



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

ARVIZU TREVINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALD/OHR
Clémentine Foizel, ALD/OHR, UN Secretariat

Introduction

1. On 8 September 2021, the Applicant filed the application in which he contests the acting United Nations Medical Director's ("the Medical Director") decision to deny his "request to establish a medical board" of 6 April 2021. Together with the application, the Applicant also filed a "motion requesting the consideration of the case by a three-judge panel" and a "motion requesting production of evidence".

2. On 16 September 2021, the Respondent requested the Tribunal to determine the receivability of the application as a preliminary matter and to suspend the deadline for filing the reply.

3. By Order No. 86 (NY/2021) dated 20 September 2021, the Duty Judge of the Dispute Tribunal in New York granted the Respondent's 16 September 2021 motion and ordered the Applicant to file his observations in response to the Respondent's contentions of non-receivability by 4 October 2021.

4. On 4 October 2021, the Applicant filed his observation on receivability.

5. On 7 October 2021, the case was assigned to the undersigned Judge.

Consideration

The motion for a three-judge panel

6. In the Applicant's motion for a three-judge panel, he, in essence, argues that the present case concerns Appendix D of the Staff Regulations and Rules and that it "is a case of first impression" and of "importance to the 85,000 United Nations staff members working around the globe, as the resolution of this case will likely establish a legal precedent that either consolidates or limits their contractual benefits as established under the Staff Regulations and Rules".

7. The Tribunal notes that the motion for a three-judge panel only concerns the merits of the case and not the question of its receivability, which, on its own accord, is to be handled as a preliminary matter pursuant to Order No. 86 (NY/2021). The request for a three-judge panel is therefore not relevant to the question of receivability. In any event, the Tribunal finds that the merits of the case are not of any such “particular complexity or importance” in accordance with art. 10.9 of its Statute to justify a three-judge panel (on the Tribunal’s competence to decide on this matter, see, for instance, *Gueben at al.* Order No. 82 (GVA/2015) dated 10 April 2015, para. 18).

8. Accordingly, the motion is rejected.

Case management regarding the issue of receivability

9. The Respondent claims that the application is not receivable for two reasons:

a. Under the doctrine of *lis pendens*, the “subject-matter” and “cause of action” of the present case are already being considered in two other cases of the Applicant before the Tribunal, namely (a) Case No. UNDT/NY/2020/042, which has been closed after found non-receivable in Judgment No. UNDT/2022/001, and (b) Case No. UNDT/NY/2021/026, which is currently pending before the Tribunal after it was found to be receivable in published Order No. 1 (NY/2022) dated 5 January 2022;

b. The application is not receivable *ratione materiae*, because the letter dated 6 April 2021 from the Medical Director to the Applicant does not constitute an appealable administrative decision under the Statute of the Dispute Tribunal. The reason stated by the Respondent is that the decision made in this letter is solely “a preparatory step and may only be challenged in the context of an appeal against a final administrative decision”. The final administrative decision is instead “that of the Controller on 30 December 2020, made on behalf of the Secretary-General, to approve the recommendation of the ABCC to deny the Applicant’s claim for compensation for illness under

Appendix D” of the Staff Regulations and Rules. In this regard, with reference to the Appeals Tribunal’s judgment in *Kollie* 2021-UNAT-1138 (para. 61), the “recommendation of [the Advisory Board on Compensation Claims (“ABCC”)] to the Controller, and the letter of the ... Medical Director to the ABCC may only be contested in that context, and not as individual administrative decisions”.

10. After closely perusing the case file, the Tribunal notes that in the 6 April 2021 letter, the Medical Director states that the “input from the Division of Healthcare Management and Occupational Safety and Health [“DHMOSH”] was not a *determination* given under Article 1.7 of Appendix D, but *advice* given under Article 2.2”. The Medical Director further explained that “Article 5.1 of Appendix D which covers ‘Reconsideration, review and appeal’ requires any medical board to be based upon a medical *determination* by DHMOSH”. The Medical Director’s “primary reason” for not establishing a medical board was therefore “the lack of a mechanism to do so” as medical boards are “established for resolving disputes related to medical determinations” but “no determination was made” in this case.

