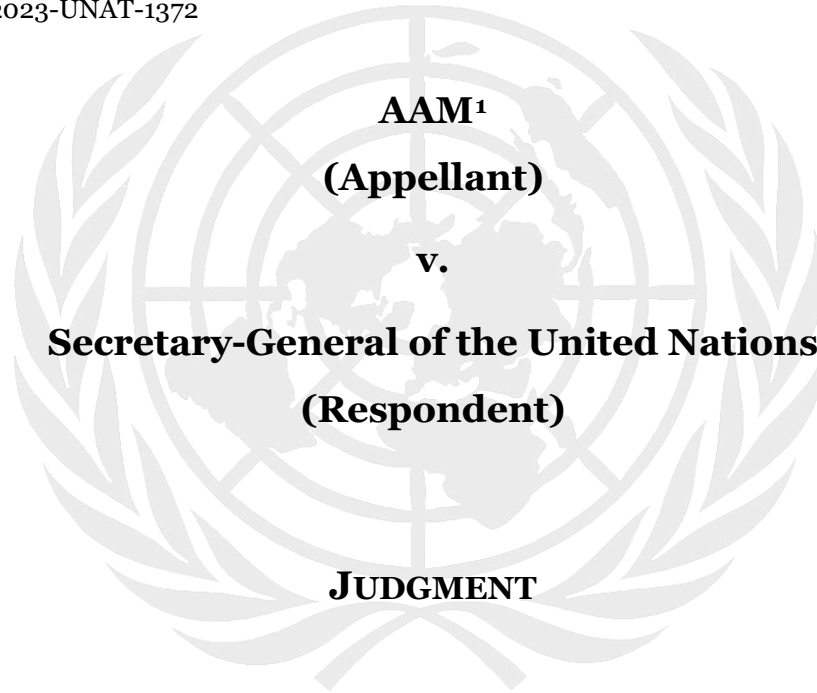




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1372



**AAM¹
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No.:	2022-1712
Date of Decision:	30 June 2023
Date of Publication:	3 August 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Noam Wiener

¹ This unique three-letter substitute for the party's name is used to anonymize the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

JUDGE GAO XIAOLI, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), AAM contested the Controller's decision of 30 December 2020 to deny him compensation under Appendix D of the Staff Regulations and Rules (Appendix D). By Judgment No. UNDT/2022/051, the UNDT found the application was without merit, but awarded AAM compensation for an unduly and inordinately protracted process when rendering the administrative decision (the impugned Judgment).
2. AAM has filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
3. For the reasons set forth herein, the Appeals Tribunal dismisses AAM's appeal and affirms the impugned Judgment.

Facts and Procedure

4. AAM joined the service of the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund) in 2006.
5. On 29 June 2018, AAM filed a claim for compensation under Appendix D for service-incurred mental injury and disability to the Advisory Board on Compensation Claims (ABCC).
6. After the Controller having twice remanded AAM's compensation claim back to the ABCC for a renewed review, on 30 December 2020, the Controller informed AAM that his claim for compensation was denied (Controller's decision or contested decision) following the recommendation of the ABCC, which had determined, based on advice received from the Division of Healthcare Management and Occupational Safety (DHMOSH), that AAM had not proven that his illness was attributable to the performance of his duties (medical determination).
7. As background for the recommendation and decision to deny AAM's claim, the ABCC Secretary stated as follows:²

The board noted your association with Lovis, a company that provides solutions to enterprise problems and where you apparently served on its advisory board since

² Impugned Judgment, para.8.

separating from the Organization on a Pension Fund disability. The board reviewed the correspondence between the ABCC secretary and your counsel explaining this association.

The board noted the reports of your psychiatrist, outlining years of alleged abuse and attribution of the cause of your illness, but also noted the opinion of Medical that there is uncertainty about the cause of your illness which could be due to matters outside the workplace and is most likely endogenous. This is supported by the nature of the illness, the nature and evolution of your symptoms, and by their failure to resolve once removed from the stressors of the workplace. Accordingly, although having considered the reports of your psychiatrist, Medical assessed that normal interactions and difficulties at work did not cause your illness, but heightened your awareness and emphasis of them, leading them to be emphasized at the exclusion of other factors.

The board reviewed your psychiatrist's statements that your illness is caused by work, noting the statements were based on your descriptions, and that the psychiatrist does not have any knowledge of the workplace except as described by you. For such complex matters involving the evolution of psychiatric/psychological illness, Medical advised the board this would normally preclude any assessment of causation by a health professional.

