



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/049

Order No.: 174 (NBI/2014)

Date: 2 July 2014

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

WAMALALA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for Applicant:

Miles Hastie, OSLA

Counsel for Respondent:

Steven Dietrich, ALS/OHRM

Nicole Wynn, ALS/OHRM

Introduction

1. The Applicant is a staff member with the United Nations Organization Mission in the Democratic Republic of the Congo (“MONUSCO”). He filed an Application with the United Nations Dispute Tribunal (the Dispute Tribunal) appealing the decision by the Advisory Board on Compensation Claims (ABCC) to award him \$49,114.03 for permanent loss of function of his right leg as a result of injuries sustained in a road accident. The Applicant further asserted a claim for gross negligence against the Secretary-General for failing to adequately ensure his safety and security in connection with the accident.

2. On 15 May 2014, the Applicant sought leave to file the following additional documents into the record:

- a) The signed witness statement of his dentist;
- b) An email from the then Medical Services Director “refusing to provide to the Applicant and his counsel the *AMA Guides to the Evaluation of Permanent Impairment*; and
- c) Chapters 1, 2, 11 and the Appendix from the *AMA Guides to the Evaluation of Permanent Impairment*.

3. By Order No. 161 (NBI/2014) dated 19 June 2014, the Tribunal directed the Respondent to submit his views on the additional documents the Applicant was seeking to have admitted into the record.

4. In compliance with Order No. 161, the Respondent submitted his views on 27 June 2014 and moved the Tribunal to reject the Applicant’s motion.

Considerations:

5. Pursuant to article 18.1 of the UNDT Rules of Procedure, the Tribunal shall determine the admissibility of any evidence and under article 18.5, it may exclude evidence it considers irrelevant, frivolous or lacking in probative value.

6. This Tribunal endorses the United Nations Appeals Tribunal (UNAT) ruling in *Messinger* 2011-UNAT-123 that:

There is a distinction between the admissibility of evidence and the weight to be attached to such evidence. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure and the weight to be attached to such evidence. This Tribunal is also mindful that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT. The fact that the Secretary-General indicated that he would not require Messinger's witnesses to be cross-examined on their statements did not mean that all of the evidence contained in the witness statements would be taken to be relevant to the matters in dispute or accorded full weight when assessed in light of the other evidence. At the hearing, Messinger chose to call only one of the witnesses who provided written statements. The weight to be attached to admitted evidence is within the discretion of the UNDT Judge and Messinger has failed to convince us of any error in the procedure adopted with respect to the admission of the witness statements or in deciding upon the weight to be attached to the witness statements.

7. After a careful review of the additional documents the Applicant seeks to include in the record, the Tribunal does not deem any of these documents to fall under the aegis of article 18.5. The Tribunal will decide however during its deliberations what weight to attach to each document.

It is hereby ORDERED that:

8. The Applicant's motion is granted pursuant to article 18.1 of the UNDT Rules of Procedure.

9. The 3 documents listed at paragraph 2 above are now part of the record of this case and may be included in the bundle of hearing documents at the commencement of the hearing on 15 July 2014.

(Signed)

Judge Vinod Boolell

Dated this 2nd day of July 2014

Entered in the Register on this 2nd day of July 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi