UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/041
Judgment No.: UNDT/2014/037
Date: 10 April 2014
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

BEZZICCHERI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
François Loriot

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a P-2 level Associate Advisor (HIV/AIDS) in the Regional Centre for East Asia and the Pacific ("ESCAP") in the United Nations Office on Drugs and Crime ("UNODC"), Phnom Penh, Cambodia filed an application contesting the decision of the Advisory Board on Compensation Claims ("ABCC"), dated 14 February 2011 and communicated to her on 17 February 2011. The contested decision denied the Applicant's claim for compensation under Appendix D to the Staff Rules on the grounds that it had not been filed within the time limits and that the explanation she provided for her delayed filing did not constitute exceptional circumstances that would warrant a waiver of the time limits (as resulted from the Secretary General decision taken on 5 February 2011).

Relevant background

2. The Applicant submits that she informed the United Nations Medical Centre of UNODC Bangkok, Thailand where she had been stationed since April 2002 that, starting in November–December 2007, she was suffering from light to progressively more severe pain in her right shoulder due to having to spend long hours at her computer work station. On 1 January 2008, due to the pain she was experiencing, despite undergoing heavy pharmacotherapy and physiotherapy treatments, she was instructed by doctors in Thailand to wear a sling around her right arm. The Applicant continued working using her left arm and, after some time, she started to experience much greater pain in her left shoulder/neck area to the point where it became progressively unbearable. At the same time, the problems she was experiencing with her right shoulder were eventually resolved with physiotherapy.

3. On 6 May 2008, in response to the Applicant's complaints, an ergonomic assessment was conducted by doctors from the UN Regional Centre in Bangkok, who issued an "Office Ergonomic Workstation Assessment and Recommendation

Report". They established that the position in front of her computer was harmful, the chair was inadequate, the air conditioning was directed directly towards her neck and the office lighting was deficient and that these irregularities were responsible for her medical condition. The report made a number of recommendations: adjustments were to be made to her office setup, including her workstation, the computer positioning, as well as changes to air conditioning and office lighting. In October 2008 the Applicant bought an ergonomic chair.

4. The Applicant was hospitalized in Bangkok on 3 June 2008 for three days whereupon doctors diagnosed her with bulging discs in three parts of her cervical spine and recommended surgery. The Applicant decided not to have a surgery in Thailand and instead traveled to Rome, Italy to obtain a second medical opinion. She stated that her flight ticket from Bangkok to Rome cost 12,660 Thai Baht (equalling less than USD400) because she used air miles.

5. In Rome, a doctor conducted a neurological examination of the Applicant and, on 17 June 2008, advised against her pursuing any surgery due to the extreme inflammation of her nerves. The doctor recommended that the Applicant go on complete rest for 30 days following which, if the next examination was to show adequate improvement, physical therapy would be initiated. The Applicant was on full time sick leave approved by the UN Medical Service, for the period 15 June 2008 to 15 October 2008.

6. On 17 July 2008, the Applicant returned to her doctor in Rome for a medical examination. The doctor advised her that since her symptoms had improved, she could commence five weeks of physical therapy. He also recommended that she pursue a period of absolute rest should the posture exercises not prevent a relapse of certain symptoms.

7. On 1 September 2008, the Applicant's doctor in Italy examined her again and found that, although her clinical conditions had improved and that the prognosis of

her condition was benign and would not require surgical intervention, she had demonstrated a slow healing process. The doctor therefore recommended at least four month of part-time rest. The doctor recommended that while at work on a part-time basis, she should avoid activities involving traction or the lifting of weight, as well as prolonged postures in a non-ergonomic environment.

8. According to the Applicant, in September 2008, while in Italy, she consulted a lawyer who instructed her to immediately submit a claim for disability benefits.

9. On 16 October 2008, upon approval by the UN Medical Service of the four-month part-time sick leave recommended by her doctor in Italy, the Applicant returned to work on a part-time basis until 15 January 2009.

10. On 26 December 2008, the Applicant emailed three staff members at UNODC. The subject line of the email read "DISABILITY BENEFIT ? / QUESTION" and the email stated:

> Dear Colleagues,
>
> I was told to refer to you with regard to question on above.
>
> I have been sick due to wrong office furniture / lack of ergonomic environment in work place. I was also forced to take prolonged sick leave to heal enough to work. In this regard and with reference to the UN Secretariat Administrative Instruction on Sick Leave – ST/AI/2005/3 – Section 3.2, I would like to ask what are the premises to obtain disability benefit, provided I may be entitled to it.

11. On 15 January 2009, the Applicant returned to work on a full-time basis. She submits that during the period of 15 January 2009 to 15 July 2009, she made "new efforts to localize […] UN office where she could address her claims".