The board noted that, while there is no requirement to establish fault or negligence under Appendix D, there is a requirement to establish a link between the illness and the performance of duties. The board determined that you have not done so.

8. Minutes of the 517th Meeting of ABCC on 23 November 2020, *inter alia*, said:³

Having reviewed this claim previously, the board reviewed it anew. The board considered the documentation previously submitted by the claimant and considered all the new documentation submitted by the claimant, including his statements, various memoranda, email correspondence, articles from IPS (inter press service) and isseek, and the reports of the claimant's psychiatrist. The board specifically considered the fact that the Organization did not carry out an investigation into the allegations of harassment and other misconduct that the claimant raised.

The board noted the claimant's association with Lovis, a company that provides solutions to enterprise problems and where the claimant apparently served on its advisory board since separating from the Organization on a Pension Fund disability. The board reviewed the correspondence between the ABCC secretary and the claimant's counsel explaining this association.

The board noted the reports of the claimant's psychiatrist, outlining years of alleged abuse and attribution of the cause of the claimant's illness, and also noted the opinion of Medical

³ Appeal Form, Annex 2.

that there is uncertainty about the cause of his illness which could be due to matters outside the workplace and is most likely endogenous.

Medical concluded the illness (i) could equally be due to factors at home or outside the workplace or (ii) is endogenous, and unrelated to any specific cause at all. This is supported by the nature of the illness, the nature and evolution of his symptoms, and by their failure to resolve once he was removed from the stressors of the workplace. Accordingly, Medical assessed that normal interactions and difficulties at work did not cause his illness, but heightened his awareness and emphasis of them, leading them to be emphasized at the exclusion of other factors.

The board reviewed the claimant's psychiatrist's statements that his illness is caused by work, noting the statements were based on the claimant's descriptions, and that the psychiatrist does not have any knowledge of the workplace except as described by the claimant. For such complex matters involving the evolution of psychiatric/psychological illness, Medical advised the board this would normally preclude any assessment of causation by a health professional.

The board noted that, while there is no requirement to establish fault or negligence under Appendix D, there is a requirement to establish a link between the illness and the performance of duties. The board determined that the claimant has not done so.

Accordingly, the board concluded and determined that the claimant has not met his burden of proof to show that his illness is attributable to the performance of duties, and recommended denial of the claim.

9. On 20 January 2021, AAM challenged the contested decision on medical grounds, and requested that a medical board be convened to review the medical determination, in accordance with Article 5.1 of Appendix D.
10. On 22 February 2021, AAM requested management evaluation of the decision of the ABCC and the Controller in accordance with Article 5.2 of Appendix D (challenge of a decision taken on a claim to the extent that the decision was based on considerations other than a medical determination).
11. On 6 April 2021, the acting Medical Director informed AAM that he had decided not to convene a medical board to review the medical determination (medical board decision).
12. On 17 June 2021, AAM filed an application with the UNDT contesting the Controller's decision to deny his claim for compensation for mental injury and disability.

13. On 8 September 2021, AAM filed an application with the UNDT challenging the medical board decision.

14. On 25 May 2022, the UNDT issued Judgment No. UNDT/2022/051, dismissing AAM's application contesting the Controller's decision of 30 December 2020 to deny him compensation under Appendix D. The UNDT held that it had no authority to review the medical opinion of DHMOSH or its relevancy related to AAM's claim before the ABCC. Even if it had the competency to review DHMOSH's finding on causality, the UNDT found that the ABCC and the Controller lawfully exercised their discretion when rejecting AAM's claim on the basis of DHMOSH's medical opinion. The UNDT was satisfied that no relevant matters were ignored, that no irrelevant matters were considered, and on its own terms, it did not lead to an absurd or perverse decision. The UNDT found that the contested decision was legal, rational, procedurally correct, and proportionate. The UNDT however held that the case fell "within the lower end of compensable non-pecuniary harm" and awarded him USD 2,500 compensation for moral damages.⁴

15. On 10 June 2022, the UNDT issued Judgment No. UNDT/2022/055 on AAM's application contesting the decision by the Acting Director of DHMOSH not to convene a medical board to review the medical determination (UNDT Judgment on the medical board). The UNDT partially granted the application, rescinded the decision not to convene a medical board in accordance with Article 5.1 of Appendix D, and remanded the matter "to DHMOSH for a new consideration in light of the Tribunal's findings in the present judgment". This Judgment has not been appealed.

16. On 24 August 2022, AAM filed an appeal of Judgment No. UNDT/2022/051 with the Appeals Tribunal. The Secretary-General filed his answer on 21 October 2022.

