



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: Wanda L. Carter

MP¹

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR, UN Secretariat

Nasuru Magomu, AS/ALD/OHR, UN Secretariat

¹ The Applicant's name has been anonymized because this Judgment contains personal data about his medical condition.

Introduction

1. On 18 November 2024, the Applicant filed an application regarding the denial of his claim seeking compensation for gross medical negligence by the United Nations Mission in South Sudan (“UNMISS”) (“the contested decision”).
2. The Respondent filed a reply on 20 December 2024 urging the Tribunal to find that the application is not receivable.

Facts

3. In April 2016, the Applicant was assigned to the Temporary Operation Base established in Mundri West County, in the Western Equatoria region of South Sudan where he developed jaundice-like symptoms.
4. He was examined by a Medical Officer at the UNMISS Level One Clinic on 13 September 2016 and was diagnosed with acute hepatitis of unknown origin, tentatively attributed to alcohol abuse. UNMISS Medical Service recommended further medical assessment related to liver malfunction and referred the Applicant to a Level III hospital, Case Medical Center (“CMC”), in Uganda.
5. CMC diagnosed the Applicant with “jaundice” due to a stone inside his gallbladder that blocked bile from flowing into his intestines. In October 2016, the Applicant had two surgeries at CMC.
6. On 22 November 2016, the Chief Medical Officer, UNMISS, lodged a complaint on behalf of the Applicant regarding the diagnosis and treatment he received at the CMC.
7. On 2 May 2019, the Applicant submitted a management evaluation request seeking compensation for the referral by the UNMISS doctor to CMC and the damages resulting from alleged malpractice by CMC.
8. On 13 June 2019, the Management Evaluation Unit (“MEU”) advised the Applicant that his 2 May 2019 request for management evaluation was not receivable for the following reasons:

a. The alleged medical malpractice by a third-party entity, CMC, was not an administrative decision insofar as it did not relate to his contract of employment or terms of appointment, nor was it an action taken by the Administration.

b. The issue of medical malpractice was outside the scope of administrative review.

c. Regarding the referral decision by the UNMISS Level I clinic to CMC, MEU noted that this was a medical assessment, which was similarly not subject to management evaluation. The MEU observed that such a decision could not be said to be the proximate cause of the Applicant's injuries.

d. Because the Applicant's underlying illness was not service incurred, this was not a matter that could be brought before the Advisory Board on Compensation Claims ("ABCC").

9. On 17 May 2022, the Applicant submitted a claim to the ABCC for compensation under Appendix D. The Applicant requested, *inter alia*, United Nations support to prosecute CMC for their medical negligence.

10. On 7 October 2022, during its 528th meeting, the ABCC considered the Applicant's claim. Based on advice received from the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH"), the ABCC determined that the Applicant's injuries and referral were not directly causally related to the performance of official duties and unanimously recommended that the claim be denied on the merits.

11. On 22 December 2022, the Applicant filed an application challenging the ABCC decision. That case was registered by the Dispute Tribunal as Case No. UNDT/NBI/2022/124.

12. On 11 August 2023, the Tribunal issued Order No. 131 (NBI/2023) in that case holding, *inter alia*, that the Applicant's claim for compensation for medical

malpractice was not receivable because the alleged malpractice took place more than 90 days before the application was filed.

13. On 15 February 2024, the Dispute Tribunal denied the rest of the Applicant's claim stating it found no fault with the ABCC decision to deny his claim for compensation for injury and illness incurred during and resulting from employment on behalf of the United Nations. UNDT/2024/006. The Applicant did not appeal the Judgment.

14. On 20 February 2024, the Applicant wrote to the UNMISS Chief of the Human Resources Management Section ("CHRO") requesting "compensation for gross medical negligence" in the referral to CMC by UNMISS officials. From 22 February to 8 April 2024, UNMISS repeatedly reminded the Applicant that MEU had considered his request for compensation for medical negligence twice and that the Dispute Tribunal had denied his appeal of the ABCC decision.

15. On 8 April 2024, the Applicant met with the CHRO. By email the following day, the Applicant acknowledged that he received a "verbal denial of [his] claim for compensation for gross medical negligence with the Human Resources Team during [a] meeting yesterday".

16. The Applicant also said in his email that based on advice from a lawyer, "the right procedure for filing a claim for compensation for gross negligence is to request through the administration (HR). That means my claim is on the right path despite you (administration) denied it."

17. In response, the CHRO emailed to say, "it is beyond my purview as CHRO to either approve or deny such claims ... we also advised that we do not know the process on how and to whom such claim should be submitted, therefore I advised you to consult OSLA [the Office of Staff Legal Assistance] for advice."

18. The Applicant continued to advocate for his claim, and on 21 April 2024, the CHRO sent an email to the Applicant in which she told him that "UNMISS HR will not be in position to guide you further on the subject."

19. On 18 June 2024, the Applicant requested management evaluation (“MER”) challenging the decision to deny his gross negligence claim. In his request, the Applicant asserted that the contested decision was taken in the 21 April 2024 email and that he became aware of it on 18 June 2024. Inexplicably, in his application to the Tribunal, the Applicant claims the decision was made on 15 April 2024 and he was notified of the decision on 21 April 2024.

20. On 23 August 2024, the Management Advice and Evaluation Section (“MAES”) denied the MER as not receivable because it was a reiteration of his two previous MERs, medical decisions are outside its remit, and that it was time-barred.

Consideration

21. The Respondent argues that the application is not receivable as a matter of law and should be dismissed for the following reasons.

- a. The contested decision is not an administrative decision;
- b. The contested decision is not a stand-alone statutory cause of action;
- c. The contested decision is time-barred; and.
- d. The contested decision is *res judicata*;

22. The Applicant contends that on 21 April 2024, the UNMISS/CHRO informed him that the Organization currently lacks a framework for addressing claims of gross negligence which have not been the subject of an administrative decision. The Applicant states that this is the first instance he has made the gross negligence claim. He further states that MAES erred when they determined that he had failed to follow the correct framework for submitting claims of gross negligence and that his claim was not time-barred because he could not have been expected to follow a framework that did not exist.

23. The Respondent first argues that the Applicant has not identified a reviewable administrative decision within the meaning of art. 2.1(a) of the Tribunal’s Statute.

He says that the decision had no direct legal consequences upon the terms of the Applicant's employment contract.²

24. The Applicant submits that he requested compensation for gross negligence in his 20 February 2024 communication to the UNMISS/CHRO. He identifies the contested decision as the 21 April 2024 email from the UNMISS/CHRO in which he is advised "that the Organization currently lacks a specific framework for addressing claims of gross negligence which have not been the subject of an administrative decision." He further submits that following this email, the "best [he] could do was to follow the *Wamalala* decision of 2013-UNAT-300 case because there was no process in place." Thereafter, he sought management evaluation of the 21 April 2024 "contested decision" on 18 June 2024.

25. Assuming *arguendo* that the contested decision is the one communicated to the Applicant on 21 April 2024 (as discussed further below, the Tribunal determines that the Applicant was notified of the decision to deny his gross negligence claim on 8 April 2024), it does not meet the definition of "administrative decision" within the meaning of art. 2.1(a) of the Tribunal's Statute.

26. The email served to inform the Applicant that "the Organization currently lacks a specific framework for addressing claims of gross negligence which have not been the subject of an administrative decision." The email is a "guidance" or advice, by both its terms and substance; it is not an administrative decision. The email merely reiterated prior communications from the CHRO that it was beyond her purview to either approve or deny medical negligence claims. Hence the email was not an administrative decision. Further, the guidance had no direct legal consequences on the Applicant's rights. He could either accept the advice or reject it, and which option he chose would be his own decision, not the Organization's decision.

² The Respondent also argues that the contested decision was not taken by the Organization but by a third party, CMC. This mischaracterizes the decision. The decision in this case is not the alleged malpractice of CMC. It is the Organization's denial of the Applicant's claim for compensation for its alleged gross negligence in referring him to CMC. Hence, this argument of the Respondent has no merit.

27. The Respondent next argues that negligence is not a stand-alone statutory cause of action. The 21 April 2024 email does not change the essential nature of the claim as one for gross negligence.

28. The Tribunal recently addressed this very issue in *Aslam* UNDT/2024/104. There the Tribunal observed that

It is crystal clear that the Applicant's claim in this case is based on alleged negligence by United Nations officials. That is not a cause of action available to staff members and is beyond the jurisdiction of this Tribunal. The Applicant's effort to clothe this claim as an implied decision by the Secretary-General to deny his negligence claim does not change its essential character.

Aslam UNDT/2024/104, para. 25. Thus, the Applicant cannot bring a claim of gross negligence.

29. Next, the Respondent argues that the application is time-barred because the Applicant failed to file a timely request for management evaluation. The Applicant says that the claim is not time barred because “[t]here was no framework in place for claims of gross negligence which have not been the subject of an administrative decision”, citing to *Wamalala* 2013-UNAT-300.

30. As a preliminary matter, the Tribunal observes that the Respondent is using imprecise and incorrect terminology. “Time-barred” is another way of saying “not receivable *ratione temporis*. A (timely) management evaluation request is a prerequisite to UNDT competence, and the lack of one makes the application not receivable *ratione materiae*. On the other hand, *ratione temporis* refers to a timely filing of an application to the UNDT. In this case, the issue is not the timeliness of the application to the Tribunal; it is the timeliness of the request for management evaluation.

31. However, the Applicant also conflates two issues and thus misses the point. Under staff rule 11.2(c), a request for management evaluation must be filed no more than 60 days after the staff member was notified of the contested decision. If the staff member fails to timely seek management evaluation, then their claim is not receivable *ratione materiae*. *Wamalala*, para. 32. The issue of whether a framework

exists to entertain a claim of gross negligence is a separate issue from the near universal requirement of a timely management evaluation. (The only exceptions to the management evaluation requirement are for challenges to decisions of a technical body or following a disciplinary process. Staff rule 11.2(b). Neither exception applies in this case.)

32. The contested decision in this case, denial of the Applicant's gross negligence claim, was first communicated to him in a memorandum dated 13 March 2024, in which the UNMISS Director of Mission Support noted that "this case has previously been adjudicated at the levels of the MEU and UNDT" and effectively refused the Applicant's request for compensation for medical negligence.

33. On 4 April 2024, the Applicant emailed the CHRO arguing that he had never previously sought compensation for gross negligence. Based on that email, the CHRO met with the Applicant on 8 April 2024.

34. In a follow-up email on 9 April 2024, the Applicant acknowledged that he received a "verbal denial of [his] claim for compensation for gross medical negligence with the Human Resources Team during [a] meeting yesterday". Thus, it is clear that he was notified of the decision to deny his gross negligence claim on 8 April 2024. Thus, he was required to request management evaluation within 60 calendar days from that date, which is 7 June 2024. He failed to do so.

35. Instead, he requested management evaluation on 18 June 2024, contending the contested decision was taken on 21 April 2024, referring to the CHRO's email informing him that the "Organization currently lacks a framework for addressing claims of gross negligence which have not been the subject of an administrative decision". As this email merely reiterated the previous decision, it cannot reset the clock. *See e.g., Aliko* 2015-UNAT-539, para. 35; *Staedtler* 2015-UNAT-546, para. 46; *Kazazi* 2015-UNAT-557, paras. 31-33; and *Mbok*, 2018-UNAT-824, para. 42.

36. Therefore, the application is not receivable *ratione materiae*.

37. Finally, the Respondent submits that this application is not receivable under the doctrine of *res judicata* because the Tribunal adjudicated the Applicant's

request for compensation for negligence in Order No. 131 (NBI/2023) and Judgment No. UNDT/2024/006.

38. After review of the Order and Judgment, the Tribunal determines that it is not clear that the issues raised by the Applicant in this case were previously raised and resolved in the prior case. Thus, for that reason, and since the Tribunal has already determined this application to be not receivable on other grounds, the *res judicata* issue will not be examined further.

Conclusion

39. In view of the foregoing, the Tribunal DETERMINES the application is not receivable and is DISMISSED as such.

(Signed)

Judge Sean Wallace

Dated this 14th day of February 2025

Entered in the Register on this 14th day of February 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi