



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SELIM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Yassin Tageldin Yassin

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

The Application and Procedural History

1. The Applicant is a Field Assistant at the United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO). He serves at the FS-3 level and has been at the Mission since 29 December 1999.

2. On 10 April 2011, the Applicant filed an Application appearing to contest decisions/absence of decisions relating to his remuneration, compensation for workplace injury and his desire to be reassigned to a less difficult duty station.

3. The Application was served on the Respondent on 14 July 2011.

4. On 22 July 2011, the Respondent sought leave to have the Receivability of this matter determined as a preliminary issue. On the same day, the Respondent also filed his Reply on Receivability in which he moved the Tribunal to have this matter dismissed as not receivable.

5. On 15 August 2011, the Tribunal issued Order No. 091 (NBI/2011) directing the Applicant to provide evidence of his correspondence with the Management Evaluation Unit.

6. On 6 December 2013, the Registry wrote to the Applicant with directions to submit his submissions in response to the Respondent's position on receivability by 27 December 2013.

7. Those submissions were not filed before the Tribunal. What the Registry received however were several filings of medical certificates by doctors treating the Applicant and other submissions "updating the Tribunal" as to the situation of the Applicant.

8. On 15 May 2014, the Tribunal issued a Notice of Hearing (Order No. 103 (NBI/2014)) inviting the Parties to a case management hearing.

9. It became clear at the case management hearing on 22 May 2014 that there were significant communications related challenges between the Parties, and between the Parties and the Tribunal. The court process was not fully understood

by the Applicant, which coupled with language issues, made for significant confusion.

10. Having heard the Parties' respective submissions, the Tribunal made the considered decision of urging the Parties to consider having the disputes in this matter resolved informally.

11. Counsel for the Respondent informed the Tribunal that it needed further documentation showing, in particular, that the Applicant had previously asked to be reassigned to a duty station of lesser hardship; following which, subject to instructions from his client, he would be willing to consider the prospect of engaging in a discussion with the Applicant with a view to resolving this dispute.

12. The Applicant, for his part, was agreeable to the suggestion that this matter might be best resolved informally between the Parties.

13. On 27 May 2014, the Tribunal issued Order No. 139 (NBI/2014) directing the Parties to jointly advise the Tribunal if this matter is capable of being resolved informally or if a formal order referring the matter to mediation would be necessary.

14. On 27 June 2014, the Parties jointly filed submissions stating that "counsel for the Respondent has consulted with the client office and respectfully submits that there is no prospect of this matter being resolved informally or formally through mediation".

FACTS AND SUBMISSIONS

15. As of 28 September 2001, the Applicant was assigned to the (then) United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC).¹ His assignment required travel to the different regions in the Democratic Republic of the Congo (DRC) - namely Kindu, Kisangani, Goma, Béni and Kinshasa.

¹ As of 1 July 2010, MONUC was renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

16. The Applicant submits that he suffered trauma following incidents related to the civil war between the belligerent parties in the DRC and having witnessed the killing of many of his colleagues. The pressures of the work environment and the ambient conditions in the DRC caused him to contract tuberculosis and malaria, for which the Mission did not provide adequate care.

17. The Applicant was transferred from Kindu to Goma in May 2006 for an 18 month assignment. He was however moved back to Kindu in August 2006, “in violation of the UN Rules”.

18. The Applicant claims that he was being ill-treated by his superiors; the combination of that and living in “fear of being killed” caused him to suffer from trauma and high blood pressure.

19. His physical and psychological health deteriorated. He suffered paralysis resulting in the partial loss of speech and physical mobility. He also developed cardiac and circulatory disorders. In January 2010, the Applicant fell down resulting in serious injuries of the spine and the neck. He had to undergo surgery followed by physiotherapy.

20. The Applicant submits that his move from Goma back to Kindu was in breach of the rules of the Organisation. His health has continued to deteriorate and he is seeking compensation for the injuries sustained at his place of work. He is also seeking compensation for loss of promotion.

21. The Applicant also submits that he replaced the “director of the office” in Kisingani and Goma and that he should receive the difference of the salary between an FS3, his grade, and an FS4, the grade of the “director.”

22. The Applicant also submits that he should have been transferred to a less stressful duty station.

23. The Respondent’s position is that the Application is not receivable for three reasons: (a) the Applicant has failed to identify the administrative decision he is contesting with sufficient specificity; (b) the Applicant has not filed an “Appendix D” claim with the Advisory Board on Compensation Claims (ABCC);

and (c) the Applicant has failed to request management evaluation of the decision to reassign him.

24. The Applicant provided the Tribunal with copies of his correspondence with various officials in the Mission, at Headquarters in New York and the Office of Staff Legal Assistance seeking their assistance towards having his issues resolved. Included in the correspondence were several requests to be reassigned to a less difficult duty station.

DELIBERATIONS

25. The issue to be determined is whether the claim for compensation for the injuries suffered by the Applicant and the fact that he was not moved to another mission are receivable.

26. The Tribunal has jurisdiction to determine whether an administrative action was properly taken. This presupposes that a staff member who is challenging an administrative decision clearly identifies the decision he is seeking to challenge². The applicant must also comply with the *sine qua non* requirement of requesting management evaluation of the impugned decision within the stipulated timelines. The Tribunal is also “competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute”³.

27. In the present claim for compensation, the Applicant merely recites what he should be compensated for. He did not identify or explain what administrative decision was taken that was adverse to him and how that decision was unlawful.

28. Even if the Tribunal were to sift through the Applicant’s submissions and ‘find’ the impugned decision, the Applicant has not been able to show that he has requested management evaluation of that or any other administrative decision.

29. Claims governing compensation for work related injury are governed by Appendix D to the Staff Rules.⁴ The Appendix sets out the rules governing

² *Planas* 2010-UNAT-049 and *Reid* 2014-UNAT-419.

³ *Christensen* 2013-UNAT-335.

⁴ ST/SGB/Staff Rules/Appendix D/Rev.1.

compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nation. An Advisory Board on Compensation Claims (ABCC) was established to make recommendations to the Secretary-General concerning claims for compensation under those rules.

30. Where a staff member is not satisfied with the determination made by the Secretary-General, that staff member may within a period of thirty days submit a request for reconsideration pursuant to art.17 of Appendix D to the Staff Rules. The decision of the Secretary-General pursuant to an art.17 request would be open to judicial scrutiny.

31. The court's scrutiny is however limited to determining whether all the procedural requirements relating to the merit and assessment of the claim have been complied with. The Tribunal has no jurisdiction to evaluate the amount of compensation a staff member is entitled to following injuries suffered in the course of employment.

32. In the absence of any evidence that the Applicant submitted a claim to the ABCC, the Tribunal has no jurisdiction to consider his claim for compensation for work related injury.

Decision

33. The Application is not receivable.

(signed)
Judge Vinod Boolell
Dated this 16th day of October 2014

Entered in the Register on this 16th day of October 2014

(signed)
Abena Kwakye-Berko, Registrar, Nairobi