



Before: Judge Solomon Areda Waktolla

Registry: Nairobi

Registrar: Wanda Carter

RASCHDORF

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Introduction

1. On 18 July 2023, the Applicant, a former P-4 Political Affairs Officer with the United Nations Assistance Mission for Iraq (“UNAMI”), filed an application with the Dispute Tribunal to challenge the decisions of the Advisory Board on Compensation Claims (“ABCC”) dated 20 and 24 April 2023.
2. On 21 August 2023, the Respondent submitted his response contesting the receivability of the application within the meaning of art. 2.1(a) of the Dispute Tribunal’s Statute, among other reasons.
3. On 21 August 2023, the parties were informed that the case had been assigned to the undersigned Judge.
4. On 11 September 2023, the Tribunal issued Order No. 136 (NBI/2023) inviting the Applicant to respond to the Respondent’s position on receivability, and “strongly advising” him to seek the assistance of counsel in this matter. To hasten the process, the Tribunal referred the matter to the Office of Staff Legal Assistance for its consideration.

Facts

5. The Applicant joined the Organization on 1 April 2004. She separated from the Organization on 31 May 2019 upon the expiration of her fixed-term appointment.
6. On 21 October 2020, she submitted a claim for compensation under Appendix D (P.290 form) to the Claims and Entitlements team at the Kuwait Joint Support Office (“KJSO”). The P.290 form noted the date of injury as 11 April 2019. The Applicant wrote on the P.290 form that the injury was “non-service incurred related to injury/illness under Appendix D”.
7. On 1 November 2020, KJSO forwarded the form to ABCC for its review.
8. On 5 November 2020 and 12 November 2020, ABCC informed the Applicant that her claim was time-barred under Article 2.1 of Appendix D.

9. On 12 November 2020, the Applicant requested ABCC to reconsider her claim and attached a new P.290 form, which noted the date of injury as 14 September 2020.

10. ABCC did not respond to the Applicant's request.

11. On 24 November 2020, the Applicant filed an Application with the Dispute Tribunal, registered under Case No. UNDT/NBI/2020/096, contesting:

a. The decision by UNAMI not to renew her fixed-term appointment beyond its expiration on 31 May 2019;

b. The Division of Healthcare Management and Occupational Safety and Health's decision ("DHMOSH") not to refer her case for a disability benefit to the United Nations Joint Staff Pension Fund; and

c. The decision of the ABCC to reject her claim for compensation under Appendix D.

12. By Judgment *Rashdorf* UNDT/2022/044 issued on 17 January 2022, the Dispute Tribunal dismissed Case No. UNDT/NBI/2020/096 because:

a. The Applicant had failed to request management evaluation of the decision of UNAMI not to renew her fixed-term appointment and of the decision of the ABCC to reject her claim; and

b. It found that the decision of DHMOSH was legal, rational, and procedurally correct.

13. On 17 February 2022, the Applicant appealed Judgment *Rashdorf* UNDT/2022/044. On 24 March 2023, the Appeals Tribunal dismissed the Applicant's appeal (see *Raschford* 2023-UNAT-1343).

14. On 6 April 2023, the Applicant requested management evaluation of "the non-decision of the ABCC on the corrected/amended P-290 she submitted in November 2020 with the new onset date of 14 September 2020".

15. On 20 April 2023, the ABCC Secretariat informed the Applicant that it would present her 12 November 2020 claim to the ABCC for a “recommendation on whether to waive the deadline in accordance with Article 2.1 (e) of Appendix D”. The ABCC Secretariat also requested the Applicant to submit additional information in support of her 12 November 2020 claim. The Applicant submitted the requested information on 21 April and 25 April 2023.

16. The ABCC Secretariat acknowledged receipt of the Applicant’s additional information on 24 April and 25 April 2023 and presented it to the ABCC on 30 June 2023.

17. On 24 April 2023, the Management Evaluation Unit (“MEU”) informed the Applicant that her 6 April 2023 management evaluation request had been rendered moot by the decision of the ABCC to reconsider whether to waive the deadline in accordance with art. 2.1(e) of Appendix D.

18. On 1 May, 3 May, and 6 May 2023, the Applicant requested management evaluation of the decisions of the ABCC of 20 April and 24 April 2023 “to only receive a claim form of 21 October 2020 with an incorrect illness onset/awareness of 11 April 2019 for a formal review of receivability” and “to only formally receive a brief on a non-decision on a corrected claim form of 12 November 2020 rather than a corrected P-290 claim form itself with a corrected illness onset date/awareness date of 14 September 2020 for a review in line with Art. 2.1b”.

19. On 26 May 2023, the MEU dismissed the Applicant’s requests of 1 May, 3 May, and 6 May 2023 as not receivable.

20. The Applicant has come before the Tribunal to impugn a decision(s) she describes as follows:

The contested ABCC secretariat decisions of 20 and 24 April 2023 relate to a formal receivability screening of a disability claim of 12 November 2020 and a procedural announcement by the secretariat on how the claim will be processed by the board. (Annex 1) The disability claim was obstructed by three non[-]decisions by the organization (MSD, KJSO and ABCC) that date back to 30 May 2019 and 5 and 12 November 2020 (Annex

2,3,4,5). These material mistakes remain to be corrected through the board in line with Art 5.3 c, i and ii, Annex D. They were reviewed by the MEU in April and May 2023 and [were] either mooted or found to be moot, premature or preliminary/non-receivable in nature. (Annex 11 and 25) The applicant maintains that these material mistakes were not fully taken into account by the ABCC secretariat and MEU with regard to their impact on a correct determination of formal receivability deadlines, when both argued that it was lawful to assume that a waiver of deadlines/new setting of deadlines could only be granted in line with Art 2.1e, Annex D and not as the result of material mistakes of the organization. These mistakes included a) the non[-]determination of MSD in terms of an eligibility/non-eligibility in line with Annex D of 30 May 2019 in line with Art 2.1, STAI2019-1 (Annex3), b) the lack of engagement with relevant facts on 5 November 2020 through KJSO, as illustrated through the early separation (Annex 6) and emails sent and received on the same day, and c) the failure of the organisation (KJSO and ABCC) to acknowledge/process a P290 form of 12 November 2020 with a regularly receivable service incurredness awareness date of 14 September 2020 after a STAI2019-1 review (Annex 4). The latter would have been timely in line with Art 2.1b, Annex D but was never processed as a result of the KJSO and ABCC non[-]decisions. It is these administrative decisions of 20 and 24 April 2023 together with the MEU evaluations of the preceding three non[-]decisions that are being contested and are being referred to the UNDT. This further includes an implied administrative decision on the retroactive granting of special leave in line with Art 1.7 a, Art 3.9 a, Annex D that emerges out of a delay in medical determinations/material mistakes that were not found to be relevant by the ABCC/MEU prior to a review by the board.

Consideration

21. Having reviewed the application, the Tribunal considers that the primary issue to be determined is its receivability. The issue of receivability is one that in appropriate cases, such as this one, the Tribunal may determine on a priority basis with or without the Respondent's reply.¹

22. In this case, the Applicant was given the opportunity to respond to the Respondent's submissions on receivability.

¹ *Morales* UNDT/2019/158, *Cherneva* UNDT/2021/101.

23. The Respondent correctly points out that the Applicant has not clearly identified which precise administrative decision she seeks to challenge in this application before the Tribunal.

24. For an application to be considered receivable by the Tribunal, it is essential that the Applicant distinctly identifies the specific administrative decision being contested. This requirement is stipulated under art. 2.1 of the Tribunal's Statute, which outlines the parameters within which the Tribunal exercises its jurisdiction. The clarity in pinpointing the contested decision ensures that there is a concrete basis for the Tribunal to examine the claims and assess any alleged violations of employment terms.

25. In *Selim* 2015-UNAT-581, the Appeals Tribunal held that:

[A] statutory burden is placed upon an applicant to establish that the administrative decision in issue was in non-compliance with the terms of his appointment or his contract of employment. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed.

26. The Applicant bears the statutory burden of proof to demonstrate the existence of a contested administrative decision that allegedly does not comply with the terms of her appointment. This principle is well established in numerous UNAT decisions,² which emphasize the necessity of identifying an administrative decision subject to review. An application must specifically delineate the specific administrative decision being contested, providing clear details of its issuance and the impact it allegedly has on the Applicant's employment. The failure to identify a specific administrative decision fundamentally undermines the receivability of the application.

27. To the extent that the Applicant is challenging the ABCC decisions of 20 and 24 April 2023, the Tribunal's record shows that on 20 April 2023, the ABCC Secretariat informed the Applicant that her claim was going to be assessed by the ABCC for a "recommendation on whether to waive the deadline in accordance with

² See *Haydar*, 2018-UNAT-821, para 13 and 15; *Obino* 2014-UNAT-405 para 19.

Article 2.1 (e) of Appendix D”. The Applicant was also informed that “the only aspect of the claim that will be considered at the 10 May 2023 meeting (or the following Board meeting) is the waiver of the deadline. The merits of the case will only be considered if the deadline is waived”.

28. On 24 April 2023, MEU wrote to the Applicant to inform her that the decision to reconsider her claim—and waive the deadline—by the ABCC had rendered her request for management evaluation moot.

29. Also on 24 April 2023, the ABCC Secretariat wrote the following to the Applicant:

Kindly be reminded that per Appendix D rules, the deadline to submit a claim is 1 year from the date of the onset of your illness/injury (not from the date you receive a response from MSD). And, in this case, a determination on whether you have complied with the time limitations for the filing of a claim will be made by the Secretary[-]General/Controller upon a recommendation of the Board. We will promptly advise you once a decision is issued in your case.

30. In the final part of her application, the Applicant requests “that the ABCC secretariat screening decisions of 20 and 24 April 2023 [be] rescinded/corrected”. She also moves the Tribunal to “rescind the MEU findings”.

31. Under the circumstances, the Tribunal finds that it is hamstrung by the lack of clarity in the Applicant’s submissions. Communications from the ABCC Secretariat on 20 and 24 April 2023 are not reviewable as they served to do little more than inform the Applicant of the process ahead of her.

32. The MEU decision of 24 April 2023 did much the same. It informed the Applicant that “her claim will be submitted to the ABCC for a recommendation on whether the deadline should be waived”, and this rendered moot her request for review by MEU. The response to a request for management evaluation is not an appealable administrative decision.³

³ See *Kalashnik* 2016-UNAT-661.

33. In the present case, the Applicant alleges that numerous decisions have adversely affected her rights. However, she failed to identify a singular, definitive administrative decision issued by entities such as the ABCC or any other pertinent authority that could be subject to the Tribunal's review at this juncture.

34. In her submissions, the Applicant references a variety of interactions involving the ABCC. Nevertheless, these references do not collectively or singularly establish the presence of an identifiable administrative decision that has a direct and definable legal effect on her employment situation.

35. Additionally, the Applicant's approach of relying on her interpretations of procedural communications, rather than identifying a formal administrative conclusion, contributes to the application being non-receivable. The Tribunal requires a concrete decision with determinative impact to engage its review function, which is absent in this instance.

36. Having carefully perused the record, the Tribunal finds that the Applicant has not clearly identified one, or a series of, reviewable administrative decisions such that the Tribunal can consider it for its receivability nor its merits.

Conclusion

37. In view of the foregoing, the Tribunal DECIDES to dismiss the application on the grounds of receivability.

(Signed)

Judge Solomon Areda Waktolla

Dated this 2nd day of September 2024

Entered in the Register on this 2nd day of September 2024

(Signed)

Wanda Carter, Registrar, Nairobi