



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

WISDOM-COFIE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Duke Danquah, OSLA

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 24 October 2012, the Applicant filed a motion requesting the transfer to the Dispute Tribunal of his case that was previously before the former United Nations Administrative Tribunal (Case No. 1640/2008) and the reinstatement of his case in front of the Dispute Tribunal in order to pursue his original appeal.

## **Relevant background**

2. On 14 October 2008, the Applicant filed an application with the former United Nations Administrative Tribunal (“former Administrative Tribunal”) requesting that the former Administrative Tribunal find that the 18 July 2008 monetary award of USD31,227.84 provided to him for his injuries was woefully inadequate relative to their permanent nature and that the former Administrative Tribunal examine the inadequacy of the Advisory Board on Compensation Claims (“ABCC”) standard formula in calculating the contested award

3. The Applicant added that the ABCC erred in asserting that because he was retired from active service within the United Nations that “there is no basis for additional compensation in the form of earning capacity”. The Applicant submits that his situation was exceptional and that it was unfair for the ABCC to deny his request to have a medical Board established to objectively review his claim that his service-incurred injury amounted to 100 per cent disability and not 16 per cent disability as determined by the United Nations Medical Service Division (“MSD”).

4. On 26 February 2009, at the request of the Applicant’s counsel, the then Executive Secretary of the former Administrative Tribunal suspended Case No. 1640/2008 until further notice for the purpose of enabling the parties to attempt to resolve it informally.

5. On 28 August 2009, the ABCC informed the Applicant that it had decided to rescind its 18 July 2008 and 30 June 2009 recommendations and that it was also

recommending that the Respondent approve the Applicant's request for the convening of a Medical Board.

6. On 29 August 2012, the ABCC informed the Applicant that "it would be impossible for any medical board to determine matters essential to the Applicant's claim for additional compensation".

7. On 23 October 2012, the Applicant filed a request with the Dispute Tribunal seeking to have his original case that was previously pending in front of the former Administrative Tribunal reinstated in front of the Dispute Tribunal.

8. The Applicant submitted that he had originally sought a suspension of his case as a result of the fact that the parties had agreed to proceed with an informal resolution of his case. However, due to "a long drawn-out process in which [he] sought to attain his remedy from the ABCC, he was recently served with a decision with which he disagrees. [He] therefore wishes to pursue his original appeal". On 16 November 2012, the ABCC held additional discussions with the Applicant during which it informed him that, should he so desire, it was willing to convene a Medical Board to review his case.

9. On 23 November 2012, the parties stated that they agreed that "the matter is properly before the Tribunal by operation of section 4.2 of the Secretary's General Bulletin ST/SGB/2009/11" and, following the Applicant's decision to accept the ABCC's offer that a Medical Board be convened to review his case, requested that any proceeding before the Dispute Tribunal be suspended.

10. On 15 March 2013, the Dispute Tribunal issued Order No. 72 (NY/2013) whereby it requested that the Applicant inform it as to the status of the proceedings in front of the ABCC and whether the present proceedings in front of the Dispute Tribunal should be maintained. On 20 March 2013, the Applicant responded that he had "received an ambivalent response [and that he...] would therefore prefer to maintain the status quo so that his rights are not prejudiced in any fashion.

Accordingly, the Applicant ... will instead wait for a definite response from the ABCC before he decides on a future course of action”.

11. On 16 June 2013, the Dispute Tribunal issued Order No. 145 (NY/2013) whereby it again requested that the Applicant inform it as to the status of the proceedings in front of the ABCC and whether the present proceedings in front of the Dispute Tribunal should be maintained. On 28 June 2013, the parties submitted a jointly signed response stating that due to the absence of the MSD official who was on leave until 8 July 2013 they had “been unable to come to a joint conclusion on the status of the Applicant’s proceedings before the ABCC” and asking for an extension of time to respond to Order No. 145 (NY/2013) until 12 July 2013.

12. On 3 July 2013, the Dispute Tribunal issued Order No. 164 (NY/2013), granting the parties’ joint request for an extension of time. On 12 July 2013, the parties submitted a jointly signed response that indicated that the ABCC had requested that the Applicant formulate “a clear articulation ... of the ailment for which compensation is sought”. The parties further stated that if “the Applicant accepts the determination so made by the MSD, the Applicant will consider the matter closed”.

## **Consideration**

### *Re-instatement*

13. On 24 December 2008, the General Assembly adopted resolution 62/253 (“Administration of justice at the United Nations), which in sec. IV (“Transitional measures”) (paras. 43–45) decided to abolish the United Nations Administrative Tribunal as of 31 December 2009 and that all cases pending before the joint appeals boards, the joint disciplinary committees and the disciplinary committees shall be transferred, as from abolishment of those bodies, to the United Nations Dispute Tribunal. Further, the General Assembly decided that cases from the United Nations and the separately administered funds and programmes pending before the United

Nations Administrative Tribunal, as from the abolishment of that Tribunal, shall be transferred to the United Nations Dispute Tribunal.

14. Similar provisions were included in sec. 4.1–4.2 of ST/SGB/2009/11 (Transitional measures related to the introduction of the new system of administrative justice): the United Nations Administrative Tribunal was to be abolished as of 31 December 2009 and cases that had not been decided by 31 December 2009 were to “be transferred to the United Nations Dispute Tribunal as of 1 January 2010”. In light of these mandatory provisions all the cases pending before the former Administrative Tribunal were to be transferred to the Dispute Tribunal on 1 January 2010.