Submissions

AAM's Appeal

17. As a preliminary matter, AAM submits that his appeal may be partially moot since the Secretary-General has not lodged an appeal against the Dispute Tribunal's findings that the decision was taken based on a medical determination (UNDT Judgment on the medical board).

⁴ Impugned Judgment, para. 39.

18. AAM alleges that the UNDT erred in law in finding the Controller's decision lawful. Had the UNDT not excessively constricted its judicial review, it would have found that the Organization's exercise of discretionary authority was unlawful due to the following: (a) relevant matters were ignored, in particular the true nature of the working conditions, which were extremely stressful, hostile, unhealthy and unsafe for AAM; (b) the exclusion of working conditions from the Senior Medical Officer's (SMO) medical assessment was noticed by the UNDT but this important fact was not connected to the Organization's flawed decision-making process; (c) irrelevant and illegal matters were considered, including the ABCC's *ultra vires* policy, and AAM's participation in Lovis (a company), which is irrelevant and unrelated to whether or not AAM's illness and disability are service-incurred; (d) the Organization failed to exercise due care when it accepted the SMO's false characterization of the working conditions as "normal", and accepted his medical assessment that was patently not based on medical facts or evidence; and (e) the consideration of matters was not proportionate, as the dossier, which was the basis for the decision, completely excluded AAM's documents and evidence, and included and excessively considered irrelevant matters.

19. AAM further submits that the UNDT erred in finding that the Controller had the delegated authority to make the contested decision. AAM argues that a later delegation instrument was signed in November 2019 when a new Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) was appointed and that this new delegation instrument was not entered into the dedicated portal and accepted by the Controller, and that, therefore, no proper delegation of authority was made, and the Controller acted *ultra vires*.

20. AAM requests that the UNAT reverse the impugned Judgment; rescind the Controller's decision dated 30 December 2020; remand the case to the ABCC for review of AAM's Appendix D claim; order the ABCC and the Controller to conduct the review of AAM's Appendix D claim in a reasonable and fair, legally and procedurally correct, and proportionate manner; order the ABCC and Controller to consider in their review and decision the conclusions of the medical board that shall be established to determine whether AAM's illness is service-incurred; order that a medical board be established immediately; order the ABCC to complete the review of AAM's Appendix D claim no later than 31 December 2022; direct the Secretary-General to calculate and pay AAM the benefit entitlement for total disability, retroactively from the date of the claim with interest; and award compensation at the highest end

of the scale amounting to two years' net base salary based on medical evidence provided for moral damages. AAM further asks that the UNAT refer this matter for possible action against the ABCC Secretary, DHMOSH, the SMO, Medical Director, Controller, USG/DMSPC, and any other staff that may have been implicated in the serious illegalities to enforce accountability under Article 10(8) of its Statute; and to redact the public version of its Judgment so as not to disclose details of AAM's medical evidence which is confidential and sensitive.

The Secretary-General's Answer

21. The Secretary-General contends that the appeal is premature. In the UNDT Judgment on the medical board, the UNDT rescinded the decision by the Acting Director of DHMOSH not to convene a medical board. Thus, DHMOSH is required to reconsider the decision not to convene a medical board, in accordance with the reasoning of the latter UNDT Judgment. Accordingly, a reconsideration of the medical determination could conclude that the medical determination is erroneous, which in such case would lead to a reconsideration of the contested decision. Consequently, prior to DHMOSH's compliance with the UNDT Judgment on the medical board and the reconsideration of the medical decision, the review of the contested decision is premature. If a judicial review of the medical determination were to be undertaken, such a review should not be taken while the medical determination is still pending reconsideration. Consequently, AAM's challenges to the medical determination are premature as the medical determination is under reconsideration. Moreover, the appeal is legally untenable because the UNAT has held that the UNDT does not have the medical expertise to review medical determinations of DHMOSH, which serves as the entity with the authority to make medical determinations in the Secretariat.

22. The Secretary-General further submits that the UNDT correctly held that the Controller had the authority to make the contested decision. In accordance with Section 2.5 of Secretary-General's Bulletin ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules), delegations of authority are formally made when a delegation instrument is submitted and accepted by delegator and delegatee in the dedicated internet portal set up by the Secretariat for this purpose. The UNDT found that on 19 March 2019, the USG/DMSPC delegated to the Controller the authority to make decisions on claims for compensation under Appendix D. The UNDT further found that the Controller accepted this delegation on 25 March 2019, and that this delegation was not withdrawn and was in place when the contested decision was made in December 2020.

