



**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** Geneva

**Registrar:** René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

George Irving

**Counsel for Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a Humanitarian Affairs Officer working with the Office for the Coordination of Humanitarian Affairs (“OCHA”), contests the decision to not reopen her claim for compensation under Appendix D to the Staff Rules (“Appendix D”).
2. The Respondent filed a reply requesting the Tribunal to reject the application. He contends that the contested decision was lawful.

## **Factual background**

3. On 28 February 2014, while serving in the Central African Republic (“CAR”) with OCHA, the Applicant experienced a traumatic incident: her and her colleagues were ambushed by about 40 machete-wielding Anti Balaka militia.
4. The Applicant states that by late 2014, she started developing memory issues, including difficulty in remembering names, spelling or writing coherently. Her treating physician, Dr. Sheila Ardigo, referred her to Mrs. Helena Tombeur for psychotherapy, which the Applicant started in 2015. In a medical certificate dated 14 July 2023, Dr. Ardigo attested that such referral “is common practice for anyone who experienced a life-threatening event and is not an indication of a diagnosis”.
5. In 2018, the Applicant consulted a neurologist, and the test results showed that she had a condition of slow retrieval of information and poor cognitive functioning.
6. Upon further tests, in January 2019, the Applicant was diagnosed with severe impaired functioning, which both her doctor and the Applicant attribute to the effects of the ambush.
7. On 28 August 2019, the Applicant met with the officer responsible for the Compensation Claims Unit (“CCU”), at the United Nations Office at Geneva (“UNOG”), hereinafter (“CCU Officer/UNOG”).

8. The meeting was followed by an email dated 2 September 2019 from the CCU Officer/UNOG, *inter alia*, informing the Applicant of the Appendix D claim process. The CCU Officer/UNOG also informed the Applicant that until 31 December 2016, the deadline to file a claim was four months from the date on which the alleged work-related illness “was diagnosed or when [the Applicant] became aware that [her] work situation was affecting [her] health” and that, as of 1 January 2017, the deadline became one year. The CCU Officer/UNOG also provided the website where the Applicant could access information concerning Appendix D claims.

9. On 7 November 2019, the Applicant started sessions with Dr. Miguel Marset, a psychiatrist.

10. In a medical report dated 16 December 2019, Dr. Marset diagnosed the Applicant with post-traumatic stress syndrome (“PTSD”) and professional exhaustion. Dr. Marset confirmed this in an addendum to his 16 December 2019 medical report dated 24 January 2022. In said addendum, Dr. Marset further indicated that the 2015 psychotherapy that the Applicant followed focused on addressing PTSD although, at the time, her psychotherapist, Mrs. Tombeur, was of the view that the Applicant’s symptoms did not fully match all the conditions of PTSD.

11. On 27 January 2020, the Applicant filed a claim for compensation under Appendix D with CCU, UNOG, which she attributed to the 28 February 2014 ambush in CAR.

12. By memorandum of 24 February 2020, CCU, UNOG, denied the claim as untimely because it was outside the four-month filing deadline set in art. 12 of Appendix D applicable in 2015 when, as per the memorandum, the Applicant was treated for PTSD. CCU, UNOG, further stated in its memorandum that the four-month filing deadline started to run “from the date of the diagnosis of [the Applicant’s] PTSD”.

13. On 30 March 2020, the Applicant appealed the decision of CCU, UNOG. CCU, UNOG, then transferred the claim to the Secretariat of the Advisory Board on Compensation Claims (“ABCC”) in New York for consideration.

14. By letter dated 26 August 2021, ABCC communicated to the Applicant that it recommended to reject the Applicant’s request to waive the deadline for filing her claim, which the Controller endorsed on 9 August 2021. In essence, ABCC found that based on the 16 December 2019 report of the Applicant’s psychiatrist, Dr. Marset, the Applicant had been treated for PTSD since 2015, and that it was as of then that she would have been reasonably aware of her condition to allow her to file a timely claim. ABCC also found that the Applicant had not presented evidence that justified waiving the deadline.

15. By email of 21 February 2022, the Applicant requested ABCC to reopen her claim under art. 9 of Appendix D. In support of her request, the Applicant submitted a new medical report from Dr. Marset, dated 24 January 2022, stating that she was diagnosed with PTSD only on 16 December 2019 “and only after extensive testing, ruling out other possible causes”.

