



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/149

Judgment No.: UNDT/2021/100

Date: 24 August 2021

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LARRIERA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

George Irving

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Background

1. The Applicant filed an application on 23 October 2019, revised on 11 January 2021, challenging the refusal to acknowledge her civil status and to process her claim for compensation under Appendix D to the Staff Rules as a surviving spouse of a staff member killed in the course of official duties. The Respondent requested rejection of the application as irreceivable. For reasons given below, the application is declined.

Facts and Procedure

2. The Applicant is a former United Nations staff member who alongside Mr. M. was a victim of a terrorist attack while working in Baghdad on 19 August 2003. The attack killed Mr. M.

3. The Applicant avers that she had formed a family with Mr. M. and that at the time of the attack they had been living together for two and a half years in a stable union. They were awaiting the finalization of his divorce in order to marry and have children.

4. On 1 June 2018, the Applicant through her Counsel, wrote to the Assistant Secretary-General for Human Resources (“ASG/HR”) providing documentation and filing a claim for a surviving spouse’s benefit under art. 3.4 of Appendix D to the Staff Regulations and Rules.

5. On 22 June 2018, the Secretary of the Advisory Board on Compensation Claims (“ABCC”) acknowledged receipt of the claim and advised that he was seeking legal advice on the policy matters raised in it.

6. On 26 April 2019, the Applicant’s Counsel wrote again to the ASG/HR referring to his prior correspondence and providing a Civil Registry Certificate of Common Law Marriage that had been issued by the Brazilian Government. He advised that if no response was received in the following 30 days, he would consider

it a negative decision within the meaning of staff rule 11.2. On the same day, the ASG/HR, replied by email advising that she was forwarding the letter of 26 April to the Director of Finance Division which handles Appendix D cases.

7. No reply was received following the 30 days.

8. On 17 July 2019, the Applicant requested management evaluation of the implied decision rejecting her claim.

9. On 20 June 2019, the Management Evaluation Unit acknowledged receipt, noting that in the absence of a response within 45 days, the Applicant could proceed to the Tribunal. There was no further response.

10. The Respondent filed a reply on 25 November 2019 in which he argued that the application is not receivable *ratione materiae*. He averred that the application did not identify as a contestable administrative decision. There was no refusal to process the Applicant's claim for benefits as a surviving spouse under Appendix D to the Staff Regulations and Rules. He submitted that on 12 November 2019, the ABCC Secretary issued the administrative decision in response to the Applicant's Appendix D claim. The decision refused to acknowledge the Applicant as a deceased staff member's spouse and rejected her claim for compensation, providing reasons thereof. At the time of filing this reply the Applicant had not submitted a management evaluation of the 12 November 2019 decision.¹

11. The Tribunal issued Order No. 001 (NBI/2021) on 4 January 2021, providing the Applicant an opportunity to file a rejoinder on the issue of receivability. This was filed on 11 January 2021.

12. On 19 August 2021, the Tribunal held a case management discussion ("CMD") to facilitate fair, efficient and expeditious management and disposal of this case.

¹ This was later done culminating to case number UNDT/NBI/2020/026 pending before the Tribunal.

Parties' submissions on receivability

Respondent's submissions

13. The Respondent argued that art. 2(1)(a) of the Dispute Tribunal Statute provides that this Tribunal is competent to hear and pass judgment on an application against an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The Appeals Tribunal has held that an administrative decision is a unilateral decision taken by the administration in a precise case, which produces adverse legal consequences to the legal order.²

14. The Applicant does not contest an administrative decision. There was no refusal to process her Appendix D claim. The Applicant may not unilaterally determine the date of a decision.³

15. While the Applicant had asserted that a failure to take a decision may constitute an administrative decision, there was no failure to take a decision in the instant case. Unlike in *Tabari*⁴, upon which the Applicant relied, the Applicant's claim was acknowledged and addressed. The ABCC Secretary acknowledged receipt of the Applicant's claim and informed her that she would receive a response in due course. A decision was issued on 12 November 2019. The Tribunal lacks jurisdiction to adjudicate the application.

Applicant's submissions

16. In the relevant parts, the Applicant submitted that the application is receivable as it rests on the entitlement to benefits of a deceased staff member under Appendix D and not upon her own status as a former staff member.

² *Tintukasiri* 2015-UNAT-526; *Hamad* 2012-UNAT-269.

³ *Terragnolo* 2015-UNAT-566, paras. 35-36.

⁴ 2010-UNAT-030.

Considerations

17. The Tribunal held a CMD on 19 August 2021 during which the parties agreed that this application had been superseded by the decision of 12 November 2019 from the ABCC denying the Applicant's claim for benefits under Appendix D. At the time of filing the application, on 23 October 2019, the Applicant had not yet received this decision.

18. In view of this development, the application is not receivable *ratione materiae* as indeed the application does not disclose a reviewable administrative decision.

Judgment

19. The Applicant has not established that she is contesting an administrative decision within the meaning of art. 2(1)(a) of this Tribunal's Statute as defined by jurisprudence⁵. The application is dismissed.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 24th day of August 2021

Entered in the Register on this 24th day of August 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁵ *Andronov*, UNAdT Judgment No. 1157 (2003) adopted by UNAT in *Andati-Amwayi* 2010-UNAT-058, paras. 17-19; *Hamad* 2012-UNAT-269, para. 23; *Al Surkhi et al.* 2013-UNAT-304, para. 26; *Ngokeng* 2014-UNAT-460, para. 26; *Gehr* 2014-UNAT-475, paras. 16-17; *Lee* 2014-UNAT-481, para. 48; *Terragnolo* 2015-UNAT-517, para. 31; *Reid* 2015-UNAT-563, para. 32; *Staedtler* 2015-UNAT-578, para. 30.