23. The Secretary-General rebuts AAM's contention that a later delegation instrument was signed in November 2019 when a new USG/DMSPC was appointed, which had not been entered into the dedicated portal and accepted by the Controller, and thus no proper delegation of authority had been made, and the Controller acted *ultra vires*. The new USG/DMSPC had, indeed, prepared and signed a new delegation instrument in November 2019. However, as AAM himself argues, the new USG/DMSPC did not enter the new delegation instrument into the dedicated internet portal. Therefore, the November 2019 delegation did not enter into force and did not replace the March 2019 delegation of authority, which did not expire until 20 March 2021. Consequently, the UNDT was correct to hold that the Controller had been properly delegated the authority to issue the contested decision.

24. Finally, the Secretary-General submits that the UNDT did not err in determining the quantum of moral damages. In his appeal, AAM provides a list of circumstances that he believes the UNDT should have taken into consideration when determining the compensation awarded to him and suggests that had the UNDT done so, it would have awarded him greater compensation. AAM however fails to show that the UNDT ignored these reasons in its determination or to provide any objective grounds on which he bases his claim for greater compensation.

25. The Secretary-General asks that the UNAT dismiss the appeal and affirm the impugned Judgment.

Considerations

26. The issues to be considered in this case include a) whether AAM's appeal is moot or premature in light of the pending medical determination; b) whether the UNDT erred in finding that the Controller had the delegated authority to deny AAM's claim for compensation under Appendix D; c) whether the UNDT erred in concluding that the decision of the Controller was reasonable and lawful; d) whether the UNAT should grant AAM the remedies he requested; and e) whether the UNAT should grant AAM's request to redact the public version of this Judgment

Whether AAM's appeal is moot or premature in light of the pending medical determination

27. It is uncontested that the applicable Appendix D is the version appended to Secretary General's Bulletin ST/SGB/2017/1 (Staff Regulations and Rules of the United Nations).⁵

⁵ Superseded by Secretary General's Bulletin ST/SGB/2018/1 on 1 January 2018.

28. Article 1.4 of Appendix D provides, in part:

Advisory Board on Compensation Claims

(a) The Secretary-General has established the Advisory Board on Compensation Claims to consider claims for compensation arising from a service-incurred death, injury or illness and to make recommendations thereon to the Secretary-General.

29. Article 1.7 of Appendix D provides:

Role of the Medical Services Division

(a) The Medical Services Division shall make a medical determination for consideration by the Advisory Board on Compensation Claims or the official with delegated authority to consider *de minimis* claims. Such a determination may include:

- (i) Whether a death, injury or illness is directly causatively related to an incident;
- (ii) Whether a death, injury or illness is directly causatively related to the performance of official duties;
- (iii) Whether treatment or services are directly related to a service-incurred injury or illness;
- (iv) Whether treatment or services are reasonably necessary for the treatment of such an injury or illness;
- (v) Whether medical expenses are at a reasonable cost for the treatment or services provided;
- (vi) Whether absence from work is directly related to a service-incurred injury or illness;
- (vii) Whether a claimant has reached maximum medical improvement, in order to assess a permanent loss of function;
- (viii) Permanent disfigurement or loss of function;
- (ix) Total disability.

(b) In accordance with staff rule 6.2 (g), a staff member may be required to undergo a medical examination by a medical practitioner designated by the United Nations Medical Director, with the cost to be borne by the Organization, in order to clarify findings or to further assess the claim in connection with any of the determinations made pursuant to the present article. A staff member may also be required to provide further information in connection with any of the determinations made pursuant to the present article.

30. Article 2.2 of Appendix D provides, in part:

Eligibility for coverage

(a) To be eligible to receive compensation under the present rules, the death, injury or illness underlying a claim must be service-incurred, as assessed in accordance with article 2.2 (d) below.

(b) The Advisory Board on Compensation Claims will assess whether the death, injury or illness is service-incurred and provide its recommendation on a claim to the Secretary-General. For *de minimis* claims, the official with delegated authority to consider *de minimis* claims will assess whether the death, injury or illness is service-incurred and take a decision on the claim on behalf of the Secretary-General.

(c) Such an assessment will be based on the claimant's submissions, and, as appropriate, the recommendations of the Medical Services Division, technical advice from ex officio members of the Board and any other relevant documentary or other evidence.

