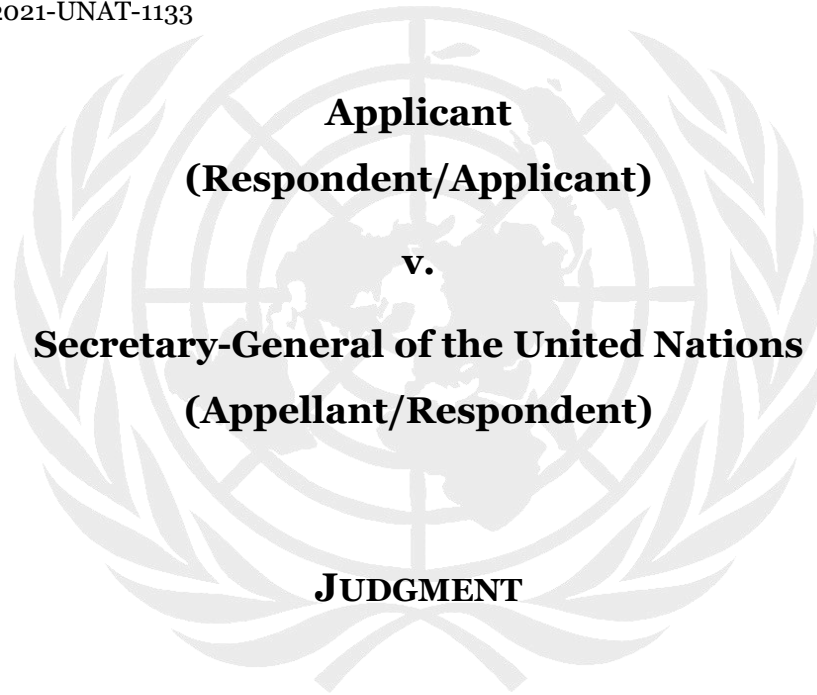




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1133



**Applicant
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Kanwaldeep Sandhu Judge Sabine Knierim
Case No.:	2020-1451
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Applicant:	Omar Yousef Shehabi, OSLA
Counsel for Secretary-General:	Noam Wiener

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. The Secretary-General has appealed against Judgment No. UNDT/2020/116/Corr.1, by which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) partially granted the Applicant's application and rescinded the decision of the Advisory Board on Compensation Claims (ABCC), dated 11 December 2019, that his compensation claim for post-traumatic stress disorder (PTSD) was time-barred, remanded the case to the ABCC to consider the Applicant's claim on its merits under the applicable Appendix D from before 2017, and awarded him three months' net-base salary in compensation under Article 10(4) of the Dispute Tribunal's Statute, and an additional USD 20,000 in compensation under Article 10(5)(b) of the Dispute Tribunal's Statute. On appeal, the United Nations Appeals Tribunal (Appeals Tribunal), with Judge Sandhu dissenting, grants the appeal for the reasons set out below.

Facts and Procedure

2. The Applicant joined the United Nations Children's Fund (UNICEF) on 28 October 2002. From July 2006 to February 2010, he served as UNICEF's Deputy Representative at the P-4 level in Ndjamena, Chad. On 3 February 2008, the Applicant was the victim of a malicious act/critical incident there.¹

3. The Applicant was granted a permanent appointment effective 30 June 2009. From March 2010 until January 2013, he served as Chief of the UNICEF Field Office in Bosasso, Somalia.

4. According to a consultant psychiatrist at the Nairobi Hospital, Kenya, on 3 September 2012, the Applicant developed excruciating headache, was medically evacuated from Somalia to Nairobi, was admitted to the Nairobi Hospital on 4 September 2012 and was discharged on 7 September 2012. The consultant psychiatrist diagnosed the Applicant with a combination of depression, burnout and PTSD as a result of the many traumatic incidents that the Applicant had witnessed during the previous six years while in the service of the Organization.

¹ The UNDT found that the accident took place in March 2018 (see para. 21, impugned Judgment). But according to the Applicant, confirmed by other sources, the malicious act/critical incident occurred on 3 February 2008.

5. Effective 25 January 2013, following a competitive recruitment exercise, the Applicant was offered the post of Coordinator of Technical Assistance to Regional and Country Offices in Humanitarian Response Situations (HATIS Coordinator) at the P-4 level at the UNICEF Headquarters in New York. He was reassigned to the Program Division as a planning specialist effective 1 December 2013 and worked there until August 2014, when he returned to his original function as the HATIS Coordinator.

6. On 20 January 2016, the ABCC received from the Applicant an Appendix D claim for service-incurred injury in the form of chronic PTSD, which occurred on 3 February 2008 and “onwards to date”, as a consequence of his “exposure while on official duty” for UNICEF.

7. In a memorandum dated 9 November 2017, the Secretary of the ABCC informed UNICEF that the Applicant’s claim had been dismissed on the basis that it was “time-barred and non-receivable” under Article 2.1 of Appendix D, because the claim had been filed four years after the PTSD diagnosis and eight years after the incident in Ndjamena. However, in the same memorandum, the Secretary of the ABCC stated that, should medical documentation demonstrating incapacity be submitted, the Applicant’s claim may be further considered.

8. On 13 November 2017, the United Nations Staff Pension Committee determined that the Applicant was incapacitated from further service on the basis of PTSD, pursuant to which he was awarded a disability benefit under article 33 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF).

9. After he was notified of the decision to reject his Appendix D claim, on 15 December 2017, the Applicant, through his counsel, filed a request for management evaluation of the decision of the Secretary of the ABCC to reject his Appendix D claim. The Applicant maintained that the ABCC had incorrectly applied the revised 2017 version of Appendix D when assessing his case and, moreover, that the ABCC had failed to afford him an opportunity to substantiate his claim and explain the late submission of his claim.

10. On 12 January 2018, UNICEF informed the Applicant that his management evaluation request was moot, as the Secretary of the ABCC had confirmed that he would reassess the Applicant’s Appendix D claim under the standard enunciated in the pre-2017 version of Appendix D, and that the Applicant would have the opportunity to submit further information, medical or otherwise, to explain the late submission of his claim.

11. On 2 February 2018, the Applicant's counsel submitted to the ABCC a medical report, which outlined the Applicant's condition and the reason for the delay in submitting his Appendix D claim.