16. In her reopening request, the Applicant included information relevant to whether there were exceptional circumstances for considering her claim despite it being submitted later than the four-month deadline. The Applicant stated the following therein:

[t]here was no space or time to process the traumatic event due to my work situation. ... Given this, it would have been impossible to submit a claim within a four-month time limit and certainly not with how this illness unfolded for me. Further, it was standard practice for the ABCC to review cases well-beyond the four-month limit (even years later for many cases) given the ambiguity of the previous framework governing the Appendix D process. Thus, my case is in line with precedent.

17. ABCC recommended to deny the Applicant’s reopening request and the Controller endorsed the recommendation. By letter dated 5 May 2023, which the Applicant received on 9 May 2023, ABCC communicated to the Applicant the outcome of her reopening request. This is the contested decision.

## Consideration

### *Applicant's motion for an oral hearing and request for anonymity*

18. By Order No. 110 (GVA/2024), dated 19 September 2024, the Tribunal ruled against the Applicant's motion for a hearing filed on 19 December 2023.

19. The Applicant's motion for anonymity is set out in the following terms at para. 21 of her application:

I am requesting the Tribunal to anonymize any interim or final orders as well as any final judgment. This is [in] line with the Tribunal's previous precedents when summarizing factual backgrounds of a case including private medical information. A publicly available order referring to my name, work circumstances, a traumatic event and medical diagnoses and widely available on the Internet would negatively impact me both personally and professionally. It also impinges on my right to privacy. Therefore, I am requesting anonymity to my case.

20. There is well-established jurisprudence of the United Nations Appeals Tribunal ("UNAT" or "Appeals Tribunal") underscoring the value of transparency to the Organization. This will in most instances take priority over an individual staff member's preference for anonymity in the Tribunals' proceedings. This position applies whether the affected staff member seeks anonymity as an Applicant or to have personal information redacted from proceedings. Concerning redaction, in *Utkina* 2015-UNAT-524, para. 18, the Appeals Tribunal explained:

The notion of transparency of, and access to, information, is very important in any Organization. It allows for openness, accountability and good governance, which indeed are the overarching principles of this Organization. It is therefore important that requests for the redaction of evidence be carefully examined within this context and only be permitted where it is necessary having considered the facts of each case. A request for redaction can only be permissible and/or permitted where it is necessary to protect information of a confidential and sensitive nature.

21. In the instant case, the Tribunal finds that redaction of sensitive information will not suffice. The Applicant's request for anonymity is based on a proven need for protection of confidential and sensitive information about her health, which

underpins her claim and pervades the record of these proceedings. The Respondent has not challenged the Applicant's request for anonymity.

22. The Tribunal finds it appropriate to omit the Applicant's name from the proceedings so that she cannot be readily identified as a staff member afflicted with the medical concerns addressed in this case. Noting the publication, prior to this Judgment, of Orders in this case bearing the Applicant's name, the Tribunal also finds it appropriate to anonymize those issuances.

*The Applicant's submissions on the merits of the case*

23. The Applicant submits that in its recommendation of 26 August 2021, ABCC did not question the diagnosis or its work-related nature, but rejected the claim on procedural grounds, namely that the Applicant missed a deadline. This procedural finding was based on one sentence in Dr. Marset's 16 December 2019 medical report: "La prise en charge psychothérapeutique en 2015, a été axée sur l'ESPT", which translates to "Psychotherapeutic care in 2015 focused on PTSD".

24. The Applicant avers that this was used to speculate that the Applicant had reasonable awareness of PTSD as of 2015 and, therefore, missed the four-month deadline to file an Appendix D claim when she filed it five years later in 2020. The Applicant asserts that there is no evidence that she received such a diagnosis in 2015. Dr. Marset first met her in November 2019 and did not evaluate her in 2015.

25. The Applicant further submits that Dr. Marset clarified this sentence in his 24 January 2022 medical report, which was an addendum to his initial 16 December 2019 report. The Applicant based her request to reopen her case on the 24 January 2022 addendum.

26. The Applicant contends that ABCC had a misperception of Dr. Marset's diagnosis, which impacted its findings. Among others, the Applicant states that ABCC relied on one phrase in Dr. Marset's addendum whereby a PTSD diagnosis was confirmed "seulement après des tests approfondis éliminant d'autres causes possibles", which translates to "only after extensive testing, ruling out other

possible causes”. Yet, Dr. Marset did not carry out any diagnosis based on exclusion, contrary to the statement of the ABCC. Further, the ABCC recommendation did not indicate any consideration of, or accorded any weight to, the new material evidence provided by Dr. Marset or the Applicant.