Service-incurred death, injury or illness

(d) A death, injury or illness is service-incurred if it is directly attributable to the performance of official duties on behalf of the United Nations, in that it occurred while engaged in activities and at a place required for the performance of official duties.

...

31. Accordingly, concerning claims for compensation arising from a service-incurred death, injury or illness, the ABCC assesses the claim and makes its recommendation to the Secretary-General with the assistance of the Medical Services Division which provides a medical opinion on the basis of its medical expertise.

32. Appendix D also provides two different paths to challenge the Secretary-General's decision depending on different arguments raised by the claimant. It provides:

Article 5.1

Reconsideration of medical determinations

Claimants wishing to contest a decision taken on a claim under the present rules, when that decision is based upon a medical determination by the Medical Services Division or the United Nations Medical Director, shall submit a request for reconsideration of the medical determination under conditions, and by a technical body, established by the Secretary-General.

Article 5.2

Review and appeal of administrative decisions

Claimants wishing to contest a decision taken on a claim under the present rules, to the extent that the decision was based on considerations other than a medical determination, shall submit to the Secretary-General a written request for management evaluation in accordance with staff rule 11.2.

33. According to Articles 5.1 and 5.2, claimants shall submit a request for reconsideration of the medical determination when the administrative decision is based upon such a determination; however, they shall submit a written request for management evaluation in accordance with Staff Rule 11.2 to the extent that the decision was based on considerations other than a medical determination.

34. In this case, after considering AAM's claims as well as the medical opinion of DHMOSH, the ABCC recommended to the Controller, who was designated to make the contested decision, that the Organization find the alleged injury not to be service-incurred. Following the notice of the contested decision, AAM exhausted his procedural rights granted by Appendix D to file concurrently two requests to the Administration.

35. On the one hand, AAM requested the establishment of a medical board pursuant to Article 5.1 of Appendix D to challenge DHMOSH's findings in the 6 November 2020 letter. His request was rejected by the acting Medical Director on ground of lack of a mechanism. AAM then challenged the decision and filed an application before the UNDT (Case No. UNDT/NY/2021/038) which the UNDT disposed of in the UNDT Judgment on the medical board. In that case, AAM mainly requested that his case be remanded to the ABCC for a new consideration on the grounds that DHMOSH's medical recommendation was flawed and unlawful absent a consideration of the medical report of AAM's psychiatrist.

36. On the other hand, AAM requested management evaluation of the contested decision dated 30 December 2020 according to Article 5.2 of Appendix D. Since he did not receive an answer from the Administration, AAM filed an application before the UNDT (Case No. UNDT/NY/2021/026) which the UNDT disposed of by Judgment No. UNDT/2022/051 which led to the present appeal. In this case, AAM challenged the Controller's decision dated 30 December 2020 on account that the decision was made illegally and was contrary to Appendix D. Although the decisions contested and the claims made in the two cases are different in some aspects, AAM's goal was the same in both, i.e., to receive compensation under Appendix D.

37. On 10 June 2022, the UNDT rendered Judgment No. UNDT/2022/055, UNDT Judgment on the medical board, by which it rescinded the medical board decision of 6 April 2021 and remanded the case to DHMOSH for a new consideration as “the basic legal premise for the contested administrative decision was flawed”.⁶ Since neither of the parties has filed an appeal and the time limit for doing so has lapsed, Judgment No. UNDT/2022/055 has come into effect.

38. Since the ABCC considered the medical determination when it made its recommendation to the Controller, a reconsideration of the medical determination may, or may not, lead to a new administrative decision. If a new administrative decision is made and AAM is satisfied with it, the current appeal will be moot. In this regard, we could say the current appeal is thus potentially moot. However, at this stage, the administrative decision dated 30 December 2020 is contested by AAM and it is challengeable. So, we cannot say the case at hand is premature.

Whether the UNDT erred in finding that the Controller had the delegated authority to deny AAM’s claim for compensation under Appendix D

39. AAM challenged the legality of the contested decision on the grounds that the Controller, who signed the decision, did not have the delegated authority to make a decision concerning issues on compensation for death, injury, and illness.

40. As we found in *Appellant*:⁷ “The requirement of authority is a fundamental precept of the principle of legality of the Administration. The first principle of administrative law (and of the rule of law) is that the exercise of power must be authorized by law.”

41. The contested decision was signed by the Controller on 30 December 2020. So we should look at whether the Controller had been duly delegated authority at that time.