12. On 7 September 2009, the Applicant sent an email which stated that she had already sent all her medical reports "to both UN Medical Centre and the Van Breda [the Applicant's insurance company]". In addition, the Applicant attached "the most salient medical reports".

13. On 9 September 2009, the Applicant was informed by a Human Resources Assistant, Social Security Office, Human Resources Management, UNODC that they had received an email from Vanbreda advising that they were "unable to consider the benefit [of a household help] in question as it is excluded under the United Nation medical plan."

14. On 2 October 2009, the Applicant forwarded her latest medical certificate and stated as follows:

> On different note, I understand from UN rules and regulations that if an injury is related to the work place environment, Vanbreda should provide 100% coverage of all medical expenses? However, it only provided 80% for issues related to my neck/spine issues – as if this was not related to my work place environment; could please let us know why?
>
> Also, please note that the costs associated with my injury due to the work place environment have been many and are not only financial; this issue has changed my whole life. Originally indeed, this email was written to inquire about the possibility of a disability benefit. Could please kindly clarify about this?

15. The same day, the Applicant received a response from the Benefits Assistant in the Social Security Office in the Human Resources Management Service in UNODC to which was attached "information on the procedures for submission of compensation claims and the claim form" and how such a claim and supporting documentation should be sent to the ABCC. The email stated as follows

> Dear [Applicant],
>
> […] is not in the office today so I am taking the liberty to provide you with some information regarding (a) compensation under Appendix D to the Staff Rules and (b) disability benefit from the United Nations Joint Staff Pension Fund (UNJSPF).
>
> (a) Vanbreda should not cover any medical expenses if an injury or illness is work related. Instead, Appendix D to the Staff Rules (copy attached below) provides for reimbursement of medical expenses, loss of earnings, and temporary or permanent impairment if an accident or sickness was attributable to the performance of official duties. The Advisory Board on Compensation Claims at United Nations

> Headquarters, New York, is responsible to consider claims under Appendix D.
>
> Please find attached below information on the procedures for submission of compensation claims and the claim form. You can submit the claim form and all supporting documentation including medical reports directly to the Advisory Board on Compensation Claims at the United Nations Headquarters at New York or, if you so wish, submit your claim and any documentation to the Social Security office at UNODC Headquarters Vienna, for onward transmission to the Claims Board.
>
> Consideration of a claim under Appendix D by New York Headquarters may take some time, therefore, medical claims may be submitted to Vanbreda first. If compensation is granted under Appendix D, Vanbreda will be refunded for the reimbursements made relating to the claim and the claimant would be paid the remaining costs incurred.
>
> (b) The rules and regulations of the UNJSPF provide for a disability benefit, please find below the brochure on the subject. You can find more information about the rules of the UNJSPF on website www.unjspf.org. This benefit is payable on a monthly basis, if, due to an illness or injury, a staff member can no longer continue working and if the illness/injury is likely to be permanent or of long duration. Disability benefits are awarded by the Staff Pension Committee of the United Nations Joint Staff Pension Board. You can apply yourself to the UNJSPF for a disability benefit or UNODC as your employer may do so upon your request. If awarded, a disability benefit starts earliest after all paid sick leave (full pay and half pay) has been exhausted and/or after your separation from UNODC. The amount of a disability benefit is roughly equivalent to the retirement benefit you would receive if you were to continue working until normal retirement age at the same level/step. If you wish to have an estimate of such a benefit, please address an Email indicating the approximate separation date to the UNJSPF Office in Geneva
>
> (unjspf.gva@unjspf.org).
>
> I am copying this message also to Mr. […]. He may be in a position to give you more information regarding the administrative steps required in connection with a disability benefit.

16. From 5 to 24 October 2009 the Applicant was hospitalized in an Ayurvedic "Health Resort" in Sri Lanka for canal stenosis and other symptoms. The treatment cost was EUR 1,200.

17. On 9 November 2009, the Applicant submitted a one page form to the ABCC entitled "Claim for compensation claim under Appendix D". In her claim the Applicant stated that the nature of the injury/illness was spinal canal stenosis and the date of injury/illness was 1 January 2008. In the part concerning the nature of the claim, the Applicant checked the box "Reimbursement of medical expenses". She also filled in the line "Other (please explain):", stating the following:

> Compensation under article 11 of Appendix D to the Staff Rules related to permanent injury to the spine due to official duty at work station.

18. In the section "Additional comments and/or explanations", the Applicant included the following comment:

> The reason why I am only applying for compensation [illegible] is because we were so advised only on 2 October '09 (please see attached email).