27. As material evidence, the Applicant seeks to rely on the correspondence she had with Dr. Sheila Ardigo that in December 2015, the Applicant did not have reasonable awareness or even symptoms associated with PTSD. The Applicant states that she then had only two symptoms: memory issues and fatigue. Further, the Applicant relies on her sick leave and therapy session records. These records show that the Applicant had increased sick leave absences as of 2019, which correlate to the fact that she only then began experiencing symptoms associated with PTSD, requiring her frequent absences and the need for therapy.

28. The Applicant thus opines that in failing to consider new material evidence, ABCC ignored relevant matters and considered irrelevant factors in the evaluation of the request to reopen her claim, thereby rendering the contested decision unlawful. Although the Applicant’s letter seeking reopening of the claim included arguments on exceptional circumstances for considering her claim beyond the four-month period, she did not focus on that aspect of her case in her request.

29. After two case management discussion sessions convened by the United Nations Dispute Tribunal (“UNDT”) and having received the Respondent’s reply to her application, the Applicant was permitted to file a rejoinder. Therein, the Applicant’s focus is on the failure of ABCC to consider exceptional circumstances for waiving the claim filing time limit.

30. Counsel for the Applicant further addressed this issue in closing submissions. He highlighted that the security incident that occurred in 2014 and gave rise to the Applicant’s illness was undoubtedly exceptional. Further, the worsening over time of the Applicant’s memory impairment and diagnosed “unconscious dissociative form of trauma” is highlighted as an exceptional circumstance. Counsel points out that there is nothing to suggest that ABCC considered these factors when

entertaining whether to waive the filing time limit in light of exceptional circumstances.

31. As remedies, the Applicant requests:

- a. Rescission of the contested decision and remand of her case to ABCC to make a new determination on her claim; and
- b. Payment of the equivalent of four months'<sup>1</sup> net base salary for emotional harm and moral damages.

*The Respondent's submissions on the merits of the case*

32. The Respondent contends that the filing deadline under Appendix D is not triggered by the date of a diagnosis, but rather by the date of “the injury or onset of the illness”. Therefore, Dr. Marset’s second report—claiming that other possible causes had to be ruled out before a PTSD diagnosis—was inconsequential. At its 531<sup>st</sup> meeting, held on 24 February 2023, ABCC found that the Applicant was reasonably aware of the illness as it was clear from documentation received that she had a range of trauma-related psychological issues in the period following the incident in 2014 and specifically received treatment for PTSD.

33. The Respondent submits that in February 2023, ABCC considered all available documentation including a note from the Division of Healthcare Management and Occupational Safety and Health [“DHMOSH”], dated 25 January 2023, which stated the following on Dr. Marset’s second report:

[T]he report by Dr. Marset was reviewed and focused on PTSD as a diagnosis of exclusion that was only made or able to make after detailed neuropsychiatric testing. This is not consistent with the diagnostic criteria for PTSD. It is clear that the claimant had a traumatic event in 2013, and that she was referred in 2014 for care by a specialist in psych traumatology. Her treatment, as stated in numerous medical reports, was consistent with and focused on the after effects of this event. [...]. From the medical perspective, the original advice to the Board that it is more likely than not that [the

---

<sup>1</sup> In the application, the Applicant requests for a compensation equivalent to four months’ net base salary. In the rejoinder, she increased it to eight months.



Applicant] had a psychological condition prior to 2019 that was related to this trauma is confirmed.

34. The Respondent further argues that regardless of the recent PTSD diagnosis, the Applicant's treatment in 2014 and in the ensuing years included treatment for trauma and mental illness due to the 2014 incident. She sought treatment for mental illness resulting from the 28 February 2014 CAR incident from as early as 2014. Both of Dr. Marset's reports recognize this.

35. In addition, other reports that the Applicant had submitted to UNOG with her original claim document her treatment for PTSD in the 2014-2015 timeframe onward. A 15 October 2018 neurological report from Dr. Damien Fayolle states that since the CAR incident, the Applicant had been followed by a psychotherapist for PTSD. On 13 December 2018, Dr. Fayolle, following an examination of the Applicant and based on medical history she provided, stated that the Applicant had a "diagnostic", meaning diagnosis, of PTSD and that she had been in psychotherapy for it for four years.