11. The Tribunal further observes that in the 30 December 2020 decision, whenever making reference to presumably some assessment(s) made by DHMOSH, the ABCC Secretary referred to “the opinion of Medical”, that “Medical assessed ...” and that “Medical advised ...”.

12. The Tribunal, however, notes that no documentation from DHMOSH, or any other medical entities of the United Nations, has been submitted by any of the parties in the present case. It is therefore not possible for the Tribunal to understand whether the “input from Medical”, in the words of the Medical Director, was a “determination” under art. 1.7 of Appendix D or an “advice” pursuant to its art. 2.2. Also, it is not clear to the Tribunal how this issue might possibly, if at all, affect the receivability of the application.

13. Accordingly, the Respondent is ordered to submit in evidence the assessment(s) of DHMOSH or “Medical”, which are referred to by the Medical Director and the ABCC Secretary. In addition, the Respondent is to provide his submissions on whether any stipulation made in the relevant document(s) constituted a “determination” under art. 1.7 of Appendix D or an “advice” as provided for in its art. 2.2, and how this affects, if at all, the receivability of the application.

Motion on production of further evidence

14. In the Applicant’s motion, he requests that the Respondent is ordered to provide the following additional evidence:

- a. “[A]ll medical evidence used by [the Medical Director] to substantiate the decision to refuse the establishment of a Medical Board communicated in letter dated 6 April 2021”;
- b. “[C]opy of the entire dossier with all the documents presented to the Advisory Board on Compensation Claims (ABCC) at its 517th meeting for its review as part of Applicant’s claim”;
- c. “[A]ll correspondence issued previous to and concerning or relating to the 517th meeting of the ABCC or subsequently between [the Medical Director] and [DHMOSH] with the ABCC”;
- d. “[A]ll medical evidence or reports issued by DHMOSH in connection with Applicant’s claim”;
- e. “[T]he composition of the ABCC during its 517th meeting, as to ensure that there was no conflict of interest in the ABCC as expressed in the email of the Applicant’s counsel to the ABCC Secretary sent on 18 December 2019 and requested subsequently by Applicant many more times”.

Requests (a) and (d)

15. The Tribunal notes that the requests quoted in paras. 14(a) and (d) above are already covered by the Tribunal's instructions to the Respondent for provision of further evidence included in this Order. Accordingly, both requests are rejected.

Requests (b) and (c)

16. The Tribunal observes that if any of the parties wishes additional evidence to be produced, they are to specifically refer to the relevant documentation and clearly indicate what disputed fact the relevant evidence is intended to corroborate. In this regard, the Tribunal notes that the Appeals Tribunal has prohibited a so-called "fishing expedition", whereby one party requests the other party to produce evidence in "the most general terms" (see, for instance, *Rangel* Order No. 256 (2016)). A party requesting certain evidence must therefore be able to provide a certain degree of specificity to her/his request.

17. The Tribunal finds that the Applicant's requests quoted in paras. 14(b) and (c) above do not adequately provide the required specificity related to a disputed fact to allow any of them. Both requests are therefore rejected.

Request (e)

18. The Tribunal finds that with reference to the Applicant's request quoted in para. 14(e) above, the question of the ABCC's composition is irrelevant to the question of the receivability of the present case and also to its merits. Consequently, the request is rejected.

19. In light of the above,

IT IS ORDERED THAT:

20. The Applicant's motions of 8 September 2021 for a three-judge panel and production of additional evidence are rejected;

21. By **4:00 p.m. on Monday, 24 January 2022**, the Respondent is to submit:

a. Any document to which reference is made by the Medical Director in the 6 April 2021 letter and the ABCC Secretary in the 30 December 2020 decision regarding the assessment(s) of DHMOSH or other medical entities at the United Nations;

b. His contentions regarding the question of whether whatever stipulation made in this documentation constituted a "determination" under art. 1.7 of Appendix D or rather an "advice" as provided for in its art. 2.2, and how this, if at all, affects the receivability of the present case;

22. By **4:00 p.m. on Friday, 28 January 2022**, the Applicant is to file his observations, if any, to the Respondent's 24 January 2022 submissions.

(Signed)

Judge Joelle Adda

Dated this 11th day of January 2022