12. On 26 February 2018, the Applicant filed an application against the decision to reject his Appendix D claim on receivability ground with the Dispute Tribunal, which was registered as Case No. UNDT/NY/2018/011.

13. On 4 May 2018, the Secretary of the ABCC informed UNICEF that a waiver of the deadline "has been reviewed and is denied". That decision was taken on the basis of the advice from the Medical Services Division of United Nations (MSD), which had reviewed the Applicant's file in detail as well as the report by his psychologist, that the Applicant was not incapacitated from submitting an Appendix D claim in the period from September 2012 to January 2016. Moreover, the MSD concluded that the Applicant had failed to substantiate an exceptional circumstance for waiving the four-month deadline set out in Article 12 of Appendix D. The MSD noted that:

... following [the Applicant's] diagnosis there are significant periods of time when [he] was considered fully fit for work, functioning successfully at a senior level, and had ready access to psychiatric help and support. He also had access to in-house administrative, counselling and medical support that could have shielded or largely eliminated the effects of submitting a claim. ... During any of these periods and commencing after his diagnosis in 2012 (the Applicant) knew of his condition (PTSD), had sought treatment for it, and had ascribed it to traumatic experiences at work. ... Furthermore (the Applicant) had also at numerous times sought special consideration for the nature of his work by describing his condition and its perceived cause in detail. At these times in particular he could not be considered to be incapacitated from submitting a claim as he had the capacity to tell his story, even though this had some clinical impact, and tell it in a much greater degree of detail than would be required for the initial claim for compensation.

14. On 13 June 2018, the Applicant filed a request for management evaluation challenging the decision of the Secretary of the ABCC to refuse to consider his Appendix D claim. No response was issued by UNICEF in relation to this request.

15. On 18 July 2018, the Applicant filed another application against the decision to refuse to consider his Appendix D claim, which was registered as Case No. UNDT/NY/2018/032.

16. On 29 May 2019, the Dispute Tribunal issued Judgement No. UNDT/2019/098, with respect to Case Nos. UNDT/2018/011 and UNDT/2018/032. The Dispute Tribunal remanded the Applicant's claim to the ABCC for institution or correction of the required procedure, with an order that the ABCC consider the Applicant's Appendix D claims within three months of the date of the Judgment.

17. However, the three-member ABCC did not meet to consider the Applicant's case until 11 December 2019. At that meeting, the ABCC reviewed several reports by the Applicant's psychologist, two UNICEF security reports, the Applicant's attendance records and a report by the MSD. The ABCC observed that the Applicant's attendance records showed that he had been working full time from 2006 through 2015, that he appeared to have been promoted several times, and that he had on various occasions invoked his traumatic experiences in the field in order to secure UNICEF Headquarters duty assignments. With one dissent, the majority of the ABCC concluded that "[the Applicant had] failed to meet the deadline set out in Article 12 of Appendix D to the Staff Rules and ... [the Applicant had] failed to meet the standard for waiver due to exceptional circumstances". The ABCC's recommendation to deny the Applicant's Appendix D claim was approved on 6 January 2020 by the United Nations Controller, on behalf of the Secretary-General.

18. On 9 January 2020, the Secretary to the ABCC informed UNICEF of the decision to deny the Applicant's Appendix D claim.

19. On 17 January 2020, the Applicant filed a third request for management evaluation challenging the decision of the ABCC, which was upheld by UNICEF on 14 February 2020.

20. On 17 February 2020, the Applicant filed a third application with the Dispute Tribunal, which was registered as Case No. UNDT/NY/2020/008.

21. In Judgment No. UNDT/2020/116/Corr.1 dated 10 July 2020, the Dispute Tribunal ordered rescission of the Controller's decision that the Applicant's Appendix D claim was time-barred. It concluded that, when determining whether his Appendix D claim was filed in a timely manner under Article 12 of the pre-2017 Appendix D, the members of the ABCC should have relied on the psychologist's medical opinion that the Applicant could not have been expected to file his Appendix D claim before 20 January 2016. Instead, "the ABCC

inappropriately relied only on the medical report from MSD and not on the Applicant's psychologist's medical opinion."²

22. The UNDT decided to remand the Applicant's Appendix D claim to the ABCC for consideration of its merits based on the pre-2017 Appendix D. Additionally, the Dispute Tribunal awarded the Applicant three months' net base salary in compensation for the procedural delays, "once for the three cases",³ in addition to awarding him USD 20,000 for additional harm. But the Dispute Tribunal saw no reason to accede to the Applicant's request to refer his entire case to the Secretary-General to enforce accountability under Article 10(8) of its Statute.

23. On 8 September 2020, the Secretary-General filed an appeal against Judgment No. UNDT/2020/116/Corr.1. On 9 November 2020, the Applicant filed an answer to the appeal.

Submissions

The Secretary-General's Appeal

24. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment and uphold the contested decision.

25. The Secretary-General submits that the Dispute Tribunal committed several errors of law and fact when it rescinded the decision to reject the Applicant's Appendix D claim as untimely. It exceeded its competence when it assumed the role of the MSD and relied on the medical reports submitted by the Applicant to find that exceptional circumstances existed to justify a waiver of the time requirements set forth in Article 12 of the pre-2017 Appendix D. It erroneously assumed that it had the authority and competence to question the medical expertise of the MSD, which acts as the medical advisor on matters pertaining to the ABCC claims, and decided that the medical advice from the MSD on the Applicant's Appendix D claim was incorrect. Members of the ABCC are not medical professionals and do not have the medical knowhow to interpret the information contained in the medical reports; they must rely on the advice of the MSD in respect of the medical information and the manner in which the medical information relates to the policies of the Organization. The Appeals Tribunal has

² Impugned Judgment, para. 57.

³ *Ibid.*, para. 69.

held that the Dispute Tribunal is not competent to replace the discretion of the ABCC and the MSD with regard to medical matters.

26. The Dispute Tribunal erred in law in holding that the ABCC should have checked the credentials of the medical officer who issued an opinion on the Applicant's condition, treating him as if he were a competing expert witness to give expert testimony. This was a misunderstanding of the role of the MSD in the process before the ABCC. Under the legal framework, the ABCC is not required to make an inquiry into the competence of a medical officer every time it seeks advice from the MSD. The advice of the MSD is the authorized interpretation of the medical information provided by a staff member's treating physician. The Dispute Tribunal was not competent to order the ABCC to ignore the medical advice from the MSD.