19. The Applicant also included an attachment to her claim to "clarify the reasons for the delay of this submission as well as its necessity". The Applicant explained to the ABCC that

> inquiries regarding compensation claims/disability benefit began soon after hospitalisation in June 2008. However, despite repeated requests supported by my colleagues including the Representative and my immediate supervisor Regional HIV Adviser, specific advice in this regard was only received on 2 October 2009 … . On 4–23 October I left Thailand to attend a specialised treatment for canal stenosis. Hence this request was soon formulated and prepared on 9 November 2009, immediately after my return and as soon as work schedule permitted. …
> Kindly note that all medical certificates that cover the whole period since hospitalisation in Bangkok in June 2008, were duly sent to the Medical Service at the United Nations Office on Drugs and Crime Headquarters in Vienna, Austria as we were advised to do.

20. On 23 November 2009, the Applicant responded to the email of 2 October 2009 from HRMS stating:

> Dear […],
>
> Many thanks for very enlightening and concrete advise finally.
>
> Since I have come back to work and on full time basis [she] could not see how [she] could qualify for disability benefit, but [she] could see how [she does] qualify for a compensation claim; hence, please be informed that last week and in consultation with […], I have submitted the Compensation Claim as per your instruction instructions to:
>
> **Secretary, Advisory Board on Compensation Claim**
>
> **Room FF - 0335, United Nations, New York, N.Y. 10017**
>
> Given the delay of the submission despite our repetitive requests for this since June 2008, we have also included an attachment explaining the delay as well as the necessity of the submission of Compensation Claim (below for your information).

21. The Applicant further submitted that in October 2010 she underwent the same Ayurveda treatment for which she had to use her annual leave and she bore the responsibility for paying for the treatment.

22. On 22 November 2010, the Applicant was transferred to Cambodia and, on 25 January 2011, she submitted a request to HRMS "that Ayurveda treatment be included in [her] insurance plan and certified sick leave be provided to undertake it…if an exception can be made to my insurance plan to include Ayurveda treatment (the insurance is willing pending request from employer)"

23. On 17 February 2011, the Applicant was notified of the ABCC's 14 February 2011 decision with regard to her 9 November 2009 claim under Appendix D of the Staff Rules which stated that

> per the Secretary-General's decision, the explanation you have provided regarding the delay in the submission of your claim was not sufficient to waive the provisions of article 12 of Appendix [D] to the Staff Rules. Therefore your claim for compensation was not accepted.

24. On 11 March 2011, the Applicant submitted a request for management evaluation with the Management Evaluation Unit ("MEU") of the ABCC's decision to find her 9 November 2009 claim for compensation time-barred.

25. On 13 April 2011, the MEU informed the Applicant that "[p]ursuant to Staff Rule 11.2(b), a staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies [such as the ABCC] is not required to request a management evaluation. … In light of this, [the Applicant's] request is not receivable by the [MEU]".

26. On 9 June 2011, the Registry acknowledged receipt of the application contesting the ABCC's decision to reject her claim for compensation as time-barred and served it on the Respondent on 10 June 2011. On 7 July 2011, the Respondent filed his reply stating that the ABCC's finding that her claim was not receivable was reasonable. The Respondent also submitted that the application before the Tribunal was time-barred as it had not been submitted to the Dispute Tribunal within the applicable time limits.

27. On 5 September 2012, the Tribunal, by Order No. 180 (NY/2012), instructed the Applicant to file a submission, if any, relating to the Respondent's claim that her application was not receivable *ratione temporis*.

28. On 18 September 2012, the Applicant responded that her application had originally been submitted by email on 12 May 2011. The Applicant submitted that, on 25 May 2011, having failed to receive an acknowledgment from the Registry of the Dispute Tribunal of her application, she contacted the Registry to enquire as to the status of her application. That same day, the Registry of the Dispute Tribunal informed the Applicant that it had not received any applications on her behalf. On 8 June 2011, the Applicant re-sent her application, which was received by the Registry on 9 June 2011.

29. On 3 October 2012, the Respondent filed a response to the Applicant's submission regarding receivability stating that her contentions had no merits and that she had not produced any credible evidence in support of her claim.

30. Upon having reviewed the parties' responses, the Tribunal determined, by Order No. 331 (NY/2012), dated 4 December 2012, that the Applicant had initially sent her application to the Tribunal on 12 May 2011 and that its delivery was not completed due to a technical issue. The Tribunal therefore decided that the Applicant's application was filed within the time limit and was receivable *ratione temporis*.

31. On 1 and 7 January 2014, the parties, upon direction by the Tribunal in Orders No. 347 (NY/2013) and No. 8 (NY/2014), filed their closing submissions.

