



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

ARVIZU TREVINO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

**ON RECEIVABILITY**

---

**Counsel for Applicant:**

Laurence C. Fauth

**Counsel for Respondent:**

Alan Gutman, ALD/OHR, UN Secretariat

## **Introduction**

1. On 17 May 2019, the Applicant filed an application contesting correspondence from the Secretary of the Advisory Board on Compensation Claims (“ABCC”) advising him that his claim for compensation under Appendix D to the Staff Rules (“Appendix D”) was not receivable. As a remedy, the Applicant requests the Dispute Tribunal to remand the matter to the ABCC for consideration of the case.

2. On 30 June 2019, the Respondent filed his reply submitting that the application is moot and should be dismissed. The Respondent stated that on 19 June 2019, the Secretary of the ABCC advised the Applicant that he would be submitting his claim for consideration by the ABCC.

3. For the reasons stated below, the Tribunal finds that the application is moot and it is dismissed in its entirety.

## **Facts**

4. On 1 January 2006, the Applicant commenced his service with the United Nations.

5. On 29 July 2018, the Applicant filed a claim with the Secretariat of the ABCC under Appendix D to the Staff Rules for compensation for a service-incurred illness. The Applicant stated that the underlying illness was caused by harassment in the work place.

6. On 5 November 2018, the United Nations Joint Staff Pension Fund (“UNJSPF”) notified the Assistant Secretary-General of the Office of Human Resources Management (“ASG/OHRM”) that the Applicant had been awarded a disability benefit under art. 33 of the UNJSPF Regulations starting in 8 January 2019.

7. On the same day, the ASG/OHRM notified the Applicant that the Secretary-General had authorized the termination of his fixed-term appointment on account of his medical disability as of 7 January 2019.

8. On 22 February 2019, the Secretary of the ABCC informed the Applicant that his claim for compensation under Appendix D was considered non-receivable since a “compensation claim based on harassment requires an Organizational finding of harassment”, and “such claims are receivable by the ABCC only when the Organization has made a definitive finding of whether there has been harassment or an abuse of authority in a specific case”.

9. On 19 June 2019, the Secretary of the ABCC advised the Applicant that he would be submitting his claim for consideration by the ABCC.

### **Consideration**

10. The Applicant argues that whilst it is true that his claim for compensation under Appendix D was eventually submitted for consideration by the ABCC, he does not accept that his appeal is moot or that he has been provided with a complete remedy. In this regard, the Applicant states that the Respondent has admitted, by referring the claim to the ABCC on 19 June 2020, that Secretary of the ABCC’s prior decision of 22 February 2019 to not refer the claim was unlawful.

11. Upon review of the record, the Tribunal finds that the application is moot as the underlying contested decision in this case has been reversed. It is the jurisprudence of the Tribunals that in cases where the Administration rescinds the contested decision during the proceedings, the applicant’s allegations may be moot unless the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief (see for instance, *Gehr* UNDT/2011/211, confirmed by 2013-UNAT-328; *Lahoud* UNDT/2017/009).

12. The Tribunal notes that on 19 June 2019, the Secretary of the ABCC notified the Applicant that he would be submitting the Applicant's claim to the ABCC. The 19 June 2019 correspondence superseded the correspondence of 22 February 2019 thereby providing the Applicant with the remedy he has requested in the application, i.e., the remand of his case to the ABCC.

13. The Appeals Tribunal stated in *Kallon* 2017-UNAT-742 that an applicant has to demonstrate to the Dispute Tribunal how his rights remained adversely affected by a decision which has been superseded and to show that he is suffering an injury because of that decision. In the present case, although the Applicant believes the initial 22 February 2019 decision of the Secretary of the ABCC to be unlawful, he fails to demonstrate to the Tribunal how his rights remain adversely affected by the contested decision which has been superseded. The Applicant has also failed to show that he is suffering an injury as a result of the superseded decision.

14. The Tribunal notes that on 6 September 2019, the Applicant filed a motion for summary judgment in this case requesting that the case should be summarily decided on the merits, rather than on receivability. As the Tribunal has determined that the case is not receivable, the Applicant's motion is rendered moot.

15. The 19 June 2019 correspondence from the Secretary of the ABCC granted the Applicant his requested relief, and there are no remaining legal matters or remedies for the Dispute Tribunal to adjudicate.

**Conclusion**

16. The application is moot and it is dismissed in its entirety.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 10<sup>h</sup> day of December 2020

Entered in the Register on this 10<sup>h</sup> day of December 2020

*(Signed)*

Nerea Suero Fontecha, Registrar, New York