27. The Dispute Tribunal erred in law when it arrogated the discretion granted to the Secretary-General under Article 12 of Appendix D, and decided that it had competence to declare the Applicant's Appendix D claim timely and sent the case back to the ABCC for consideration on the merits. The UNDT should have remanded the case for a renewed consideration as to whether the Applicant's medical condition created exceptional circumstances within the meaning of Article 12 of Appendix D.

28. Even assuming that the rescission of the contested decision was lawful, the UNDT erred in the manner in which it applied Article 10(4) and 10(5) of its Statute. It awarded the Applicant excessive compensation. The Dispute Tribunal contradicted itself in making awards under Article 10(4) and 10(5). It is difficult to understand for which damages the Dispute Tribunal intended to compensate the Applicant by awarding him three-month net base salary "once for the three cases". In this connection, the Secretary-General notes that the Dispute Tribunal has disposed of the Applicant's UNDT/NY/2018/011 and UNDT/NY/2018/032 cases by Judgment No. UNDT/2019/098, and that the UNDT awarded the Applicant compensation for procedural delay in the absence of any proof by the Applicant that such delay caused him any damage.

29. The Secretary-General also submits that the UNDT's award of USD 20,000 as moral damages was excessive as its finding of a four-and-a-half-year delay in assessing the Applicant's claim was erroneous. The Dispute Tribunal neglected to clarify to what periods it referred as the delay. In addition, its finding that the delays were aggravated by "the

Respondent's disorderly handling of the present proceedings" was not sufficiently specific.⁴ Even if accepted that the three-and-a-half-month delay between August 2019 when the Secretary-General should have reconsidered his decision as per Judgment No. UNDT/2019/098 and December 2019 when he actually did, the award of USD 20,000 was still excessive.

The Applicant's Answer

30. The Applicant requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment in its entirety.

31. The Applicant submits that the ABCC proceedings were fraught with irregularities. The ABCC disregarded the timelines ordered by the Dispute Tribunal in Judgment No. UNDT/2019/098. The ABCC Secretary was "brazen enough" to inform the ABCC that he had already "adjudicated" the receivability issue twice. The ABCC relied on the report of the medical doctor from the MSD, who is a general practitioner and had not spoken with, or medically examined, the Applicant.

32. The Applicant maintains that the Dispute Tribunal did not exceed its competence. The UNDT set out to determine whether the ABCC had lawfully exercised its discretion under Article 13 of Appendix D, which requires that body to make a determination "on the basis of reports obtained from a qualified medical practitioner or practitioners". Taking medical advice from the MSD does not establish that the ABCC lawfully exercised its discretion under Article 13, nor does it put the ABCC decision beyond judicial review.

33. The Applicant also submits that the standard for determining whether exceptional circumstances exist under Article 12 of Appendix D is not a medical matter. The ABCC is required not to limit its inquiry to incapacity, but to consider all the circumstances of the case. The ABCC, and not the MSD, is mandated to interpret the provisions of Appendix D, and the ABCC abused its authority when it ceded the interpretation of Article 12 of Appendix D to the MSD. Medical advice is not sacrosanct even when limited to medical matters. Its non-medical interventions deserve less deference, and the unfounded interventions like those from the medical doctor of the MSD in the present case deserve no deference. The UNDT's conclusion that the ABCC had failed to consider the reports from the qualified medical

⁴ *Ibid.*, para. 67.

practitioners and thus abused its authority falls squarely within its competence and should be affirmed.

34. The Applicant further submits that the Dispute Tribunal properly exercised its competence under Article 10(5)(a) of its Statute by directing the ABCC to consider the Applicant's claim on the merits. The case has been repeatedly mishandled and, after five years since the Applicant filed his claim, to give the ABCC a fourth chance to decide on receivability of his claim "would only yield further delays and more litigation".

35. The Applicant finally submits that the Dispute Tribunal's award of compensation was appropriate. The UNDT properly determined a single award of three months' net base salary satisfactorily resolved the "reserved" delay damages claims under Article 10(4) of the UNDT Statute and awarded USD 20,000 in compensation for harm under Article 10(5)(b) as moral damages based on the severity of his suffering as proven in the medical certificate, in line with the *Kallon* Judgment.⁵

Considerations

36. The core issue on appeal is whether the UNDT erred in law or fact, resulting in a manifestly unreasonable decision, when it found that the administrative decision to reject the Applicant's claim for compensation for alleged psychological injuries suffered of PTSD arising from his traumatic experiences during service with UNICEF in Chad and in Somalia was unlawful and awarded him compensation for moral damages. For the reasons set out below, this Tribunal, with Judge Sandhu dissenting, determines that the UNDT's findings and conclusions are not correct.

Whether exceptional circumstances existed under Article 12 of Appendix D to Staff Rules

37. The applicable law on these matters is as follows:

38. Appendix D (ST/SGB/Staff Rules/Appendix D/Rev. 1) to the Staff Rules, as it was in force before it was revised in 2017, provides, in Section IV (Administration and procedures), under Articles 12 to 16:

⁵ Citing to *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742.

Article 12. Time limit for entering claims

Claims for compensation under these rules shall be submitted within four months of the death of the staff member or the injury or onset of the illness; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date.

Article 13. Type and degree of disability

The determination of the injury or illness and of the type and degree of disability shall be made on the basis of reports obtained from a qualified medical practitioner or practitioners.

Article 14. Medical examination

The Secretary-General may require the medical examination of any person claiming or in receipt of a compensation for injury or illness under these rules. In case of refusal or failure of a claimant or beneficiary to undergo such examination at such time or times as, in the opinion of the Secretary-General, may be reasonably necessary, the Secretary-General may bar the claimant or beneficiary from receiving compensation in full or in part.

Article 15. Documentary evidence

Every person claiming under these rules or in receipt of a compensation under these rules shall furnish such documentary evidence as may be required by the Secretary-General for the purpose of determination of entitlements under these rules.

Article 16. Advisory Board on Compensation Claims

(a) An Advisory Board on Compensation Claims shall be established to make recommendations to the Secretary-General concerning claims for compensation under these rules;

(b) The Advisory Board may be consulted by the Secretary-General on any matter connected with the implementation and administration of these rules;

(c) The Advisory Board may decide on such procedures as it may consider necessary for the purpose of discharging its responsibilities under the provisions of this article;

(d) The Board shall consist of:

(i) Three representatives of the Administration appointed by the Secretary-General;

(ii) Three representatives of the staff appointed by the Secretary-General on the recommendation of the Staff Committee[,] who should have the necessary expertise in administrative and personnel matters.

(e) A Secretary shall be designated by the Secretary-General. He may not, at the same time, be a member of the Advisory Board on Compensation Claims.

39. Section 8 of the Secretary-General's Bulletin ST/SGB/2011/4 on the Organization of the Office of Human Resources Management reads:

Section 8

Medical Services Division

8.1 The Medical Services Division is headed by a Director who is accountable to the Assistant Secretary-General.

8.2 The Director acts as medical adviser on matters pertaining to the Advisory Board on Compensation Claims and is the designated medical consultant for the United Nations Joint Staff Pension Board.

8.3 The Division consists of the Office of the Director, administrative and information technology support services, the Field Support Section, the Headquarters and Common Support Section (including nursing and diagnostic support services), the Public Health and Emergency Preparedness Section, and the Psychosocial Support Section.

8.4 The core functions of the Medical Services Division are:

(a) To promote staff health, while ensuring medical compatibility with job requirements, through the performance and review of medical examinations, providing medical clearances for the recruitment, reassignment and mission deployment of staff worldwide, and the recruitment of military observers and civilian police monitors, providing travel health advice, pre- and post-mission consultations, preventive health and health promotion programmes, consultations and referrals, psychosocial support, health-related training, and assessments/recommendations regarding office ergonomics and the working environment;

(b) To manage risks in the workplace, through the provision of first aid, treatment and emergency services, approving, advising on and assisting with medical evacuations and repatriation requests by staff and their recognized dependants, military observers, civilian police monitors and United Nations peacekeeping troops, providing medical inputs to the Crisis Operation Group, developing preparedness plans for pandemic human influenza and other emergencies, including liaison with the New York Department of Health and Mental Hygiene and other health authorities and medical facilities of New York City;

(c) To provide medical advice to United Nations medical facilities system-wide, coordinating the implementation of United Nations policies on health care, providing advice on technical and professional aspects of the functioning of United Nations-sponsored dispensaries and civilian clinics of United Nations

peacekeeping missions, providing technical clearance and participating in interviews for the appointment of United Nations physicians and other medical staff, including to positions in peacekeeping missions, appointing United Nations examining physicians, and performing on-site assessments of health facilities at field duty stations, including the assessment of existing and potential regional evacuation centres;

(d) To advise on medico-administrative issues, including medical aspects of sick leave, the evaluation and certification of sick leave for staff worldwide, the provision of medical advice to the United Nations Joint Staff Pension Fund, the Advisory Board on Compensation Claims, the Field Budget and Finance Division (on compensation claims of troops) and the International Civil Service Commission (regarding medical aspects of hardship classifications of duty stations), advising the Administration on special dependency allowances for disabled children and special education grants for children with disabilities, and advising on health-related policies system-wide (in administrative instructions, information circulars, etc.).

40. Under the applicable legislative framework, the Secretary-General is bestowed with the discretionary authority to determine whether to grant a waiver of the four-month deadline to file a compensation claim to the ABCC on the basis of exceptional circumstances.

41. The Appeals Tribunal, however, recalls its jurisprudence that the discretionary power of the Administration is not unfettered. The Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith.⁶

42. When judging the validity of the Administration's exercise of discretion in administrative matters, as in the present case, the first instance tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. It may consider whether relevant matters were ignored and irrelevant matters considered, and examine whether the decision is absurd or perverse. It is not the role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action

⁶ *Yasin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-915, para. 43; *Abu Lehia v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-814, para. 17, citing, *inter alia*, *Dibs v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-798, para. 24; *Anshasi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-790, para. 40.

open to it. Nor is it the role of the first instance tribunal to substitute its own decision for that of the Administration.⁷

43. In compliance with the above stated principles of judicial review, the exercise of discretion must be warranted on the basis of reliable facts and be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals, which otherwise would be compromised.⁸

44. As we have stated in *Obdeijn*:⁹

... the obligation for the Secretary-General to state the reasons for an administrative decision does not stem from any Staff Regulation or Rule, but is inherent to the Tribunals' power to review the validity of such a decision, the functioning of the system of administration of justice established by the General Assembly resolution 63/253 and the principle of accountability of managers that the resolution advocates for.

45. In the present case, the Administration rejected the Applicant's claim for compensation for illness as service-incurred on the basis of the ABCC's recommendation that he had failed to meet the deadline set out in Article 12 of Appendix D to the Staff Rules or to meet the standard for waiver due to exceptional circumstances.

46. In this regard, the ABCC

noted the claim was filed in January 2016, and that the incident underlying the claim was alleged general hardship in field assignments between 2008 and 2012, in particular an incident on 2 February 2008, and the first indication of a diagnosis of PTSD was in September 2012.

Counting from any of these dates, the filing of the claim (January 2016) was well past the four-month deadline set out in Appendix D. Accordingly, the board considered whether there were exceptional circumstances such as to warrant waiving the deadline in this case. The board found there were not.

⁷ *Yasin*, *supra* note 6, para. 44; *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 27; *Abu Lehia*, *supra* note 6, para. 20.

⁸ *Yasin*, *supra* note 6, para. 47; *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 46, citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 30, and citations therein.

⁹ *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201, para. 36.

Additionally, the board noted in passing that the materials submitted do not sufficiently substantiate a claim (e.g., little to no confirmation that the claimant was involved in the incidents stated, the primary corroboration was that of the claimant's psychologist who only relayed what the claimant apparently had stated), but confirmed that the deadline is a threshold issue and without filing a timely claim, there is no further consideration given to a claim.

47. It is common cause that the relevant file of the case before the ABCC comprised medical reports from a psychologist and a psychiatrist, who had been treating the Applicant since January 2013. These medical reports from the Applicant's psychologist, dated 9 December 2014 and 28 November 2016, and a report from his psychiatrist dated 20 February 2017, were addressed to the MSD and constituted part of his medical file which was assessed by the ABCC. In addition, on 1 February 2018, the Applicant's psychologist wrote a 20-page letter to the ABCC on behalf of his patient for reconsideration of his ABCC claim.