36. In view of the above, the Respondent submits that ABCC was justified in not reopening the Applicant's case. The Respondent's reply did not address the fact that in her request to reopen the claim the Applicant also relied on exceptional circumstances based on which it should have been considered beyond the four-month deadline.

37. Following the Tribunal's direction in Order No. 110 (GVA/2024) that the Respondent address in closing submissions the issue of exceptional circumstances, the Respondent made an additional point. It was therein submitted that a decision had already been made on whether exceptional circumstances exist to waive the filing deadline under art. 12 of Appendix D. According to the Respondent, that decision was separate from the decision not to reopen the Applicant's Appendix D case and the Applicant did not challenge whether exceptional circumstances were considered to waive the deadline for submitting an Appendix D claim.

38. Regarding the requested compensatory remedies, the Respondent contends that the Applicant has not produced evidence of harm as required. Consequently, he claims that the Applicant has no right to the relief sought, namely a remand for reconsideration of the decision, and does not agreed to a remand.

*Applicable law*

39. Article 6.1(b) of Appendix D effective as of 1 January 2017<sup>2</sup> (“former Appendix D”) provided in its relevant part that:

For claims filed for incidents that occurred prior to the entry into force of the present revised rules, the previously applicable rules will be applied.

40. Article 12 of the former Appendix D provided that (emphasis added):

Claims for compensation under these rules shall be submitted **within four months of the death of the staff member or the injury or onset of the illness**; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date.

41. Article 9 of the former Appendix D provided that:

The Secretary-General, on his own initiative or upon request of a person entitled to or claiming to be entitled to compensation under these rules, may reopen any case under these rules, and may, where the circumstances so warrant, amend in accordance with these rules any previous award with respect to future payments.

*Timeline to claim*

42. The Tribunal observes that the meaning of art. 12 of the former Appendix D is clear enough to be interpreted based on the plain meaning of the words. The Respondent’s interpretation is correct that the timeline for the Applicant to have filed her claim started from 2015. That was the time of the onset of her work-related illness or more specifically her mental health issues that had to be treated after she was subjected to the 2014 ambush.

---

<sup>2</sup> The current Appendix D is an annex to the current Staff Regulations and Staff Rules issued under ST/SGB/2023/1/Rev.2, which are in force effective 1 January 2023.

43. There is no indication in art. 12 that time runs from the date of a specific diagnosis of the type of work-related illness affecting a staff member. Even in the newer, post 2017, version of Appendix D there is no such provision. It is apparent from the documents on record that the Applicant was misled by imprecise words used by the CCU Officer/UNOG in advising her on starting an Appendix D claim and by CCU, UNOG, when rejecting the submitted claim. They both referred to a diagnosis as the starting point.

44. The former version of Appendix D also does not set the affected staff member's awareness of the illness as a starting point. That provision was later added at art. 2.1(b)(i) of the post 2017 updated Appendix D.

45. The relevant starting point as per art. 12 of the former appendix D is "the onset of the illness".

46. It is clear from all documents on record, including statements by the Applicant in her communications with the Respondent, statements by her psychiatrist, Dr. Marset, in his medical reports, and statements in the reports of other doctors that the onset of the Applicant's illness was in 2014. The Applicant said as much in her original application dated 22 December 2019 and submitted in January 2020. She said (emphasis added):

While I continued to perform well at work, the amount of energy that I had to exert to get the job done was significant. Doctors that have assessed me believe that I have a high intellectual and coping capacity that have helped me continue to perform at (or at least cope with) work. These are also factors as to why the diagnosis took so long to reach for **a condition that started in November 2014**.

47. The fact that the PTSD diagnosis was only made in 2019 after ruling out other possible types of illness does not change the fact that the Applicant was dealing with a work-related illness since 2014. The effect of the 2019 diagnosis was merely to clarify that the illness afflicting the Applicant post the ambush was PTSD. The fact that the diagnosis included exhaustion did not change the fact that since 2014 symptoms were being addressed.

48. In all the circumstances, set out in the record that was before ABCC when the challenged decision was made, there was a correct determination that the Applicant submitted her claim under Appendix D long after the four-month deadline elapsed. What the Respondent has not established is that any due consideration was given to the latter part of art. 12 of the former Appendix D.

*Exceptional circumstances*

49. Article 12 of the former Appendix D provides a broader basis for considering claims beyond the four-month period than the new post 2017 version. In the former version all that was required for such consideration was exceptional circumstances. Thus, the decision whether to consider the Applicant's late Appendix D claim was a matter for the Respondent's discretion without any specific limitations.

50. The exercise of the Respondent's discretion in decision-making is generally subject to judicial review by the UNDT in the manner explained in *Sanwidi* 2010-UNAT-084. In *Applicant* 2021-UNAT-1133, the Appeals Tribunal set out as follows the judicial review considerations specifically relevant to the Respondent's decision-making on whether exceptional circumstances justify consideration of Appendix D claims beyond the submission deadline (emphasis added):

40. Under the applicable legislative framework, the Secretary-General is bestowed with the discretionary authority to determine whether to grant a waiver of the four-month deadline to file a compensation claim to the ABCC on the basis of exceptional circumstances.

41. The Appeals Tribunal, however, recalls its jurisprudence that the discretionary power of the Administration is not unfettered. The Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith (footnote omitted).

42. When judging the validity of the Administration's exercise of discretion in administrative matters, as in the present case, the first instance tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. It may consider **whether relevant matters were ignored** and irrelevant matters considered, and examine whether the decision is absurd or perverse. It is not the

role of the first instance tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it. Nor is it the role of the first instance tribunal to substitute its own decision for that of the Administration (footnote omitted).

43. In compliance with the above stated principles of judicial review, **the exercise of discretion must be warranted on the basis of reliable facts and be reasoned** in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure protection of individuals, which otherwise would be compromised (footnote omitted).

44. As we have stated in *Obdeijn*:

**... the obligation for the Secretary-General to state the reasons for an administrative decision** does not stem from any Staff Regulation or Rule, but **is inherent to the Tribunals' power to review the validity of such a decision**, the functioning of the system of administration of justice established by the General Assembly resolution 63/253 and the principle of accountability of managers that the resolution advocates for.

51. In her request to reopen her claim, the Applicant cited the following circumstances to explain her delay in submitting the claim after the four-month deadline (emphasis added):

the very nature of PTSD is that it usually manifests months or years after an event ... This was the case in 2014 when **I was almost mached to death** on a mission ... but was **still required to deliver against an excessive workload**. ... There was no space or time to process the traumatic event due to my work situation. ... Given this it was impossible to submit a claim within a four-month time limit and certainly not with how this illness infolded for me.

52. The Applicant supplied documents, including medical reports, performance appraisals, her initial email communications with medical professionals in 2015 and the gradual exacerbation of her symptoms which she overlooked due to her dedication to an excessive workload. In the Applicant's 2013-2015 appraisals her first reporting officer mentions the Applicant serving several functions, taking on additional supervisory and mentoring roles, having three overlapping supervisors

and juggling several functions demonstrating “a dedication to her work that is uncommon in the UN system”.

53. Doctor Marset’s 16 December 2019 medical report makes the point that the Applicant’s zeal at work caused her to overlook her PTSD health issues. He stated:

Grace a son surinvestissement, [e]lle a maintenu tout au long une attitude impeccable aussi bien sur le fond que sur la forme. Cette capacité de tenir, malgré toute la symptomatologie, explique vraisemblablement le délai du diagnostique.

54. After overlooking the symptoms at first due to dedication despite her heavy workload, the Applicant faced the symptoms more frontally and took more and more sick leave. The grave nature of the trauma that the Applicant faced in being threatened in a violent machete attack during her mission for the Organization is underscored by her as part of the exceptional circumstances she was asking ABCC to consider.

55. There is no indication in the letter of the ABCC communicating the contested decision about whether circumstances set out by the Applicant in her request to reopen her claim, which explained the circumstances for her not meeting the deadline, were considered. The relevant factors that seem to have been ignored by ABCC include the severity of the trauma from 2014, the fact that symptoms seemed to get worse in a creeping manner from manageable to less manageable over the years, and that the Applicant’s dedication to her work was what made her overlook the need to file a claim.

56. Moreover, as there was no mention of the said points in the contested decision, there was no explanation of the reasons for upholding the prior finding that there were no exceptional circumstances. Accordingly, the Applicant has succeeded in establishing that the decision not to reopen the claim was irrational. It was irrational because ABCC ignored factors relevant to whether despite not meeting the four-month deadline there were exceptional circumstances for considering the claim.

*Remedies*

57. The Applicant seeks three remedies that will be addressed in turn.

58. Firstly, she requests that the contested decision be rescinded and the matter remanded to ABCC for a new determination. In *Baracungana 2017-UNAT-725*, the Appeals Tribunal considered the regulatory framework for a remand as set out at article 10(4) of the UNDT Statute. UNAT observed as follows:

30. The relevant part of Article 10(4) of the UNDT Statute provides (emphasis added):

**Prior to a determination of the merits of a case,** should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may, with the concurrence of the Secretary-General of the United Nations, remand the case for institution or correction of the required procedure, which, in any case, should not exceed three months.

31. The plain language of Article 10(4) of the UNDT Statute makes it clear that an order, under it, for the remand of a case to the Administration for institution or correction of the required procedure, not observed at all or found flawed by the UNDT, can be made only with the concurrence of the Secretary-General of the United Nations.

59. In the instant case, the Tribunal has determined that ABCC failed to address the exceptional circumstances the Applicant raised. The Tribunal has not gone further to determine “the merits of a case” as to whether the said exceptional circumstances were sufficient basis for ABCC to have considered her claim despite its delayed submission. Thus, regarding the issue of exceptional circumstances, there remains the option that “prior to the determination” of that aspect of the case it can be remanded to follow the prescribed procedure of considering the exceptional circumstances that the Applicant raised in her claim to ABCC.

60. The question whether the Secretary-General will concur with a remand of the case to ABCC to consider the exceptional circumstances has not been sufficiently ventilated. In closing submissions, Counsel for the Respondent merely indicated

that the Secretary-General had not concurred in a remand. However, the said indication was premature as the Tribunal had not yet communicated a determination to the parties that a remand be considered.

61. The Tribunal's finding is that a remand is appropriate and that having so decided by this Judgment, the opportunity must now be given to the Respondent to agree to the remand based on the reasons stated herein. This finding is inspired by the approach taken in *Dahan* UNDT/2018/002, where it was ordered that:

In compliance with the ruling in *Baracungana* 2017-UNAT-725, in which UNAT emphasized the need for this Tribunal to have the concurrence of the Secretary-General to remand a case to the ABCC, this case is so remanded.

62. Secondly, the Applicant seeks compensation in the amount of four months of net base salary for the "bureaucratic impediments and delays" in processing her claim over a four-year period. Thirdly, the Applicant seeks four months<sup>3</sup> of net base salary as compensation for moral harm and psychological distress suffered as a result of the contested decision.

63. Regarding these latter two claims for relief the Applicant failed to present any medical evidence of moral harm sustained.

64. In *Dahan* (para. 18), the Appeals Tribunal explained that in that case what was being alleged was gross negligence due to the Organization's delay in addressing the claim at stake. It was a claim that had to be submitted for management evaluation pursuant to staff rule 11.2(a) before filing an application before the UNDT. The Applicant in this case met that requirement unlike the applicant in *Dahan*.

65. However, the Applicant's failing in this case was in not submitting specific evidence to sustain an award of moral damages, as required by art. 10(5)(b) of the UNDT Statute. None of the medical reports placed on record before this Tribunal present evidence of harm, such as exacerbated illness caused to the Applicant by

---

<sup>3</sup> In the application, the Applicant requests compensation equivalent to four months net base salary. In the Rejoinder, she increased it to eight months.



the Organization's delayed and negligent treatment of her claim. In those circumstances there will be no award under these heads.

**Conclusion**

66. In view of the foregoing, the Tribunal DECIDES:

- a. That the application succeeds in part;
- b. To rescind the contested decision for failure of ABCC to consider whether to reopen the case on grounds that there were exceptional circumstances that had been overlooked; and
- c. Pursuant to art. 10.4 of the UNDT Statute and subject to the concurrence of the Secretary-General, to be communicated to this Tribunal within three months of the date of this Judgment, to remand the Applicant's claim under Appendix D to ABCC for proper consideration of exceptional circumstances as submitted by the Applicant in support for a waiver of the four-month filing deadline.

*(Signed)*

Judge Eleanor Donaldson-Honeywell

Dated this 23<sup>rd</sup> day of October 2024

Entered in the Register on this 23<sup>rd</sup> day of October 2024

*(Signed)*

René M. Vargas M., Registrar, Geneva