



**Before:** Judge Vinod Boolell  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

ABIRHI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Karen Madeleine Farkas, UNHCR

## **Background and facts**

1. The Applicant joined the United Nations High Commissioner for Refugees (UNHCR) on 13 November 1995 as a radio operator in Bukavu, Democratic Republic of Congo (DRC) on a short term contract until 17 November 1995. He was thereafter employed under three short term contracts from 8 September 1997 to 3 April 1998; from 5 May 1998 to 29 June 1998 and from 31 July 1998 to 31 August 1998.

2. On 27 November the UNHCR Sub-Office in Bukavu was attacked by armed military men. The Applicant jumped from the second floor in order to escape from the building. In the process his ankles were broken.

3. By memorandum of 27 February 2006 the UNHCR Human Resources Officer informed the Compensations Claims Board, United Nations Office in Geneva (CCB/UNOG) of the service-incurred accident of the Applicant and requested that the case be referred *post facto* exceptionally, to the Advisory Board on Compensations Claim (ABCC) for its favourable consideration as the Applicant had sustained injuries on official duty. The Applicant had already settled the amount of USD226 that he had incurred.

4. On 11 August 2006, the Secretary of the ABCC informed the responsible officer of the CCB/UNOG that he had authorized the reimbursement in the amount of USD226. The Secretary of the ABCC added that the payment “does not establish entitlement to compensation or reimbursement of additional expenses. Should further compensation or reimbursement of additional expenses be requested, the Advisory Board on Compensations Claim may undertake a complete review of the authorization herein made”.

5. On 22 August 2006 the responsible officer of the CCB/UNOG informed the UNHCR Head, Headquarters and Compensation Unit of the decision of the ABCC.

6. The Applicant was informed of the ABCC's decision of 11 August 2006. By email dated 23 September 2006, the Applicant confirmed receipt of the amount of USD226 as reimbursement for the medical expenses he had incurred.

7. Subsequent to the reimbursement the Applicant claimed that he was unable to walk long distances and was awaiting final compensation.

8. On 25 October 2006, the Applicant was informed by the responsible officer of CCB/UNOG that his case had been further reviewed. The Applicant was also informed by Mr. Christophe Duverger, Human Resources UNHCR, that there was nothing in the Applicant's file that would warrant further compensation. However if the Applicant could provide additional medical evidence to establish loss of function such as X-rays and medical certificates he could always submit the same to the ABCC.

9. On 13 July 2007, the Applicant submitted a medical report dated 12 July 2007 that recommended sessions of physiotherapy for the Applicant.

10. On 22 August 2008, the Applicant submitted additional medical bills claiming that they related to his service-related injuries. The bills however did not refer to physiotherapy but to various medications that the Applicant had allegedly purchased.

11. By memorandum of 16 January 2009<sup>1</sup>, the UNHCR Human Resources Officer transmitted to CCB/UNOG the additional medical bills submitted by the Applicant.

12. On 16 February 2009, the responsible officer of CCB/UNOG informed the UNHCR Human Recourses Officer that upon a review and forensic analysis of the additional medical bills, that the bills were considered "not legitimate".

13. In a letter dated 12 March 2009, the then Director of the Division of Human Resources Management (DHRM) informed the Applicant of the decision of CCB/UNOG that the additional medical bills could not be accepted for

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<sup>1</sup> By mistake the email reads 16 January 2008 as pointed out by the Respondent.

reimbursement. The Applicant was also informed that the matter was now considered closed.

14. The Applicant responded in an email of 18 April 2009 expressing his dissatisfaction with the decision not to award him additional compensation.

15. On 15 December 2014, the Applicant filed an Application with the Dispute Tribunal Nairobi challenging the decision of CCB/UNOG dated 16 February 2009 and communicated to the Applicant on 12 March 2009.

16. The Respondent's Reply was filed on 22 January 2015.

#### **Applicant's submissions**

17. No submissions were filed by the Applicant. All his averments are contained in his Application and various correspondences that he exchanged with the CCB/UNOG.

#### **Respondent's submissions**

18. The Respondent submits that the Application is not receivable as it is time-barred having been filed more than three years after the final decision was communicated to the Applicant.

19. On the merits, the Respondent submits that no additional compensation was warranted as the Applicant failed to establish that he had experienced a loss of function.

#### **Considerations**

20. The Tribunal will dispose of the case on the issue of receivability.

21. An applicant who feels aggrieved by a "determination of the Secretary-General of the existence of an injury or illness attributable to the performance of official duties, or of the type or degree of disability" may within thirty days of the notice of the decision request reconsideration of the decision". In exceptional

circumstances the Secretary-General may accept for consideration a request made at a later date<sup>2</sup>.

22. This the Applicant did not do.

23. In addition, the Application cannot be considered as applications filed more than three years after an applicant's receipt of the contested administrative decision are not receivable under art. 8.4 of the Statute of the Dispute Tribunal. An applicant finding himself in such a situation has no right either to move the Tribunal for a waiver of the deadline.

24. In *Bangoura* 2012-UNAT 268, *Borg-Olivier* 2011-UNAT-146 and *Reid* 2013-UNAT-389, the Appeals Tribunal held that under art. 8.4 of the UNDT Statute, the UNDT cannot waive the time limit to file an appeal, more than three years after the applicant's receipt of the contested administrative decision and that was an absolute restriction on the judicial discretion of the Dispute Tribunal. .

### **Conclusion**

25. The Application is dismissed in its entirety as it is time-barred.

*(Signed)*

Judge Vinod Boolell

Dated this 30<sup>th</sup> day of July 2015

Entered in the Register on this 30<sup>th</sup> day of July 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>2</sup> Article 17(a) of Appendix D to the Staff Rules.