42. The legal framework for the delegation of authority has been set out in Secretary-General’s Bulletin ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules). Pursuant to Annex IV (Chapter VI) of ST/SGB/2019/2, authority for compensation for death, injury and illness (Appendix D) under Staff Regulation 6.2 and Staff Rules 6.4 and 6.5 is vested in the USG/DMSPC. Further, the USG/DMSPC may subdelegate his authority for the purpose of effectiveness through

⁶ UNDT Judgment on the medical board, para. 27.

⁷ *Appellant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1157, para. 49.

the online portal, and any amendment or revocation should be communicated in the same manner as described in Section 5 of ST/SGB/2019/2.

43. AAM alleges that there was a discrepancy in the dates of the instruments of delegation of authority produced by the Respondent, with one dated 19 March 2019, and the other dated 22 November 2019. Accordingly, it was unreasonable to find the Controller accepted the delegation of authority on 25 March 2019.

44. We note that the Respondent was negligent in producing evidence, in the first instance, when producing two tables of delegations dated 19 March 2019 and 22 November 2019, respectively; this brought ambiguity to the fact-finding with respect to the date on which the USG/DMSPC issued the delegation of authority for compensation. However, the Respondent provided a proper and reasonable explanation before the UNDT. That is, the initial delegation was made on 19 March 2019 and was accepted on 25 March 2019 through the online portal. The latter delegation was signed on 22 November of the same year to replace the earlier one. Yet, the new delegation was not effective for lacking a lawful process. We find that there was not a time conflict between the date of the initial delegation and the date of acceptance of the authority. Also, both administrative acts complied with the manner prescribed by ST/SGB/2019/2. Therefore, the compensation for death, injury and illness was specifically delegated from the USG/DMSPC to the Controller since 25 March 2019. As long as no amendment or revocation of such delegation of authority is made, the Controller will be the proper administrative body to decide the compensation.

45. Consequently, we believe that the delegation of authority in question from the USG/DMSPC to the Controller was in place at the time of the signing of the contested decision. The Controller made the contested decision by the authority conferred upon him by the USG/DMSPC. The UNDT did not err in finding that the Controller had the delegated authority to deny AAM's claim for compensation under Appendix D.

Whether the UNDT erred in concluding that the Controller's decision was reasonable and lawful

46. We reiterated in *Applicant*:⁸

⁸ *Applicant v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1133, para. 42 (internal footnote omitted).

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

47. The key issue in this case was whether the illness suffered by AAM was service-incurred. AAM argued that together with the medical report from his psychiatrist he had proved the causation between the work environment and his illnesses which supported his eligibility for compensation. The ABCC, however, ignored his evidence presented under Appendix D and illegally required him to prove the alleged harassment. The ABCC stated in its recommendation that the psychiatrist's statements were based on AAM's descriptions, while AAM had not met the requirement to establish a link between the illness and the performance of duties.

48. Appendix D sets forth the requirements to establish a claim clearly. Article 1.8(a) provides that the claimant must provide the evidence necessary to fully support a claim for compensation in accordance with these rules. Article 2.1(b)(ii) provides that for claims involving injury or illness a description of the injury or illness, a description of the relation of the injury or illness to the incident, a diagnosis and other relevant documents should be submitted. It is obvious that the claimant has the responsibility to present sufficient evidence to support his/her allegations at first. According to Article 2.2 (b) and (c), the ABCC will assess whether the illness is service-incurred based on the claimant's submissions and as appropriate, the recommendations of the Medical Services Division, etc.

49. In the present case, the main evidence presented by AAM is the medical report from his psychiatrist and his own statement concerning the alleged harassment and unwelcome workplace. In the letter dated 6 October 2020 from AAM's psychiatrist, she mentioned that: "In treating [AAM], and in forming my clinical diagnoses and treatment plans, I have relied not only on interviews with [AAM], but on records forwarded to me"; and "[t]he facts would suggest that [AAM], who was formerly functioning very well and was deemed more than competent in his role at the UN, was the victim of years of verbal assaults, public humiliations, professional defamation and internet/social/media/email bullying." From these statements, we find that all the

descriptions concerning the causation incurring the illness were concluded through interviews between AAM and his psychiatrist.

50. When we look at the ABCC’s recommendation, we can see that the ABCC’s recommendation to the Controller had assessed whether the injury or illness was service-incurred based on AAM’s submissions and the recommendation of DHMOSH. The ABCC did not ignore AAM’s statement and his psychiatrist’s opinion. It stated: “The board noted the reports of your psychiatrist, outlining years of alleged abuse and attribution of the cause of your illness.” However, compared with “the opinion of Medical ... that there is uncertainty about the cause of your illness which could be due to matters outside the workplace and is most likely endogenous”; and supported by “the nature of the illness, the nature and evolution of your symptoms, and by their failure to resolve once removed from the stressors of the workplace”, the ABCC upheld Medical’s assessment “that normal interactions and difficulties at work did not cause your illness, but heightened your awareness and emphasis of them, leading them to be emphasized at the exclusion of other factors” and denied a link between the illness and the performance of duties required by Appendix D.

