



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/161

Judgment No.: UNDT/2019/177

Date: 13 December 2019

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

DAHIR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Gad Gathu Kiragu

Counsel for the Respondent:
International Civil Aviation Authority

The Application and Procedural History

1. The Applicant is an employee of the International Civil Aviation Authority (ICAO), who sustained injuries while serving with the Organisation in Somalia.
2. On 28 November 2019, the Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi challenging ICAO's failure to compensate her for the injuries sustained during the course of duty.

Considerations

3. The conditions governing appeals by ICAO staff members are specified in the Statute and the Agreement between the United Nations and ICAO signed on 23 December 2009 by the Secretary General of ICAO and on 6 January 2010 by the Secretary-General of the United Nations (Agreement).
4. Article 2(6) of the Agreement provides:

An application shall not be receivable unless the person concerned has previously submitted the dispute to the neutral first instance process provided for in the Staff Regulations of [ICAO] and the latter has communicated its opinion to the Secretary General [of ICAO], except where the Secretary General [of ICAO] and the applicant have agreed to submit the application directly to the Appeals Tribunal.
5. The Advisory Joint Appeals Board (AJAB) is the "first instance process" described in the Agreement. That is where the Applicant should have directed her application.
6. Effective 1 July 2009, the United Nations and ICAO entered into an agreement providing the Appeals Tribunal with "competen[ce] to hear and pass

judgement on an application filed by staff members of [ICAO]” “in accordance with Article 2, paragraph 10 of the Statute” of the Appeals Tribunal (Statute).¹

7. In other words, an applicant who is dissatisfied with the decision of the AJAB would then have the right to challenge the latter’s decision before the United Nations Appeals Tribunal.

8. In *Ortiz*, the Appeals Tribunal held:

[A]n appeal [is] referred to the Appeals Tribunal, not directly against the original administrative decision, but against the final decision taken by the Secretary-General upon completion of the first-instance procedure. It is this Tribunal’s business to deliberate upon AJAB’s conclusions and recommendations and the reasons ... There should normally be no need for any other evidence than that submitted to AJAB.²

9. The United Nations Dispute Tribunal therefore has no jurisdiction to adjudicate on the Applicant’s dispute with ICAO.

10. This application is dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 13th day of December 2019

Entered in the Register on this 13th day of December 2019

(Signed)

Eric Muli, Legal Officer for
Abena Kwakye-Berko, Registrar, Nairobi

¹ *Williams v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2013-UNAT-376, para. 23.

² 2012-UNAT-231, para. 33.