14. Case No. 1640/2008 was pending before the former Administrative Tribunal on 31 December 2009 because it remained suspended and had not been withdrawn by the Applicant or decided by the former Administrative Tribunal.

15. Even though the case was not formerly transferred by the United Nations Administrative Tribunal to the Dispute Tribunal as of 1 January 2010, it is properly registered as Case No. UNDT/NY/2012/081 and the Applicant’s request for transfer is without object.

16. The application filed on 14 October 2008 with the former Administrative Tribunal and suspended on 26 February 2009 until further notice (for the purpose of enabling parties to resolve it amicably) will be considered reinstated at the Applicant’s initiative from the date on which the motion for reinstatement was filed, i.e., 24 October 2012.

17. The Tribunal considers that in the present case the request for reinstatement was filed by the Applicant within a reasonable time – less than two months after he was informed by the ABCC on 29 August 2012 that “it will be impossible for any medical board to determine matters essential to the Applicant’s claim for additional compensation”. The motion is granted partially in relation with the request for reinstatement in front of the Dispute Tribunal.

18. The Tribunal notes that the case was originally suspended on 26 February 2009 by the former Administrative Tribunal for the purpose of enabling the parties to resolve this matter informally and the informal proceedings are still ongoing.

*Current proceedings*

19. The Applicant decided to conduct proceedings in front of the ABCC resulting in his initial request that the proceedings in front of the former Administrative Tribunal be suspended in February 2009 for the purpose of enabling the parties to resolve the matter informally. On 28 August 2009, the Applicant was informed that the ABCC had rescinded its prior recommendations and was also recommending that the Respondent approve the Applicant's request for the convening of a Medical Board.

20. After three years the Applicant was informed on 29 August 2012 of MSD's opinion that "it would be impossible for any medical board to determine matters essential to the Applicant's claim for additional compensation". The Tribunal notes that from 1 January 2010 until October 2012 there was no correspondence between the Applicant's counsel and the Tribunal regarding the status of his case and the results of the procedure before the ABCC.

21. Nevertheless, following additional discussions in November 2012 with the ABCC, the parties expressed their consent to continue their efforts to resolve the matter informally and, on 23 November 2012, following the Applicant's decision to accept the ABCC's offer that a Medical Board be convened to review his case, the parties requested that any proceeding before the Dispute Tribunal be suspended.

22. As expressed *supra*, following several requests from the Tribunal regarding the status of the proceedings, the Applicant stated that he had "received an ambivalent response" from MSD and that he wanted to "wait for a definite response from the ABCC before he decide[d] on a future course of action" and that if

he “accepts the determination so made by the MSD, [he] will consider the matter closed”.

*Extended suspension of proceedings*

23. The issue that the Tribunal therefore has to consider is whether a case can be suspended *ad infinitum*.

24. In *Bimo, I. & Bimo, M.* UNDT/2009/061 and *Hastopalli & Stiplasek* UNDT/2009/062, the Tribunal held that it “is a general principle of procedural law that the right to institute legal proceedings is predicated upon the condition that the person using this right has a legitimate interest in initiating and maintaining [the] legal action. Access to the court has to be denied to those who are not in need of judicial remedy, as well as to those who are obviously no longer interested in the proceedings they instituted”.

25. The Tribunal has further stated that when applicants have been dilatory in the pursuit of their claims “[l]eaving the matter open on the court’s docket would be inappropriate” as they cannot let the “claim to continue to “hang like the sword of Damocles” over the efficient operations of the Organization” and the matters should therefore be struck out (see *Mwachullah* UNDT/2010/003 and *Saadeh* UNDT/2010/020).

26. In the present case the Applicant informed the Tribunal that should he accept MSD’s determination he would consider the matter closed. However, the Tribunal has stated that an applicant cannot seek a stay of the proceedings for the sole purpose of determining whether to continue, amend or terminate a matter upon being informed of whether the alternate process that has been subscribed to worked out in the applicant’s favor as such an action would constitute an abuse of the judicial process (see *Hussein* UNDT/2009/020, affirmed by the United Nations Appeals Tribunal 2010-UNAT-006).

27. The Tribunal considers that the Applicant does not demonstrate an actual and real interest in addressing the present case using the Tribunal's formal procedure. Furthermore, a case cannot be delayed for several years while being maintained pending in front of the Tribunal *sine die* only as an alternative solution, to the informal proceedings. In accordance with art. 10 of the Dispute Tribunal's Statute, the Tribunal can only suspend a case for a limited period of time and not until further notice. Taking into consideration the complexity of the Applicant's claims before the ABCC is no certainty about the length of the procedure in front of the Medical Board. When parties decide to resolve a case pending before the Tribunal using an informal process they have to do so within a reasonable amount of time while also informing the Tribunal periodically of the status of the alternate proceedings. Thus, following the filing of an application before the Tribunal the parties may ask for the case to be suspended in order to resolve it amicably. However, an informal process which is initiated after the case is registered by the Tribunal is an alternative solution to the formal process and not vice versa.

28. Therefore, the 23 November 2012 request for suspension of the proceedings before the Tribunal is rejected.

29. The Tribunal notes that any further decision issued by the ABCC, will be a new administrative decision which will supersede the one contested in the present case and which, per arts. 2 and 8 of the Dispute Tribunal's Statute, will be subject to this Tribunal's authority upon the filing of an application by either of the concerned parties.

**Conclusions**

30. In the view of the foregoing, the Tribunal DECIDES:

31. The case is dismissed.

*(Signed)*

Judge Alessandra Greceanu

Dated this 5<sup>th</sup> day of September 2013

Entered in the Register on this 5<sup>th</sup> day of September 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York