Applicant's submissions

32. The Applicant states that the ABCC's decision was erroneous because it did not take into account the exceptional circumstances, namely being hospitalized and suffering from a total disability, which made it impossible for her to submit a claim within four months from the date of injury or the onset of the illness. She stated that the disability appeared gradually, first as a muscle strain, only slightly symptomatic at the start, but progressively and slowly worsening. The date of the onset of the illness is unknown. The Applicant was put under intravenous morphine for three days during her hospitalization in Thailand, she continued to be hospitalized in Italy and she was not in a position to file any claim before going back to the office. The information related to the procedure was not provided to her until late 2009. The claim for compensation was submitted as soon as she could physically do so taking into consideration her exceptional circumstances. Upon her return to the workplace, the Applicant continued to seek advice from UNODC in Vienna to instruct her on the ABCC disability and claim process. However, her claim could only be submitted in November 2009, once she had received clear instructions;

33. In her closing submissions the Applicant underlined that

> 10. Though her post-hospitalization period after January 2009, when Applicant returned to work full-time, she made every effort to seek advice from HRMS and UNODC Regional Centre in Bangkok, amidst her daily exigencies of service and the numerous limitations and medical treatments required on a weekly basis. In the instant case, Respondent has never explained nor proven that it had responded timely to the Applicant's information requests. As established by the Applicant, prior to 2 October 2009, the Respondent's officials were often contacted and knew the Applicant's health conditions and efforts to file her claims, but delayed and neglected their final answer until 2 October 2009. The Respondent has never explained the reasons for its long delays to provide the Applicant with the necessary forms and information. The Applicant should not be held responsible for the Respondent's own negligence.

34. The Applicant requests the rescission of the Secretary-General's decision that her claim before the ABCC is time-barred. She also requests that the Tribunal remand the claim to the ABCC for adjudication on a full and fair basis and a three-month net salary compensation for the stress and delays. In the closing submissions filed on 20 January 2014, she amended her request for moral damage compensation to an amount of 12 months' salary.

Respondent's submissions

35. The Respondent's main submissions in his reply and closing submissions regarding the receivability of the Applicant's claim before the ABCC are that

> …the Applicant was diagnosed with canal stenosis on 1 January 2008. She did not submit a claim for compensation to the ABCC until 9 November 2009…over one year and six months past the deadline.
>
> The ABCC concluded that the explanation provided by the Applicant for the delay in filing her claim did not constitute exceptional circumstances and was insufficient to waive time limits set out under article 12 of Appendix D. …
>
> …The Secretary-General's approval of the recommendation of the [ABCC] not to waive the time limit was legal, rational and procedurally correct. The Applicant did not demonstrate that there

> were exceptional circumstances that warranted the waiver of the time limit under Article 12 of Appendix D. The Applicant's medical condition did not justify her delay of one and a half years in submitting her claim for compensation. The Applicant cannot rely upon her own ignorance of the Staff Rules and administrative procedures for the submission of a claim as an excuse for not meeting the time limit.
>
> …
>
> The Dispute Tribunal is to determine if the decision not to waive a time limit was legal, rational, and procedurally correct *(Sanwidi* [2010-UNAT-084]). The Dispute Tribunal does not substitute its own judgment for that of the decision-maker.

Consideration

Receivability

36. The Tribunal, by Order No. 331 (NY/2013), found that the application on the merits dated 12 May 2011 was filed within the time limit of 90 days from the day on which the Applicant received the decision that her claim for compensation in front of ABCC was denied due to not having been submitted within the time limits.

Applicable law

37. ST/SGB/2009/7 (Staff Rules), dated 16 June 2009, stated (emphasis in original):

> **Rule 6.4**
>
> **Compensation for death, injury or illness attributable to service**
>
> Staff members shall be entitled to compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations, in accordance with the rules set forth in appendix D to the present Rules.
>
> …
>
> **Appendix D**

Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations

See ST/SGB/Staff Rules/Appendix D/Rev.1 and Amend.1 and ST/SGB/Staff Rules/1/Rev.7/Amend.3, issued separately

38. ST/SGB/Staff Rules/Appendix D/Rev.1 (Appendix D to Staff Rules), dated 1 January 1966, states (emphasis in original):

> **Section II. Principles of award and general provisions**
>
> *Article 2. Principles of award*
>
> The following principles and definitions shall govern the operation of these rules:
>
> (a) Compensation shall be awarded in the event of death, injury or illness of a staff member which is attributable to the performance of official duties on behalf of the United Nations, except that no compensation shall be awarded when such death, injury or illness has been occasioned by:
>
> (i) The wilful misconduct of any such staff member; or
>
> (ii) Any such staff member's wilful intent to bring about the death, injury or illness of himself or another;
>
> (b) Without restricting the generality of paragraph (a), death, injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the United Nations in the absence of any wilful misconduct or wilful intent when:
>
> (i) The death, injury or illness resulted as a natural incident on performing official duties on behalf of the United Nations; or
>
> (ii) The death, injury or illness was directly due to the presence of the staff member, in accordance with the assignment by the United Nations, in an area involving special hazards to the staff member's health or security, and occurred as the result of such hazards; or
>
> (iii) The death, injury or illness occurred as a direct result of travelling by means of transportation furnished by or at the expense or direction of the United Nations in connexion with the performance of official duties; provided that

> the provisions of this sub-paragraph shall not extend to private motor vehicle transportation sanctioned or authorized by the United Nations solely on the request and for the convenience of the staff member;
>
> …
>
> **Section III. Compensation payments**
>
> …
>
> *Article 11. Injury or illness*
>
> In the case of an injury or illness of a staff member, or of a former staff member, which is attributable to the performance of official duties on behalf of the United Nations, the following provisions shall apply:
>
> …
>
> *Article 11.2*
>
> In the case of injury or illness resulting in disability which is determined by the Secretary-General to be partial:
>
> (a) The United Nations shall pay all reasonable medical, hospital and directly related costs, whether or not the staff member remains in the employment of the United Nations;
>
> …
>
> **Section IV. Administration and procedures**
>
> *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.

Compensation claim

39. The Applicant filed a claim before the ABCC on 9 November 2009 whereby she requested the reimbursement of the cost for (1) a June 2008 plane ticket from Bangkok to Rome (12,660 Thai Baht) on the grounds that she needed to be medically evacuated; and (2) an Ayurveda treatment received in October 2009 (EUR 1,200) on the grounds that this treatment was effective in relieving her pain. The Applicant specified in her claim that "Vanbreda has provided a reimbursement for all bills …

except the … ones from October … and the flight back home following hospitalisation (Bangkok, Thailand to Rome, Italy".

40. On 14 February 2011, the ABCC rejected the Applicant's claim as time-barred. The ABCC considered that her explanations for the delay incurred in filing her claim did not represent exceptional circumstances. "Per the Secretary-General's [5 February 2011] decision, the explanation […] provided was not sufficient to waive the provisions of article 12 of Appendix [D] to the Staff Rules".

41. The Applicant does not deny that her claim for compensation under Appendix D to the Staff Rules was time-barred. Rather, she submits that the record shows that the delay incurred by her in submitting a claim to the ABCC was the result of her being unable to obtain clear advice from HRMS regarding the process to follow with regard to submitting a claim to the ABCC. The Applicant therefore contends that there were exceptional circumstances present that require that the ABCC waive the applicable time limits and consider her claim.

42. As expressed by the Appeals Tribunal in *Sanwidi* 2010-UNAT-084:

> 40. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

43. The Tribunal will therefore review whether all the relevant facts that lead to the ABCC determining that the Applicant's claims did not present exceptional circumstances were properly considered.

44. As result from the uncontested facts presented by the Applicant, her illness started in November–December 2007 and, despite pursuing medical treatments, her

condition worsened resulting in her hospitalization in early June 2008 in Bangkok. On 9 June 2008, the Applicant traveled at her own cost to Rome where she was again hospitalized. Following her hospitalization and medical examinations, the Applicant, in September 2008, consulted a lawyer in Italy who advised her to immediately submit a claim for compensation/disability benefit to the United Nations.

45. During this period, the Applicant was placed on sick leave on a full time basis from 15 June 2008 to 15 October 2008. The Applicant returned to work on a part-time basis on 16 October 2008 until 15 January 2009 at which point she returned to work on a full time basis.

46. The evidence produced by the Applicant indicates that on 26 December 2008, she emailed three colleagues for the purpose of obtaining clear information as to how and where to apply for a disability benefit. The record does not indicate whether anyone responded to this email or whether the Applicant followed-up to obtain a response thereto. The Applicant claims that despite her efforts nobody from her office was able to provide her with information relating to the relevant legal provisions and/or the competent body responsible for resolving such a claim until 2 October 2009.

47. On 2 October 2009, the Applicant made another query on the issue of disability benefits to HRMS who responded to her request that same day. In their response, HRMS provided her with clear information about disability benefits, medical expenses and the competent bodies responsible for addressing such claims.

48. The Tribunal considers that ignorance of law is not an excuse and staff members are presumed to be aware of and know the regulations and rules applicable to them (*El-Khatib* 2010-UNAT-029; *Rahman* 2012-UNAT-260). The rules governing compensation in the event of illness attributable to the performance of official duties are contained in Appendix D to the Staff Rules. Consequently, all staff members, based on their obligation to know, be aware of, and respect all the staff

regulations and rules are presumed to be aware of the content Appendix D to the Staff Rules.

