



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MOHAMMED ALI AL-KAISSI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Misbah ul Mustafa

**Counsel for Respondent:**

Steven Dietrich, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a Chief General Services Officer at the United Nations Military Observer Group in India and Pakistan (“UNMOGIP”) filed an application on 30 September 2017 challenging the decision of the Secretary of the Advisory Board on Compensation Claims (“ABCC”), denying his claim for compensation or injuries on the ground that they were not recognised as serviced-incurred as per Appendix D of the Staff Rules (“contested decision”).
2. The Applicant also challenged the outcome of his management evaluation request of the contested decision.

## **Facts**

3. On 20 December 2013, the Applicant was seriously injured during a football match organised by the UNMOGIP staff welfare committee. It appears that his medical condition has worsened over the years.
4. The Applicant filed a claim for compensation under Appendix D of the Staff Rules which was rejected by the Secretary, ABCC, without referral to the ABCC, and he was informed of that decision on 5 September 2017.
5. After filing a request for management evaluation, which was found not to be receivable, the Applicant filed the present application, which was served on the Respondent on 12 October 2017 with 13 November 2017 as deadline to file a reply.
6. On 3 November 2017, the Chief Human Resources Officer, UNMOGIP, communicated to the Applicant a decision to place him on Special Leave Without Pay (“SLWOP”) upon the exhaustion of his sick leave and annual leave balance.
7. From the documents on record, it appears that the Applicant has utilised and exhausted all his full and half pay sick leave, including uncertified sick leave and also his annual leave balance.

8. On 10 November 2017, the Applicant filed a motion for interim measures seeking the suspension of the decision to place him on SLWOP and denying his request for “Special Sick Leave Credit”.

9. The Tribunal suspended the implementation of the decision to place the Applicant on SLWOP by five working days, pending the determination of the motion and ordered the Respondent to file a reply to the motion by 14 November 2017.

10. On 13 November 2013, the Respondent filed a reply to the application on the merits in which he informed the Tribunal that the Secretary, ABCC, had rescinded the contested decision rejecting the Applicant’s claim for compensation and that the Applicant’s claim will be referred to the ABCC for consideration.

11. On 14 November 2017, the Respondent filed his reply to the Applicant’s motion for interim measures.

12. The Tribunal gave the Applicant an opportunity to provide comments on the Respondent’s reply, especially in light of the rescission of the contested decision, which he did on 15 November 2017.

### **Considerations**

13. The Applicant challenged the decision of the Secretary, ABCC, to deny his claim for compensation under Appendix D of the Staff Rules. From the submission made by the Respondent’s Counsel, it appears that the Secretary, ABCC, on 10 November 2017 rescinded his decision and decided to submit the Applicant’s claim for compensation for consideration to the ABCC.

14. The act of rescinding the contested decision renders the Tribunal’s assessment of the merits of the case moot. In *Kallon* 2017-UNAT-742, the Appeal’s Tribunal held, *inter alia*, that:

Just as a person may not bring a case about an already resolved controversy (*res judicata*) so too he should not be able to continue a case when the controversy is resolved during its pendency. The doctrine accordingly recognizes that when a matter is resolved

before judgment, judicial economy dictates that the courts abjure decision.

15. The Applicant argues that the withdrawal of the contested decision is a “move by the Respondent to escape from the liabilities of all previous omissions and commissions and to avoid any judgment of the Tribunal in [his] favour.”

16. The decision of the Secretary, ABCC, to deny the Applicant’s claim for compensation can no longer be subject of a challenge before this Tribunal, because it ceased to have legal effect the moment it was rescinded. Since the contested decision is no longer existing, the Tribunal cannot rule on the Applicant’s case. Consequently, the Applicant’s request to have his case pending before the Tribunal until the Respondent comes up with a new decision on the compensation claim is untenable.

*Management evaluation*

17. The Applicant in his application indicated that he was also challenging the decision of the Management Evaluation Unit (“MEU”) to find his request not receivable.

18. It is settled jurisprudence that this Tribunal will not review a decision made by MEU. An Applicant who is dissatisfied by the outcome of MEU needs to plead his case before the Tribunal, challenging the particular administrative decision(s) which is considered to be non-compliant with his terms of appointment. The outcome of MEU, is not of itself an administrative decision, consequently, this Tribunal cannot pass judgment on it (*Staedtler* UNDT/2014/046).

19. In light of the above, the Applicant’s challenge against the outcome of the MEU review is not receivable.

*Motion for interim measures*

20. The Applicant, on 10 November 2017, filed a motion for interim measures pending proceedings pursuant to art 10.2 of the Tribunal's Statute which provides:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

21. The Applicant described the contested decision that he sought to have suspended as "denial of special sick leave and putting [him] on [SLWOP]".

22. The Tribunal notes that a motion for interim measures under art 10.2 of its Statute is dependent on the existence of a substantive matter pending before it. As indicated above, the substantive matter before the Tribunal was the Applicant's challenge to the decision of the Secretary, ABCC, denying his claim for compensation for injuries under Appendix D to the Staff Rules.

23. Since that decision was rescinded, the substantive case has become moot and the Tribunal does not have a live matter before it to adjudicate upon.

24. The lack of existence of a substantive matter makes any motion for interim measures moot, because the purpose of an interim measure is to grant temporary relief pending the determination and outcome of the substantive proceedings. The substantive proceedings in this case have been brought to an end by virtue of the rescission of the contested decision, thus rendering the Applicant's motion for interim measures moot.

25. The foregoing notwithstanding, the Tribunal notes that generally, administrative decisions should be appealed separately even if they pertain to the same facts, because they remain independently reviewable decisions (see *Gizaw* Order No. 151 (NY/2017)). The Tribunal notes that the Applicant did not seek management evaluation of the decision which he asks to be suspended in his motion for interim measures.

## **Conclusion**

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

- a. The application against the decision by the Secretary, ABCC, to reject the Applicant's claim for compensation under Appendix D is moot and is dismissed;
- b. Since the application on the merits has become moot, the motion for interim measures is not receivable, and is dismissed; and
- c. The Applicant's challenge against the outcome of the MEU review is not receivable by the Tribunal, the application in that respect is dismissed.

*(Signed)*

Judge Teresa Bravo

Dated this 17<sup>th</sup> day of November 2017

Entered in the Register on this 17<sup>th</sup> day of November 2017

*(Signed)*

René M. Vargas M., Registrar, Geneva