51. Concerning the recommendation of DHMOSH, in the impugned Judgment, the UNDT said: “In any event, under *Applicant* 2021-UNAT-1133, the Tribunal has no authority to review the medical opinion of DHMOSH or its relevancy related to the Applicant’s claim before the ABCC.”⁹ AAM argued that the UNDT erred in law by relying on *Applicant* as relevant jurisprudence because the latter Judgment was rendered in 2021, after there had been a change to the applicable rules in this case. However, we affirm that this jurisprudence provides philosophies, principles and a methodology for the Tribunal in dealing with relevant cases. The subsequent jurisprudence, as appropriate, is still eligible to be referred to during our judicial review.

52. In *Applicant*, the UNAT said:¹⁰

... 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*

⁹ *Ibid.*, para. 29.

¹⁰ *Applicant, op. cit.*, paras. 56, 58 and 59 (emphases added; internal footnote omitted).

examine whether the Applicant's medical reports by his private practitioners are substantiated, free of 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.

...

... 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.*

... *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.*

53. As we have mentioned before, under the legal framework of Appendix D, the role of the MSD is to make a medical determination for consideration by the ABCC to provide its recommendation to the Secretary-General to decide compensation arising from a service-incurred death, injury or illness. If claimants wish to contest a decision based upon a medical determination by the MSD, they shall submit a request for reconsideration of the medical determination under conditions, and by a technical body, established by the Secretary-General. In practice, AAM has requested to establish a medical board pursuant to Article 5.1 of Appendix D to challenge DHMOSH's finding in the 6 November 2020 letter. Upon the letter of the acting Medical Director, which rejected his request for a medical board, he filed to the UNDT and challenged the medical opinion of DHMOSH. The UNDT delivered Judgment No. UNDT/2022/055, which remanded to DHMOSH for a new consideration in light of the Appeals Tribunal's finding. The medical determination of AAM's claim is not before us in this case. As set out above, the medical determination is subject to a separate procedure and may not be contested at this stage of the proceedings via management evaluation and an application before

the Tribunals. AAM must, and did, follow the avenues of recourse made available to him in this regard.

54. However, we will judge in the present case whether the UNDT erred in finding the contested decision lawful. AAM argues that the UNDT erred in law in finding the Controller's decision lawful on grounds that: (a) relevant matters were ignored, in particular the true nature of the working conditions, which were extremely stressful, hostile, unhealthy and unsafe for AAM; (b) the exclusion of working conditions from the SMO's medical assessment was noticed by the UNDT but this important fact was not connected to the Organization's flawed decision-making process; (c) irrelevant and illegal matters were considered, including the ABCC's *ultra vires* policy, and AAM's participation in *Louis* (a company), which is irrelevant and unrelated to whether or not AAM's illness and disability are service-incurred; (d) the Organization failed to exercise due care when it accepted the SMO's false characterization of the working conditions as "normal", and accepted his medical assessment that was patently not based on medical facts or evidence; and (e) the consideration of matters was not proportionate, as the dossier, the basis for the decision, completely excluded AAM's documents and evidence, and included and excessively considered irrelevant matters.

55. A review of the Minutes of the 517th Meeting of the ABCC on 23 November 2020 reveals that the Controller and the ABCC assessed whether the illness was service-incurred based on the claimant's submissions and the recommendations of DHMOSH and other relevant documentary evidence, not only based on the opinion of DHMOSH. The Minutes, *inter alia*, said:

Having reviewed this claim previously, the board reviewed it anew. The board considered the documentation previously submitted by the claimant and considered all the new documentation submitted by the claimant, including his statements, various memoranda, e-mail correspondence, articles from IPS (inter press service) and isseek, and the reports of the claimant's psychiatrist. The board specifically considered the fact that the Organization did not carry out an investigation into the allegations of harassment and other misconduct that the claimant raised.