49. As evidenced by the Applicant's claim before the ABCC, she was aware that the deadline for her to submit a claim under Appendix D had expired resulting in her explaining that there were exceptional circumstances for the incurred filing delay which rendered her request receivable.

50. The Tribunal notes that iSeek (the United Nations internal web portal) was launched in Bangkok on May 2006 at which point all of the United Nations Staff Regulations and Rules, including Appendix D, became available to staff members within the UN Library section of iSeek. The Tribunal further notes that Appendix D is directly referenced in the index, and in the body, of the Staff Regulations and Rules.

51. Taking into consideration the Applicant's health condition and her difficult recovery during October 2008–January 2009, the Tribunal considers that the latest date by which time can be considered to have started to run under Appendix D was four months from the date on which she returned to work on a full time basis– 15 January 2009. Consequently, the last date by which she could have filed any claim under Appendix D to the Staff Rules was 15 May 2009.

52. The Tribunal concludes that the ABCC correctly determined that the circumstances presented by the Applicant could not result in a waiver of the deadline for requesting the reimbursement of the costs for the June 2008 plane ticket and therefore correctly rejected this part of the Applicant's request. The cost of the ticket was known to the Applicant since June 2008 and there are no plausible explanations as to why she did not request its reimbursement together with her other medical costs from the same 2008 time period.

53. The second request submitted by the Applicant, as part of her 9 November 2009 claim for compensation, concerns the reimbursement of the costs of

the Ayurveda treatment which she received in October 2009 as these were not covered by the Applicant's medical insurance.

54. As results from the uncontested facts presented by the Applicant, it appears that the Applicant's illness became chronic in November 2007 following which it continued worsening. However, it was only clearly diagnosed as a canal stenosis in June 2008. Further, it was not possible for the Applicant or her doctors, during the four months that followed the onset of the illness, to predict that the treatments recommended and followed by her until September 2009 would not reduce her severe pain. It is only in October 2009, following her first 20-day Ayurveda treatment, that her pain levels decreased. It results from the foregoing that the Applicant's medical condition required a variation of her treatment in October 2009. Considering that the results of the new treatment were positive, it was recommended by her doctor that she continue receiving it for a period of at least three weeks per year. The Applicant continued the same treatment once a year until 2012.

55. Article 11.2 of Appendix D to the Staff Rules states that in case of an illness or injury, which is attributable to the performance of a staff members official duties on behalf of the United Nations, resulting in a partial disability, a staff member has the right to claim compensation for all reasonable medical, hospital and directly related costs whether or not the staff member remains in the employment of the United Nations. Article 12 of Appendix D further establishes that the mandatory deadline by which a claim for compensation has to be filed under these rules is within four months of the injury or the onset of the illness.

56. The Tribunal considers that the legal provisions mentioned above address the types of costs that are covered by Appendix D: reasonable medical, hospital or directly related costs known by the staff member. This represents the general rule applicable to the compensation of the costs that are effectively known by the staff member during the four months period that follows the onset of the illness.

57. Should a staff member not be able to file a claim for compensation within the imparted four months deadline, he or she may have the claim considered by the Secretary-General at a later date provided he or she can present exceptional circumstances, whether subjective and/or objective, to justify the delay.

58. The Tribunal considers that objective circumstances exist when, for example, the initial diagnosis or treatment of a progressive illness changes or is completed in accordance with the evolution of the illness or the recommended new treatment, neither of which can be foreseen by the treating physicians and, therefore, by the staff member, within four months from the onset of the illness. In such cases, the Tribunal is of the view that the interpretation of art. 12 of Appendix D must respect the principles of equity and non-discrimination in order to permit an equal consideration of the claims filed by staff members in relation to future medical, hospital or directly related costs which were not known to them within four months from the date of the onset of their illness.

59. Consequently, the established deadline should be calculated from the date of the new diagnosis or from the date on which the costs of the new treatment become effectively known by the staff member. Otherwise, a staff member's right to claim all the costs related to his or her illness will remain illusory and without substance. The Tribunal also considers that it would be absurd and unreasonable to expect a staff member to formulate a compensation claim within four months from the onset of the illness for possible future costs related to his or her illness which are unknown at the time. This conclusion is supported by the fact that the cost of the 2012 Ayurveda treatment was reimbursed to the Applicant.

