



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/003  
Judgment No.: UNDT/2021/112  
Date: 23 September 2021  
Original: English

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**Before:** Judge Joelle Adda  
**Registry:** New York  
**Registrar:** Nerea Suero Fontecha

WENZ

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**  
Alex Haines

**Counsel for Respondent:**  
Matthias Schuster, UNICEF

## **Introduction**

1. On 13 January 2021, the Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), filed an application contesting “the [Advisory Board on Compensation Claims’ (“ABCC”)] refusal to award compensation and UNICEF’s endorsement of that decision”.

2. On 12 February 2021, the Respondent replied that the application is not receivable *ratione materiae* because the contested administrative decision had been rescinded and the ABCC had been instructed to reconsider the matter.

3. In a further submission filed on 27 May 2021, the Respondent stated that the Controller, upon advice of the ABCC, had issued a new decision on the Applicant’s claim for compensation under Appendix D of the Staff Regulations (“Appendix D”).

4. For the reasons stated below, the Tribunal finds that the application is not receivable *ratione materiae*.

## **Relevant facts**

5. On 19 April 2019, the Applicant submitted a claim for compensation under Appendix D for injuries related to an incident that she suffered while on a mission with UNICEF.

6. On 22 July 2020, the Secretary of the ABCC informed the Applicant that her claim had been denied while noting that the ABCC would welcome reconsideration of her claim “upon sufficient official determination regarding the alleged underlying incident”.

7. On 17 September 2020, the Applicant requested management evaluation of the decision.

8. By memorandum dated 12 January 2021, the Controller was notified that the Under-Secretary-General of the Department for Management, Policy and Compliance (“USG/DMSPC”) had rescinded the 22 July 2021 decision. The Controller was informed that the USG/DMSPC and UNICEF both concurred that the Applicant had provided sufficient evidence to fully support her claim that the incident occurred, and the matter was remanded back to the ABCC for a fresh review of her claim. UNICEF notified the Applicant, through her Counsel, on 13 January 2021.

9. On 17 May 2021, the acting Secretary of the ABCC informed the Applicant that the Board had recommended the recognition of her illness as service incurred and that the Controller had endorsed the recommendation.

### **Consideration**

10. In *Crotty* 2017-UNAT-763, para. 15, the Appeals Tribunal determined that the Dispute Tribunal lacks jurisdiction to review an administrative decision that has been rescinded by the Administration before an application has been filed.

11. The Appeals Tribunal’s settled jurisprudence further provides that the Administration is not obligated to respond to requests for management evaluation and that the Management Evaluation Unit’s (“MEU”) responses to requests for management evaluation do not constitute reviewable administrative decisions within the scope of art. 8 of the Tribunal’s Statute (see, for instance, *Kalashnik* 2016-UNAT-661, para. 29 and *Kalashnik* 2017-UNAT-803, paras. 25-27).

12. In the present case, the record clearly shows that the contested decision was rescinded on 12 January 2021. Indeed, a fresh decision was issued with respect to the Applicant’s claim for compensation and notified to the Applicant on 17 May 2021.

13. The Applicant, however, insists that the rescission of the contested decision following management evaluation is an admission by the Administration that the contested decision was unlawful. She relies on *Kalashnik* 2016-UNAT-661 to conclude that the rescission of the unlawful decision does not eliminate its legal effect.

14. The Tribunal notes that in the case cited by the Applicant, the Appeals Tribunal clearly restated its well-settled jurisprudence that MEU determinations are not reviewable by the Dispute Tribunal and that, therefore, the processes utilized by the Administration during management evaluation are equally beyond the remit of this Tribunal (*Kalashnik* 2016-UNAT-661, paras 29-30).

15. In the present case, the Administration rescinded the contested decision following management evaluation and remanded the matter to the ABCC for a fresh consideration, which, in turn, resulted in a fresh decision on 17 May 2021.

16. The contested decision was, therefore, not a final administrative decision capable of review by this Tribunal, which, consequently, can make no pronouncement as to its legality or as to any effects it may have caused.

17. Accordingly, the Tribunal is not in a position to award compensation for damages resulting from the contested decision.

18. The Applicant's claim that the rescission of the contested decision constitutes an admission of its unlawfulness is without merit. The Administration may decide to rescind administrative decisions for a myriad of reasons and nothing in the 12 January 2021 memorandum indicates that the Administration admitted that the contested decision was unlawful.

19. The application is therefore not receivable *ratione materiae*.

20. With respect to the Applicant's request for an award of costs, she claims that she was "forced to engage counsel to get the matter before [the Dispute Tribunal] for rescission of the contested decision and ought to be ordered to refund the Applicant's reasonably incurred costs".

21. Article 10.6 of the Tribunal's Statute provides that the Tribunal may award costs when it determines that a party has manifestly abused the proceedings before it.

22. The Tribunal notes that in this case, the Applicant does not claim any abuse of the current proceedings, nor does the Tribunal observe any such abuse. Moreover, the Tribunal recalls that the engagement of private counsel is not required for an applicant to file a case before it.

23. There is, therefore, no basis for award of costs under art. 10.6 of the Tribunal's Statute.

24. In light of the above, the application has been rendered moot.

### **Conclusion**

25. The application is dismissed as not receivable.

*(Signed)*

Judge Joelle Adda

Dated this 23<sup>rd</sup> day of September 2021

Entered in the Register on this 23<sup>rd</sup> day of September 2021

*(Signed)*

Nerea Suero Fontecha, Registrar, New York