



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NY/2016/063  
Order No.: 198 (NY/2018)  
Date: 11 October 2018  
Original: English

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**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

MONGA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON DISMISSAL FOR WANT OF  
PROSECUTION**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Steven Dietrich, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 3 June 2016, the Applicant, a former staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), filed an application contesting a decision taken on 4 March 2016, by the Controller on behalf of the Secretary-General, which approved the 15 February 2016 recommendation of the Advisory Board on Compensation Claims (“ABCC”) to deny his claim for compensation under Appendix D of the Staff Rules. The ABCC made this decision at its 490<sup>th</sup> meeting on 9 February 2016, where it also waived the provisions of art. 12 of Appendix D, which stipulates that claims for compensation shall be submitted within four months of the death of the staff member or the injury or onset of illness; provided, however, that in exceptional circumstances the Secretary-General may accept a claim made at a later date for consideration.

2. The Applicant filed a claim for compensation with the ABCC on 15 February 2012, alleging that he sustained service-incurred injuries as a passenger in a United Nations vehicle that was involved in an accident, four years earlier, on 15 April 2008 in the Democratic Republic of the Congo (“DRC”). In his application before the Tribunal, the Applicant requests “compensation for the service[-]incurred pain related impairment [...], fracture, broken and removed tooth, high blood sugar, osteoporosis, osteophyte, and cancer and spine impairment”.

3. The application was registered with the Registry in Nairobi under Case No. UNDT/NBI/2016/041.

4. On 12 July 2016, the Respondent filed his reply asking that the application be rejected on the merits arguing *inter alia* that the decision was lawful as the Applicant failed to produce evidence of causality demonstrating that his injuries and illness were attributable to the accident. The Respondent raises no issue as to the receivability of

the Applicant's claim under art. 12 of Appendix D, the ABCC having waived its application.

5. On 14 July 2016, the Applicant filed comments to the Respondent's reply, alleging *inter alia*, that various medical reports were "deliberately corrupted and made illegible" and that various additional supportive medical documents were "in United Nations computers and the Dispute [T]ribunal has power to access them".

6. On 3 November 2016, by way of Order No. 470 (NBI/2016), the parties were informed that in accordance with the Plenary of Tribunal Judges, held in May 2016, and with a view to balance the Tribunal's workload, the instant case was selected for transfer to the Tribunal in New York and the parties were ordered to express their views on the transfer. The Applicant thereafter expressed concern that the transfer of his case would delay proceedings.

7. On 21 November 2016, by way of Order No. 487 (NBI/2016), the matter was transferred to New York, noting there was a high case load in Nairobi and that the matter would be more expeditiously disposed of in New York. The matter was registered in New York under Case No. UNDT/NY/2016/063.

8. On 11 January 2017, the Registry in New York emailed the Applicant informing him that several annexes to his application were not legible and requested he upload legible copies.

9. On 19 January 2017, the Applicant emailed the Registry responding that "the report on the [15 April 2008] [a]ccident was deliberately altered on these sections, especially on Major [SS, name redacted]'s testimony, which confirmed my version of facts in order to make me lose credibility". The Applicant indicated he does not have a legible version but that "the Court has power to order MONUSCO to produce [the] original, unaltered version".

10. On 28 March 2018, by Order No. 69 (NY/2018), the Tribunal directed the Applicant to file a signed submission by 20 April 2018, indicating:

a. A list of the document(s), if any, which he requests production of indicating:

i. In particular, the Applicant shall precisely state, identifying by name or title, the document(s) which he believes have been altered and which he requests the Administration to produce, the departmental location of the document(s); together with an explanation as to how such documents are relevant to his application;

b. Whether this matter can be decided on the papers or whether he requests a hearing on the merits. If he requests a hearing on the merits of the case, the submission shall also include the following:

i. Precise reason(s) why a hearing on the merits is necessary;

ii. A list of witnesses he proposes to call, together with:

1. their full names, designation and current physical location,

2. a brief statement of the evidence he intends to elicit from the proposed witnesses; and

3. confirming whether such appearance will be in person or remotely, and providing contact details, if any.

11. The aforesaid order was transmitted via the e-filing portal notification of 28 March 2018 per usual to the Applicant's email address on record. The Applicant did not make any submission to the Tribunal within the prescribed deadline, or whatsoever.

12. Accordingly, on 21 September 2018, noting that no submission or further correspondence had been received by the Registry from the Applicant or anyone on his behalf, nor had the Applicant sought an extension of time for filing such submission, the Tribunal, by Order No. 186 (NY/2018), directed the Applicant to file a submission by 5 October 2018 indicating whether he maintains his claims. If in the affirmative, the Applicant was also directed to explain why he failed to file the submission as directed by Order No. 69 (NY/2018), and to comply by filing the submission pursuant thereto, by 5 October 2018. The Tribunal further ordered that in the event of non-compliance with the Tribunal's Order, the application stood to be dismissed for want of prosecution.

### **Consideration**

13. Although the Tribunal's Rules of Procedure contain a provision for summary judgment (see art. 9 and also art. 7.2(h) of its Statute), there are no specific provisions in the Dispute Tribunal's Statute or Rules of Procedure regarding discontinuance, abandonment, want of prosecution, postponement, or withdrawal of a case. However, abandonment of proceedings and withdrawal of applications are not uncommon in courts and generally result in a dismissal of the case either by way of an order or a judgment. In this regard, reference can be made to art. 19 of the Dispute Tribunal's Rules of Procedure, which states that the Dispute Tribunal "may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties". Also, art. 36 of the Dispute Tribunal's Rules of Procedure provides that all matters that are not expressly provided for in the Rules of

Procedure shall be dealt with by decision of the Dispute Tribunal in that particular case, by virtue of the powers conferred on it by art. 7 of its Statute (see *Giles* UNDT/2012/194).

14. The Dispute Tribunal has on several occasions enunciated the cardinal principle of procedural law that the right to institute and pursue legal proceedings is predicated upon the condition that the person exercising this right has a legitimate interest in initiating and maintaining legal action and that access to the court has to be denied to those who are no longer in need of judicial remedy, or no longer interested in the proceedings (*Bimo and Bimo* UNDT/2009/061; *Saab-Mekkour* UNDT/2010/047; *Zhang-Osmancevic* UNDT/2015/034).

15. The latter applies in the present case, as the Applicant has been ordered on two occasions to make the necessary submissions for finalization of his case, was given sufficient time to comply with the Tribunal's orders, and clearly warned of the consequences of his failure to do so. More particularly, on 28 March 2018, by Order No. 69 (NY/2018), the Tribunal directed the Applicant to identify the original documents for which he requests an Order for disclosure and production and also to provide material information as regards witnesses and evidence with a view to proceeding to trial, if so required. Due to the Applicant's noncompliance with Order No. 69 (NY/2018), on 21 September 2018, by Order No. 186 (NY/2018), the Tribunal directed the Applicant to confirm whether he maintained his claims, and provided him with a further opportunity to comply with Order No. 69 (NY/2018), failing which he was warned his application stood to be dismissed for want of prosecution.

16. However, as at the date of this Order, no submission or further correspondence has been received by the Registry from the Applicant or anyone on his behalf. The Tribunal therefore can only conclude that the Applicant is no longer interested in the pursuit and outcome of these legal proceedings, which must therefore be deemed to

have been abandoned, and this matter therefore stands to be dismissed for want of prosecution.

IT IS ORDERED THAT:

17. In light of the foregoing, but without determination of its merits and without prejudice, the Applicant's application is dismissed for want of prosecution.

18. The Tribunal will only consider reopening the application upon receipt of a motion to reinstate from the Applicant providing the grounds for his failure to act, reasonably showing that his failure to respond to the Tribunal's orders was not intentional or the result of conscious indifference, and submitting evidence that it is in the interests of justice to reinstate the proceedings.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 11<sup>th</sup> day of October 2018