60. In the present case, the Tribunal finds that the Applicant's illness resulted in the need for an ongoing evaluation as well as the exploration of new treatments. The Applicant was therefore not in a position to know the costs related to the Ayurveda treatment and to request compensation for that treatment prior to 24 October 2009. The Applicant, by submitting her claim to the ABCC on

9 November 2009, therefore filed her compensation claim within a reasonable amount of time (as soon as possible).

61. The Tribunal considers that the ABCC erred in finding that the exceptional circumstances presented by the Applicant did not result in an objective justification for the delays incurred and finds that her request for the reimbursement of the October 2009 Ayurveda treatment was timely filed before the ABCC.

62. In view of the Tribunal's finding that the Applicant's claim presented exceptional circumstances justifying the delays incurred in the submission of her claim, the ABCC's 14 February 2011 decision shall be partially rescinded. The Applicant's request for compensation of the October 2009 Ayurveda treatment is to be remanded to the ABCC.

63. The Tribunal takes note that the Applicant: (i) between 2010 and 2012 underwent the same treatment (Ayurveda) on a yearly basis (18 to 30 October 2010, 10 to 29 October 2011 and 6 to 28 October 2012); (ii) filed timely requests for the reimbursement of these treatments; (iii) the only costs that were reimbursed were those of the 2012 treatment; and (iv) that in view of her medical condition, the United Nations Joint Staff Pension Fund is currently considering placing her on disability. These factors shall be fully and fairly considered by the ABCC in the light of art. 11.2 of Appendix D. The Tribunal considers that the present decision represents per se (itself) a sufficient remedy for the distress caused to the Applicant by the procedural delays and her request for moral damages is to be rejected.

Conclusion

In the view of the foregoing, the Tribunal DECIDES:

64. The ABCC 14 February 2011 decision is partially rescinded and the Applicant's request for the reimbursement of the Ayurveda treatment is remanded to the ABCC for a fair and full consideration.

Observations

65. The Tribunal notes that the present case is related to a compensation claim submitted to the ABCC for the reimbursement of medical costs resulting from an illness. The Applicant's illness has resulted in a permanent disability which appears to be attributable to the performance of her official duties.

66. All staff members have the obligation to be knowledgeable of the Staff Regulations and Rules. Nevertheless, the Tribunal observes that Appendix D was adopted on 1 January 1966 and the only update that has been made to it since then was in 1976. The Tribunal considers that the information contained in Appendix D being very important with regard to the wellbeing of staff members, it has to be disseminated in a more supportive and comprehensive manner and it also has to be reviewed/updated periodically.

67. As results from arts. 1.3 and 1.4 of the Charter of the United Nations adopted in 1945, the United Nations is the center for harmonizing the actions of nations in order to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms.

68. In accordance with sec. III of the International Labour Organization ("ILO") Declaration of Philadelphia, the ILO is "the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles".

69. As stated in art. 23 of the Universal Declaration of Human Rights adopted in 1948, everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. This article contains four fundamental rights: the right to work, the right to a free choice of

employment, the right to just and favorable conditions and the right to protection against unemployment.

70. It results from the above that the right to just and favorable work conditions is a fundamental right and, in order to protect and promote it, the ILO adopted several conventions, as detailed below which establish mandatory legal provisions regarding safe and healthy working environment.

71. The ILO Convention on Occupational Safety and Health Convention (Convention No. 155) of 1981 states:

> Article 16
>
> 1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.
>
> …
>
> Article 19
>
> There shall be arrangements at the level of the undertaking under which—
>
> (a) workers, in the course of performing their work, co-operate in the fulfilment by their employer of the obligations placed upon him;
>
> (b) representatives of workers in the undertaking co-operate with the employer in the field of occupational safety and health;
>
> …
>
> Article 20
>
> Co-operation between management and workers and/or their representatives within the understanding shall be an essential element of organisational and other measures taken in pursuance of Articles 16 to 19 of this Convention.
>
> Article 21
>
> Occupational safety and health measures shall not involve any expenditure for the workers.

72. The ILO Convention on Occupational Safety and Health Recommendation (Convention No. 164) of 1981, *Recommendation concerning Occupational Safety and Health and the Working Environment*.