56. It is obvious that the Administration did not ignore relevant matters including the working environment expressed by AAM. The fact that the Administration did not adopt the evidence presented by AAM did not amount to ignoring it. Furthermore, AAM's argument that the ABCC "specifically considered the fact that the Organization did not carry out an investigation into the allegations of harassment and other misconduct that you raised" is a reference to the

alleged ABCC *ultra vires* policy that requires claimants to prove harassment before a claim for compensation under Appendix D may be established, which is a misunderstanding on his part. AAM's participation in the *Lovis* company is part of his life which is relevant to his health and should be taken into consideration. We cannot evaluate the lawfulness of the administrative decision merely by the quantity and proportionality of documents in the dossier, from both parties, upon which the Administration based its decision. So, we agree with the UNDT's finding that in the contested decision, no "relevant matters" were ignored and/or no "irrelevant matters" considered, and it did not lead to an "absurd or perverse" decision.

57. Further, we reiterate the jurisprudence in *Kennedy Kisia*¹¹, that the burden of proving any allegations of ill-motivation rests with the applicant. AAM has failed to establish the alleged facts that the process under Appendix D was unlawful, biased or irrational.

58. The contested decision which accepted the ABCC's recommendation to deny the claimed benefit was lawfully made and in full respect of the due process rights prescribed by Appendix D.

59. Accordingly, the UNDT did not err in finding the contested decision was lawful.

Whether the UNAT should grant AAM the remedies he requested?

60. We recall: Firstly, following the jurisprudence of this Tribunal, moral damages may not be awarded without specific evidence supporting the award,¹² and testimonial evidence without corroboration by independent evidence is not satisfactory proof to support an award of moral damages,¹³ which means both the fact of damage and its quantum need evidential support. Secondly, the UNDT and UNAT are granted the discretion to order compensation normally not exceeding the equivalent of two years' net base salary of the applicant. In addition, the quantum of compensation claimed by the applicant shall be comparable to the damage suffered. Accordingly, it is the Appellant's burden to establish a fact by which the Tribunals could decide the amount of the compensation by reference.

61. Even though we do not find the contested decision unlawful on the merits, we notice that since the initial claim, it took the Appellant nearly two and a half years to obtain a substantial decision from the Administration. The Controller twice remanded the claim back to the ABCC for

¹¹ *Kennedy Kisia v. Secretary-General of the United Nations*, Judgment 2020-UNAT-1049, para. 38.

¹² *Hastings v. Secretary-General of the United Nations*, Judgment 2011-UNAT-109, para. 3.

¹³ *Auda v. Secretary-General of the United Nations*, Judgment 2017-UNAT-787, para. 64.

renewed assessment and each time, the remand occurred after AAM challenged the ABCC's finding that his compensation claim under Appendix D was not receivable by the Management Evaluation Unit and the UNDT. In light of the principle of efficiency of the Organization and the fact that the improper delay would obviously cause a degree of anxiety and stress to AAM, and the fact that AAM presented the medical opinion of his psychiatrist to support his account of moral damages, we uphold the UNDT's finding that AAM established the required nexus between his harm and the protracted process.

62. In this case, AAM requested compensation at the highest end of the scale. We find that there is a mere procedural flaw which is undue delay of the process by the Administration. Therefore, the compensation cannot be high. Furthermore, AAM has failed to provide further evidence to support his submission that the damage caused to him requires compensation at the higher end of the scale. Meanwhile, we respect generally the discretion of the UNDT and specifically find that in the impugned Judgment the UNDT examined the compensation properly by taking into account AAM's medical history and the execution of the administrative actions of the ABCC. Above all, we consider the Appellant does not qualify for the compensation that he claimed and the amount of the compensation ordered by the UNDT was appropriate.

63. Since the contested decision is found lawful, all the other remedies requested by the Appellant should not be granted.

Whether the UNAT should grant AAM's request to redact the public version of this Judgment

64. The Appellant requests that the UNAT redact the public version of this Judgment to protect details of his medical evidence which is confidential and sensitive.

65. Transparency is an overarching principle of this Organization. The UNAT exercises its competence in line with this notion. It is set out in Article 10(9) of the UNAT Statute that the judgments of the UNAT shall be published unless protection of personal information is considered necessary. A request for redaction can only be permissible and/or permitted where it is necessary to protect information of a confidential and sensitive nature.¹⁴

¹⁴ *Utkina v. Secretary-General of the United Nations*, Judgment 2015-UNAT-524, para. 18.

66. Considering the Judgment will set out medical details regarding AAM, it is necessary to protect his confidential information. Upon AAM's request, we agree to redact his name in the public version of this Judgment.

Judgment

67. AAM's appeal is dismissed, and Judgment No. UNDT/2022/051 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 3rd day of August 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar