



UNITED NATIONS DISPUTE TRIBUNAL

Cases Nos.: UNDT/NY/2018/011
UNDT/NY/2018/032
UNDT/NY/2020/008
Order No.: 31 (NY/2020)
Date: 20 February 2020
Original: English

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

PAPATHANASSIOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
UNICEF

Introduction

1. On 17 February 2020, the Applicant, a former Program Specialist with the United Nations Children’s Fund (“UNICEF”) in New York, filed an application contesting the decision of 15 January 2020 of the Advisory Board on Compensation Claims (“ABCC”) refusing his claim for compensation for alleged psychological injuries suffered as a result of posttraumatic stress disorder (“PTSD”) arising from his traumatic experiences during service with UNICEF in Chad and in Somalia. His claim was apparently rejected by the ABCC on the basis of that it was time-barred and failed to meet the standard for waiver due to exceptional circumstances. As a remedy, the Applicant requests that the decision not to award him compensation be rescinded and that the Tribunal sets a compensation, or that, in the alternative, the claim be referred to the ABCC for reconsideration.

2. Together with the application, the Applicant submits a “motion for consolidation” by which he requests that the present case be consolidated or joined with his other cases pending before the Dispute Tribunal, namely Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032. These two other cases were reassigned to the undersigned Judge on 21 November 2020 as the tenure of the previous Judge assigned to the cases, Judge Ebrahim-Carstens, ended on 30 June 2019.

3. On today’s date (20 February 2020), the application of Case No. UNDT/NY/2020/008 was served on the Respondent.

Consideration

4. In the Applicant’s motion for consolidation, he argues that “the proposed joinder/consolidation would likely result in a more efficient or expeditious resolution of the proceedings without prejudicing the interests of the parties”. The Applicant submits that all the cases “relate to the same matter” in that they all seek “to contest

the decision of the Secretary of the ABCC and the actions of the ABCC by preventing full and fair consideration of his claim for compensation”. The Applicant further contends that “identical evidence would be presented in all applications” and that any other “disposition” than joining or consolidating the cases “would result in considerable duplication and could conceivably risk inconsistencies in result”.

5. The Dispute Tribunal consolidated the proceedings of Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 in Order No. 150 (NY/2018) dated 31 July 2018. In Judgment No. UNDT/2019/098 dated 29 May 2019 concerning both cases, the Dispute Tribunal held that (see para. 20):

a. By consent and with the concurrence of the Secretary-General, the Applicant’s claims were “remanded to the ABCC for institution or correction of the required procedure in accordance with the parties’ submissions and art. 10.4 of the Dispute Tribunal’s Statute”;

b. The Applicant’s compensation claims in connection with his medical condition should “be considered by the ABCC within three months, also taking into account the additional documentation that the Applicant has submitted”;

c. The Applicant’s “request for leave to amend each of the claims to include compensation of three-month net base salary for procedural delay under art. 10.4” was granted. Consideration of these claims under art. 10.4 for procedural delay was “reserved, unless settled by *inter partes* agreement”.

6. Subsequently, on 13 January 2020, in Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032, the Applicant filed an application for execution of Judgment No. UNDT/2019/098 contending that the three-month time limit stipulated in para. 20 had not been respected by the Respondent.

7. It appears to the Tribunal that the contested administrative decisions in Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 concern exactly the same circumstances as those of Case No. UNDT/NY/2020/008 and that the outcome was alike, namely the ABCC rejecting the Applicant's claim for compensation for his alleged psychological injuries (Post-Traumatic Stress Disorder) resulting from his service with UNICEF in Chad and in Somalia. Essentially, the decision contested in Case No. UNDT/NY/2020/008 would therefore seem to have the same legal consequence as those decisions challenged in Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032. In addition, the principal remedy sought in Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 already appears to have been granted by Judgment No. UNDT/2019/098, namely that the case be remanded to the ABCC for reconsideration, for which reason it could be argued that those cases are now moot. Similarly, any request for compensation for delay, or otherwise, raised as part of Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 (see Judgment No. UNDT/2019/098, paras. 16-19) could possibly just as well be claimed, reviewed and determined as part of Case No. UNDT/NY/2020/008.

8. For the sake of efficiency and judicial economy, with reference to arts. 19 and 36 of the Dispute Tribunal's Rules of Procedure, the Tribunal would therefore be minded to joining the proceedings of Case No. UNDT/NY/2020/008 with those of Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 and adjudicate all related matters under the same case number, namely Case No. UNDT/NY/2020/008, as its findings and determinations would likely be the same. This would require the Applicant to withdraw his applications in Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 after which the Tribunal would dispose of these cases without further considering their merits. At the same time, the Applicant would be allowed to amend his application of Case No. UNDT/NY/2020/008 to reflect any relevant changes resulting from the Tribunal's disposal of Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032, and the time limit for the Respondent to file his reply would be extended accordingly. The Tribunal, however, underlines that it is entirely

the decision of the Applicant whether to withdraw the applications in Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032, and should the Applicant prefer not do so, this will have no repercussion to the further proceedings of the three cases.

9. Alternatively, all three cases could remain open under their current case numbers and the Tribunal could either handle each case separately, or the proceedings could be consolidated to the effect that all matters under judicial review would be dealt with in the same order(s) and judgment(s) in which all three different case numbers would be listed (like in the present order).

10. Before making any determination therefore, the Tribunal will seek the Parties' views thereon in a jointly signed submission.

IT IS ORDERED THAT:

11. By **4:00 p.m. on Thursday, 27 February 2020**, the parties are to file a jointly signed submission setting out their common or different positions on whether Case No. UNDT/NY/2020/008 should be adjudicated together with Cases Nos. UNDT/NY/2018/011 and UNDT/NY/2018/032 under the same case number, namely Case No. UNDT/NY/2020/008 following the system outlined in the above. Or, alternatively, if all three cases should be handled separately, or consolidated to the effect that all judicial matters should be determined in the same order(s) and judgment(s) in which all three case numbers would be listed.

12. The Respondent's time limit to file the reply in accordance with art. 10 of the Rules of Procedure will be determined in the Tribunal's written order in response to the parties' jointly submission as per para. 11 above.

(Signed)

Judge Joelle Adda

Dated this 20th day of February 2020