> I. Scope and definitions
>
> 1
>
> (1) To the greatest extent possible, the provisions of the Occupational Safety and Health Convention, 1981, hereinafter referred to as the Convention, and of this Recommendation should be applied to all branches of economic activity and to all categories of workers.
>
> …
>
> II Technical Fields of Action
>
> …
>
> 4. With a view to giving effect to the policy referred to in Article 4 of the Convention, and taking account of the technical fields of action listed in Paragraph 3 of this Recommendation, the competent authority or authorities in each country should—
>
> (a) issue or approve regulations, codes of practice or other suitable provisions on occupational safety and health and the working environment, account being taken of the links existing between safety and health, on the one hand, and hours of work and rest breaks, on the other;
>
> (b) from time to time review legislative enactments concerning occupational safety and health and the working environment, and provisions issued or approved in pursuance of clause (a) of this Paragraph, in the light of experience and advances in science and technology;
>
> (c) undertake or promote studies and research to identify hazards and find means of overcoming them;
>
> …
>
> 8. There should be close co-operation between public authorities and representative employers' and workers' organisations, as well as other bodies concerned in measures for the formulation and application of the policy referred to in Article 4 of the Convention.
>
> IV. Action at the Level of the Undertaking
>
> …
>
> 14. Employers should, where the nature of the operations in their undertakings warrants it, be required to set out in writing their policy and arrangements in the field of occupational safety and health, and the various responsibilities exercised under these arrangements, and to

> bring this information to the notice of every worker, in a language or medium the worker readily understands.
> …
> 17. No measures prejudicial to a worker should be taken by reference to the fact that, in good faith, he complained of what he considered to be a breach of statutory requirements or a serious inadequacy in the measures taken by the employer in respect of occupational safety and health and the working environment

73. The ILO Convention on Promotional Framework for Occupational Safety and Health Convention (Convention 187) of 2006, *Convention concerning the promotional framework for occupational safety and health*, states:

> Article 2
>
> 1. Each Member which ratifies this Convention shall promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.

74. The United Nations plays a central role in promoting and encouraging the respect by member states of the human rights and fundamental freedoms, and it is expected to be an example for the member states in ensuring that the principles established in relevant international conventions, including those of the ILO, are respected.

75. The United Nations, as an employer, has to promote and actively implement a safe and healthy working environment. A very important element of such a constant effort is the prevention policy reflected in arts. 16 and 19 from the ILO Convention No. 155 and art. 2 from the ILO Convention No. 187. These provisions are mandatory and apply to all employers and their role is to avoid, as much as possible, any injury and/or illness attributable to the performance of the official duties of the employees. The employer's obligation to ensure a safe and healthy occupational environment is an ongoing process: the working place must be ergonomically evaluated by specialists before the beginning of the contract and periodically during

the contract. An efficient policy is required to be established and equally implemented in all duty stations and the recommendations made by the specialists in their periodic reports must be followed.

76. The Tribunal notes that on 9 February 1999 the Secretary-General issued ST/IC/1999/14 –Guidelines for ergonomic workstations and work with computers, but it appears that these provisions were not followed in the Applicant's case. Further, most of the articles are drafted as recommendations rather than obligations ("workstations should; existing desks, tables and regular chair may; the level and type of illumination should; the screen should; the windows should be covered; the walls should be dark or pastel colours, an operator should take breaks; computer work should be alternate with any task or activity…". There are however no provisions that reflect the Organization's obligation to ensure a safe and healthy working environment and its active role in implementing a prevention policy and continuously improve the occupational safety and health, except the ones that concern the provision of medical services. Arts. 15 and 18 (Eye health) state that the Medical Services Division must provide staff members a regular visual acuity exams during the routine medical examinations. An ophthalmologist also visits the Division periodically. The Medical Services Division coordinates lectures and seminars on ergonomics at the workplace and related subjects.

77. The Tribunal observes that such guidelines must be reviewed periodically to respond to the real needs of staff members and to address other health problems which may appear over time. Clear obligations for the contractual parties must be reflected in the legal provisions to ensure a real and efficient implementation of the Organization's prevention policies.

78. It is clear from the present case that a diligent implementation of the prevention policy could have totally or partially reduced the risk of the staff member's illness/disability by age of 38 and, implicitly, the medical costs carried by the Organization. Moving forward, the Medical Services Division, which already has

a defined and important role, must be actively involved in assessing the occupational environment for staff members, including by making concrete proposals to management.

79. A positive example in this sense is ST/SGB/2003/19 (Basic security in the field: staff safety, health and welfare–interactive online learning) which was adopted in late 2003. Section 3 of ST/SGB/2003/19 establishes clear obligations and deadlines, both for the staff members and the heads of departments, by stating that all the staff members must complete the learning programme as soon as possible and no later than 31 March 2004 and heads of departments and offices are responsible for ensuring completion of the learning programme by their staff and others for whom they are responsible, including by providing appropriate time and resources.

80. Therefore, it is advisable that such a model be followed when reviewing the current and future regulations and rules on occupational health and safety.

(*Signed*)

Judge Alessandra Greceanu

Dated this 10th day of April 2014

Entered in the Register on this 10th day of April 2014

(*Signed*)

Hafida Lahiouel, Registrar, New York