48. For the sake of avoiding prolixity, we refer to paragraphs 24 to 30 of the impugned Judgment, where these medical reports regarding the Applicant's suffering from PTSD were presented in detail. However, at this point, we hold it apposite to put up this specific extract from the 1 February 2018 letter from the psychologist addressed to ABCC, in which he explained why he believed, based on his medical assessment of the Applicant, that the latter had not been capable of filing his claim before 20 January 2016, referring to the nature and scope of PTSD and the medical/psychological history of the Applicant since 2008. Therein, the psychologist, *inter alia*, observed that:¹⁰

As a result of these events [the Applicant] displayed little understanding or insight into his condition. The repeated retraumatizing manifested in dissociative flashbacks, repeated loss of orientation to place and time, frequent loss of consciousness, paralyzing fear and his inability function due to his impaired ability to tolerate mild forms of frustration and interpersonal friction. As a result, the requirement of formally recounting events for the purposes of an ABCC claim would have been beyond his capacity until the filling in 2016. The reason for this is that for [the Applicant] like other victims of severe trauma, having to recount their trauma is equivalent to being forced into a flashback where the past is relived in the present moment. It is the reliving of the trauma in the present that is retraumatizing because it leaves these victims physically and emotionally depleted, deeply symptomatic (discussed above) and unable to function in the here and now. This not only

¹⁰ Quoted from the impugned Judgment, para.29.

exacerbates their PTSD symptoms, but it deepens the victims, like [the Applicant] feelings of shame, failure, despair and depression.

49. As opposed to the ABCC, the UNDT, based on the same plethora of evidence, which constituted the file on record before the ABCC, reached the quite opposite conclusion in terms of the timely filing of the litigated compensation claim by the Applicant.

50. In the beginning, the UNDT underscored that, without taking on the role of the decision-maker, the question for the Tribunal to determine was therefore whether it was appropriate for the ABCC to base its determination only on the MSD's findings and not on the psychologist's medical opinion, according to which the Applicant could not reasonably have been expected to file his compensation claim before 20 January 2016.¹¹

51. Then, the UNDT proceeded with displaying the pertinent inferences drawn from the Applicant's medical condition, as these were reflected in the above medical reports, noting, *inter alia*, that:¹²

- a) whereas the Administration did not even intend to disprove any of the findings in any of the mentioned medical professionals, it argued that the ABCC was not obligated to rely on any of their reports and instead referred to the report from the MSD to the ABCC dated 29 April 2018 for concluding that the Applicant's compensation claim was time-barred.
- b) as convincingly explained by the psychologist, PTSD differed from many other types of diseases and illnesses because the symptoms of PTSD did not manifest themselves at the same time as the event(s) that caused it—PTSD is per definition a *post* traumatic mental illness—and those symptoms often oscillate over time.
- c) in this sense, PTSD was indeed not a typical injury for the ABCC to assess and required that Board to consider what event actually defined the notion of “injury or onset of illness” in terms of Article 12 of the applicable Appendix D. As regards to PTSD, the notion of injury or onset of the illness could certainly not be dated from the traumatic event, because it was precisely a post-traumatic syndrome. It was also not obvious to date it from the time of the first PTSD diagnosis, because there could be

¹¹ *Ibid*, para. 47.

¹² *Ibid*, paras. 48 to 50.

remission of the symptoms. It was more rational to date the “injury or onset of the illness” when the psychological symptoms were so severe that the patient acknowledged that his/her syndrome no longer allowed him/her to fulfill his/her professional obligations. PTSD may flare up again for a patient who had had remission of her/his symptoms, and this time to a more harmful level. Therefore, for this kind of illness with fluctuation of symptoms, considering that the compensation claim would be per definition time-barred if the compensation claim under Article 12 of the applicable Appendix D was not filed in the four-month time limit after the first PTSD diagnosis seemed not to take into consideration the specificity of this illness. This was precisely why the notion of “exceptional circumstances” under the applicable Appendix D offered some flexibility.

- d) as follows from the various medical reports regarding the Applicant and otherwise from the facts, during the relevant time period from 2008 to 2017, his PTSD symptoms fluctuated considerably—from appearing to have (at least, almost) recovered at times, to eventually deteriorating to the point that the UNJSPF declared him incapacitated for further service with the Organization.

52. Following that line of reasoning, the UNDT held that the Applicant’s psychologist was the only medical practitioner, who had actually monitored, and cared for, the Applicant in New York during the relevant time period from 2013 to 2016; in addition, his credentials indicated that he possessed adequate expertise in mental illnesses to appropriately assess the Applicant’s suffering from PTSD and therefore was also “qualified” to do so under article 13 of the applicable Appendix D; in the psychologist’s various medical reports, his analyses and diagnoses were very detailed and based on objective and medical considerations, and nothing suggested that he had inappropriately taken on the role as a “patient’s advocate” on behalf of the Applicant.

53. Finally, on the basis of these findings, the UNDT concluded that the contested decision to reject the Applicant’s claim for compensation for illness as service-incurred, on the basis of the ABCC’s recommendation that he had failed to meet the deadline set out in Article 12 of Appendix D to the Staff Rules or to meet the standard for waiver due to exceptional circumstances was unlawful. Per the UNDT’s reasoning, the ABCC inappropriately relied only on the medical report from the MSD and not on the Applicant’s psychologist’s medical opinion which was the only relevant and qualified medical assessment

of the Applicant and his PTSD when determining whether his compensation claim was filed in a timely manner under Article 12 of the applicable Appendix D.¹³ Per the psychologist's opinion, considering the Applicant's mental condition, he could not have reasonably been expected to file his compensation claim before 20 January 2016. The UNDT accordingly reviewed the challenged decision, set it aside and remanded the case to the ABCC to consider the Applicant's claim on its merits under the applicable Appendix D from before 2017.

54. On appeal, the Secretary-General raises a variety of challenges to the correctness of the UNDT'S conclusions. First, the Secretary-General attacks the legality of UNDT'S conclusion by submitting that the UNDT erred in law and fact by making these findings, in that it exceeded its competence when it assumed the role of the MSD by relying on the medical reports submitted by the Applicant to find that exceptional circumstances existed that justified waiving the time requirements that were set forth in Article 12 of Appendix D. The ABCC relied on the medical advice of the MSD to interpret the medical reports submitted by the Applicant when it recommended that the medical reports submitted by the Applicant did not evince the existence of exceptional circumstances that could justify acceptance of the claim after the time limits that were set in Article 12 of Appendix D. So, the UNDT erroneously assumed it had the authority and competence to question the MSD's medical expertise and decided that the medical advice rendered by the MSD to the ABCC was incorrect. Rather, according to the Secretary-General, members of the ABCC must rely on the advice of the MSD when they assess the information contained in such reports and the manner in which this medical information relates to the policies of the Organization.

55. We agree with the Secretary-General and find that the UNDT exceeded its competence and committed errors of law and fact resulting in a manifestly unreasonable decision.

56. First, the authority and role of the MSD in the process before the ABCC is to advise and assist the latter in evaluating medical information when applying the policy set forth in Appendix D. In this regard, as per the applicable legal framework, the MSD is "qualified", in the meaning of Article 13 of Appendix D, to provide the ABCC with the proper medical opinion as a basis for determining the injury or illness and the type and degree of disability. Even without further medical knowledge on PTSD, the MSD has authority to examine whether the Applicant's medical reports by his private practitioners are substantiated, free of

¹³ *Ibid*, paras. 55-56.

inconsistencies and contradictions. Therefore, we do not share the UNDT's view that the ABCC should have relied solely on the Applicant's psychologist's medical opinion as it was the only relevant and qualified medical assessment of the Applicant and his PTSD when determining whether his compensation claim was filed in a timely manner under Article 12 of the applicable Appendix D.¹⁴

57. Moreover, contrary to the UNDT's relevant finding, it is not true that, in assessing whether there were exceptional circumstances such as to warrant the filing of the litigated claim for compensation under Article 12 of the applicable Appendix D to the Staff Rules beyond the four-month time-limit, the ABCC had solely and exclusively rested upon the MSD's medical report. On the contrary, as it is evident on the face of its recommendation, the ABCC took all relevant considerations into account including the evaluations contained in the Applicant's psychologist and psychiatrist reports, which constituted part of the documentary file before it, and especially the medical history, specificity and fluctuations of the Applicant's PTSD symptoms.

58. Next, and most importantly, the UNDT exceeded its competence in stating, in paragraph 49 of its Judgment, that in case of PTSD, there was only an "injury or onset of the illness" in the meaning of Article 12 of Appendix D when the psychological symptoms were so severe that the patient acknowledged that his/her syndrome no longer allowed him/her to fulfill his/her professional obligations, and, consequently, the time limit under Article 12 of Appendix D would only start to run from that moment. As we cannot find any such information in the medical reports presented by the Applicant, it has to be assumed that the UNDT developed this theory on its own, which it was not competent to make anyway. As the UNDT does not have any medical knowledge it is not allowed to make its own findings with regard to medical matters. Consequently, we find merit in the Secretary-General's claim that the UNDT clearly exceeded its competence in this respect.

59. The UNDT also exceeded its competence and committed errors of law, as the Secretary-General correctly asserts, when it assumed that it had the authority and competence to question the MSD's medical expertise and decided that the medical advice rendered by it to the ABCC was incorrect.

¹⁴ *Ibid.*, para. 56.

60. Additionally, in the Applicant's psychologist's letter of 1 February 2018, the said psychologist mentioned that the Applicant had been under his care since 24 January 2013 and he (the psychologist) had been fully familiar with the Applicant's medical history, coming to the conclusion that the latter was not psychologically capable of considering, let alone filing, a claim before he did (in 2016), because the Applicant, "like other victims of severe trauma, having to recount their trauma is equivalent to being forced into a flashback where the past is relived in the present moment".¹⁵

61. In between, however, as the same psychologist noted in that letter, the Applicant moved to the UNICEF Headquarters in New York City on initial reassignment to HATIS (2013), then back to HATIS (2014), and he was repeatedly required to retell—and did so—of his traumatic experiences to different administrative and medical officials of the Organization. That same psychologist, in a previous report, dated 9 December 2014, had also noted that, when the Applicant was transferred out of HATIS, on 1 December 2013, and began working for the Director of Program Division, this transfer resulted in the almost immediate remission of his symptoms and over time he was able to return to his high level of functioning at work, his mood elevated and the psychologist noticed a significant decrease of his disruptive anxiety, and the remission of acute PTSD symptoms; the Applicant was once again happy looking forward to going to work on a daily basis during that time.

61. We also note that it was not necessary for the Applicant, in order to file a request under Appendix D, to "recount his trauma". Staff members who want to file claims under Appendix D have to fill out a form and attach their medical reports. The psychologist's reports do not explain why the Applicant, possibly supported by his medical practitioners, should not have been able to do this before 2016.

62. Contrary to the UNDT's findings, the psychologist's statement is not corroborated by the report of his psychiatrist. While, in his 20 February 2017 report, the psychiatrist confirmed that the Applicant was "unable to tolerate high levels of stress, anxiety, frustration and tension that are required to function at his former level of employment in senior management", the psychiatrist did not state that the Applicant was not able to fill out, and file, an administrative request like a claim under Appendix D.

¹⁵ Page 19 of the letter of 1 February 2018.

62. In the light of these facts, as well as the behavior of the Applicant who had invoked his PTSD several times in the context of pursuing advantages (sick leave, etc.), the Appeals Tribunal finds that it was legitimate and reasonable for the Administration to not grant the Applicant a waiver of the four-month deadline to file a compensation claim to the ABCC on the basis of exceptional circumstances. Indeed, it was the responsibility and authority of the Secretary-General to determine, upon the ABCC's recommendation, on whether exceptional circumstances existed to justify the late submission by the Applicant of the compensation claim and he managed to accomplish it lawfully in a reasonable and rational way in terms of the process in reaching his decision and the reasons given for his denial to grant the requested waiver of the prescribed time limits. In this respect, the Secretary-General properly followed the ABCC's recommendation which, upon the MSD's advice, took into consideration all documentary evidence on file and was not persuaded by the above letter of the Applicant's psychologist, which was in part contradictory and not convincingly explanatory as to why the Applicant was not capable of filling out the proper form in order to timely pursue his compensation claim within the four-month time limit or at least during the period of the remission of his PTSD symptoms in 2014, whereas he was in a position to properly do it later on in 2016.

63. Hence, the rescission of the contested decision by the UNDT and the subsequent remand of the compensation claim to the ABCC to consider the Applicant's claim on its merits under the applicable Appendix D from before 2017 was erroneous. Since each error of law constitutes a sufficient ground to reverse the UNDT Judgment, we need not address each and every challenge raised by the Secretary-General on appeal.¹⁶

64. It follows that the Secretary-General's appeal must succeed on this ground.

The award of compensation

65. In the instant case, the UNDT awarded the Applicant compensation for non-pecuniary (moral damages) in the amount of USD 20,000 for having suffered psychological stress and anxiety caused by the Administration's undue delays in considering

¹⁶ *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 60; *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-503, para. 38.

his compensation claim, as well as three-month net-base salary in compensation for procedural delays.¹⁷

66. Notwithstanding our sincere and profound sympathy for the Applicant's plight and the history of this case that presents a sorrowful picture of delay on the part of the Administration in considering the Applicant's compensation claim, which was submitted on 20 January 2016, we, however, have to adhere to our consistent jurisprudence that the right to compensation is inextricably linked to the illegality of the impugned administrative decision.

67. In this context, our conclusion that the Secretary-General's decision to reject, for the reasons set forth above, the Applicant's claim for compensation for alleged psychological injuries suffered of PTSD arising from his traumatic experiences during service with UNICEF in Chad and in Somalia was lawful precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal stated before, "compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".¹⁸

68. With regard to the award of compensation for undue delays, the UNDT exceeded its competence because the requirements of Article 10(4) of its Statute were not met. During this procedure before the UNDT, the Secretary-General did not give his concurrence, and the UNDT took a decision on the merits of the case.

69. Accordingly, the appeal succeeds.

¹⁷ Impugned Judgment, paras. 67-68.

¹⁸ *Justin Mwetaminwa v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1098, para. 26.

Judgment

70. The appeal is granted, and Judgment No. UNDT/2020/116/ Corr.1 is hereby reversed. Judge Sandhu's dissenting opinion follows the majority opinion and forms part of this Judgment.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 2nd day of August 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar

DISSENTING OPINION BY JUDGE KANWALDEEP SANDHU

1. Further to the majority Judgment, I respectfully disagree with their finding that the Dispute Tribunal exceeded its competence and committed errors of law and fact resulting in a manifestly unreasonable decision.

2. Article 12 of Appendix D (ST/SGB/Staff Rules/Appendix D/Rev. 1) provides that claims for compensation under these rules shall be submitted within four months of the injury or the onset of the injury. However, “in exceptional circumstances, the Secretary-General may accept for consideration a claim made at a later date”. This is a wide discretion which is not qualified or defined by the applicable regulatory framework. What constitutes exceptional circumstance will vary from case to case.¹⁹ So long as this discretion is properly exercised, it cannot be challenged.²⁰

3. Despite the broad discretion provided to the Secretary-General, the discretion is not unfettered. The exercise of the discretion must be “legal, rational, procedurally correct and proportionate”.²¹ This means that judicial review will consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. It is not the role of judicial review to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him or substitute a decision for that of the Secretary-General.²²

4. An important issue in reviewing the legality of the impugned decision is whether, in carrying out its delegated function under Article 12 of Appendix D, the ABCC applied the correct legal test of “exceptional circumstances” in making its recommendation to the Secretary-General such that the exercise of the Secretary-General’s discretion was properly and lawfully exercised.

5. This requires an examination of the ABCC minutes attached to the 6 January 2020 recommendation, where the ABCC found the Applicant had failed to meet the standard for waiver due to exceptional circumstances. In its minutes, the ABCC said the

¹⁹ *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218.

²⁰ See *Dahan v. Secretary-General of the United Nations*, Judgment No. UNDT/2018.002, para. 17, affirmed by the Appeals Tribunal in Judgment No. 2018-UNAT-861.

²¹ *El Madhoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-947, para. 9.

²² See *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

key issue was why the Applicant “could and did invoke his trauma for other special consideration, but failed to do so to file a claim form and submit medical reports to the ABCC”. It initially accepted that submitting a claim “may in itself be traumatic and cause some degree of avoidance”, but noted there were significant periods of time where the Applicant was “fully fit to work”, functioning at a senior level, and had access to support. The ABCC concluded that, at these times in particular, the Applicant could not be considered to be “incapacitated” from submitting his claim. In reaching this conclusion, the ABCC held the “analysis and advocacy of the claimant’s psychologist” did “not address the issue of why the claimant could and did invoke his trauma for other special consideration, but failed to do so to file a claim form and medical reports to the ABCC”. Rather, in support of their recommendation, the ABCC majority relied on the medical report of Dr. M. R. of the MSD, which found the Applicant was not incapacitated from submitting the claim from 2012 onwards. In the report, Dr. M. R. opined that he “accept[s] that [the Applicant] may not have wanted to submit a claim or that there is some difficulty or concern in doing so, but this does not rise to the standard of incapacity”. It is clear that the ABCC’s consideration of exceptional circumstances was restricted to whether the Applicant was incapacitated from submitting the claim and this was the overriding reason for not finding exceptional circumstances.

6. However, there is nothing in the applicable Appendix D that provides that the Applicant must be “incapacitated” from filing a claim in order for there to be “exceptional circumstances” in waiving the time limit in Article 12. By applying this test or definition of “exceptional circumstances”, the ABCC and Secretary-General limited their discretion to this narrow question and ignored other relevant considerations.

7. The ABCC minutes does not indicate that any consideration, or weight, was given to the detailed account of the severe health problems experienced by the Applicant. Rather, the ABCC disregarded extensive evidence and information supporting the Applicant’s history and suffering from his condition, which, in his submission, impeded his ability to submit this claim. By disregarding this evidence as not supporting “incapacity”, the ABCC failed to apportion any weight to the Applicant’s relevant medical evidence in reviewing whether “exceptional circumstances” existed. Rather, it refused to waive the time limit on the ground of insufficient explanation (i.e., incapacity) for the delay in filing the claim.

8. In only considering capacity, the ABCC therefore limited its analysis of the evidence and ignored relevant considerations. With the Secretary-General's reliance on this recommendation and analysis, he fettered his discretion in waiving the time limit for filing the claim to just a determination of incapacity. This resulted in an unlawful exercise of the Secretary-General's broad discretion to deal justly with a claim for compensation for a service-incurred injury.²³

9. This interpretation of "exceptional circumstances" is consistent with the legal framework outlined in Appendix D, which provides "for compensation [for] ... death, injury or illness ... attributable to the performance of official duties on behalf of the United Nations".²⁴ The provisions provide for compensation for death, total disability, and partial disability, not just for incapacity. Therefore, restricting the definition of "exceptional circumstances" to "incapacity" is contrary to the provisions and stated purpose of Appendix D.

10. The majority finds that the Dispute Tribunal erred when it held that the ABCC should have relied solely on the Applicant's psychologist's medical opinion when determining whether his compensation claim was filed in a timely manner. In paragraph 56, the Dispute Tribunal held that the ABCC should have relied on this opinion as it was the only relevant and qualified medical assessment that properly considered the circumstances. This was not an error but consistent with the Dispute Tribunal's interpretation of "exceptional circumstances".

11. In light of its interpretation, the Dispute Tribunal reviewed whether it was appropriate for the ABCC to base its determination only on the MSD's finding and not on the Applicant's psychologist's medical opinion. After reviewing the medical evidence and given the nature of PTSD, the Dispute Tribunal found it was very difficult to objectively determine exactly when the Applicant's PTSD symptoms were so manifest that a compensation claim to the ABCC would have been warranted. This made it difficult to establish the commencement of the four-month deadline under Article 12 of Appendix D. In accordance with Article 13 of Appendix D, this would "entirely depend on a relevant and qualified medical assessment of the Applicant's subjective state of mind".²⁵ The Dispute Tribunal then turned to the medical assessments. It reviewed the MSD report of

²³ See *Dahan*, *supra* note 20.

²⁴ Article 2(a) of Appendix D.

²⁵ Impugned Judgment, para. 51.

Dr. M. R. and noted the doctor had not assessed the Applicant's condition but his capacity to file the claim. The Dispute Tribunal correctly held that the Applicant's capacity to file a claim was not the sole, relevant consideration in determining "exceptional circumstances". As the Applicant's psychologist's medical opinion was the only medical evidence that considered more than just capacity to file a claim (while the MSD's opinion was solely based on capacity), the Dispute Tribunal did not err in finding that the Applicant's psychologist's report was the only relevant medical assessment.

12. The MSD's assessment was improperly restricted to answering the question posed to it, namely, "[w]hether the claimant was medically incapacitated from submitting an ABCC claim from 2008 to January 2016?" The ABCC erroneously relied on this assessment and failed to consider the relevant evidence of the Applicant's psychologist that explained the nature of PTSD and the delay in submitting the claim. This resulted in an unlawful exercise of discretion under Article 12.

13. Contrary to the majority opinion, I find the Dispute Tribunal's review of the qualifications of the Applicant's psychologist and MSD doctor was an exercise in weighing the expert opinion evidence, not a determination of whether they were "qualified medical practitioners" pursuant to Article 13. This is a question of fact and evidence that is entirely within the purview of the Dispute Tribunal as the first instance trier of fact that should not lightly be overturned.

14. The Dispute Tribunal in making its finding of facts weighed the medical evidence that was before the ABCC. In doing so, the Dispute Tribunal found the Applicant's psychologist was the only medical practitioner who had monitored and cared for the Applicant and who had the credentials and adequate expertise to appropriately address PTSD. Therefore, he was more "qualified" to provide his expert opinion evidence and assessment.²⁶ Conversely, the ABCC failed to examine the credentials of Dr. M. R. to ensure he was "qualified" to make any medical assessment of the Applicant and failed to consider that he had never actually met or examined the Applicant. This does not mean that Dr. M. R. was not a "qualified medical practitioner" under Article 13. Rather, this was an exercise of what appropriate weight to assign expert opinion evidence. In doing so,

²⁶ *Ibid.*, para. 55.

the Dispute Tribunal considered the question of whether he was qualified to provide an expert medical opinion on PTSD based on his credentials and qualifications.

15. We may disagree with the Dispute Tribunal's view of the evidence (as does the majority), but the Dispute Tribunal's Judgment should not be overturned unless it can be found that any error on a question of fact resulted in a manifestly unreasonable decision, which I do not find. I note that the majority of this panel also equates "exceptional circumstances" with incapacity in finding that the Applicant had invoked his PTSD in pursuing advantages but had not sufficiently explained why he could not file the claim form for present benefits. This reasoning relies on a technical and narrow definition of "exceptional circumstances" as meaning "incapacity" contrary to the provisions of Appendix D.

16. There is no dispute that the Applicant has suffered and struggled greatly from PTSD resulting from traumatic experiences resulting from his service to the Organization, which has ultimately led to his separation from service. The Applicant's struggles and attempts to be functioning should not be used against him in drawing negative inferences particularly when he ultimately became incapacitated. Also, these benefits are not extraordinary or exclusive benefits. Eligible staff members, some of whom (like the Applicant) have been put in harm's way, are entitled to, and have earned, these benefits as a result of their service to the Organization.

17. I also disagree with the majority that the Dispute Tribunal exceeded its competence in paragraph 49 of its Judgment. The Dispute Tribunal had medical evidence before it on the Applicant's condition as well as on the general nature of PTSD which can present with fluctuating symptoms. In the Applicant's psychologist's opinion of 28 November 2016, the psychologist confirmed the Applicant presenting an impression of "control" on the surface but once the "veneer is scratched" by stress, insecurity and fear, PTSD symptoms emerge with variable severity. Also, the psychologist recounted the effects and instances of re-traumatization on the Applicant as a result of having to recount his trauma in support of his claims for benefits. The Dispute Tribunal did not exceed its competence in stating that there was a need for "flexibility" in the application of exceptional circumstances in dealing with cases of PTSD. In making its statements, the Dispute Tribunal relied on evidence before it that supported its interpretation and inferences, including that the onset of PTSD and the severity of its symptoms may not always

be clear or homogenous. This finding was entirely within the competence of the Dispute Tribunal as the first instance trier of fact.

18. As for the award of for compensation, the Dispute Tribunal did not commit an error of law or fact in its assessment of the award given its finding of the Organization's unconscionable delays in considering the Applicant's claim for compensation, the ABCC Secretary's interference, and the "disorderly" handling of the Dispute Tribunal's proceedings. In such circumstances, the Appeals Tribunal gives deference to the Dispute Tribunal in the exercise of its discretion and will not lightly disturb the quantum of damages.²⁷

19. For the afore-mentioned reasons, I would dismiss the appeal and affirm the Judgment of the Dispute Tribunal.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 2nd day of August 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar

²⁷ See *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 34, citing *Maslei v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-637, para. 31; *Leclercq v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-429, para. 22, in turn citing *Sprauten v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-219.