



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/103

Judgment No.: UNDT/2012/018

Date: 9 February 2012

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

McKAY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant filed an application on behalf of her deceased husband (“the staff member” or “the decedent”), former staff member of the United Nations Interim Force in Lebanon (“UNIFIL”), contesting the refusal by the Administration to provide compensation to the decedent’s estate for negligence contributing to his death and for expenses incurred in administering the estate.

2. As remedies, the Applicant seeks:

a. The rescission of the decision limiting compensation to the estate of the decedent and his survivors to the reimbursement of expenses and death benefits;

b. Compensation in the amount of USD300,000 to the legal heirs of the estate of the decedent for failing to afford him the conditions of service to which he was entitled;

c. Additional compensation in the amount of three years’ net base salary for refusing to release the Board of Inquiry Report and the excessive delays in handling this case;

d. Reimbursement for the actual outlays for transportation, funeral and other related expenses still outstanding, in a total amount of USD18,581;

e. Award of costs in the amount of USD15,000.

Facts

3. The decedent joined the United Nations in October 1975 and, at the time of his death, was serving with UNIFIL, in Naqoura, Lebanon, as a Senior Telecommunications Engineer on a fixed-term appointment at the FS-6 level.

4. Early in the morning on Sunday, 28 January 2007, while at his residence in Tyr with his wife, the decedent began experiencing severe chest pain. The

Applicant tried to secure help through her husband's radio, personal mobile phone and neighbours.

5. Broken radio calls were noticed by the Security Head of Operations at approximately 6 a.m. Another UNIFIL staff heard a female voice trying to call on the radio channel reserved to evacuation and attempted to call the recently released Emergency Security Number, but no one responded. Having heard new pleas, he contacted the Chief Security Officer, who called the Security Head of Operations at 7.06 a.m. After unsuccessfully trying to contact the Security Duty Officer, the Security Head of Operations then took over responsibility to follow the matter himself.

6. Contacted by the Applicant, a neighbour and colleague of the decedent who was the zone warden for the area (i.e., security focal point), called the Lebanese Red Cross around 6.20 a.m., requesting an ambulance to come.

7. An ambulance arrived at the residence at approximately 6.30 a.m., having apparently experienced some difficulties in finding the address. The decedent was given first aid and then transported with his wife to the Najem Hospital, one of the main hospitals in Tyr and the closest to the decedent's residence, about 100 meters away. The above-mentioned neighbour and colleague followed the ambulance to the hospital. He also called the Chief Medical Officer, UNIFIL, who arrived to the hospital at approximately 7.10 a.m.

8. The decedent was examined by the attending doctor as soon as he reached the hospital, at around 6.40 a.m. He was declared dead shortly thereafter; the doctor issued a medical report stating that the decedent had reached the hospital dead, with no presence of vital signs and that the cause of death was most probably a cardiac arrest occurred more than five hours ago. The Chief Medical Officer of UNIFIL, a specialist pathologist, examined the decedent's body upon her arrival to the hospital—at about 7.10 a.m.—and confirmed his death. She declared that he had deceased about two to three hours before, because the body was already ashen and cold and *rigor mortis* was not complete but had started.

9. The decedent's family expressed its wish that no autopsy be conducted. No such examination was carried out. The body was however embalmed for the purpose of airplane transportation to the United Kingdom, the staff member's home country.

10. On 31 January 2007, the Director of Administration, UNIFIL, officially informed Headquarters of the death of the staff member, describing the cause as a "heart attack".

11. UNIFIL personnel handled the arrangements for the decedent and his four escorts—his wife and three children, who came when they learnt about the events—to travel to the United Kingdom immediately afterwards. The Administration advised them at this stage that the cost of the tickets for three of them would probably be recovered from the decedent's last pay, which was done.

12. The British authorities did perform an autopsy upon arrival of the remains onto United Kingdom territory, in order to clarify the exact cause of death.

13. In March 2007, the widow and a daughter of the decedent returned to Lebanon. During this stay, they attended to the paperwork which was pending with the UNIFIL Administration.

14. The family made a request for compensation to the Advisory Board on Compensation Claims ("ABCC"), dated 27 May 2007. Under cover of a memorandum dated 29 May 2007, the Chief of Operations, Department of Peacekeeping Operations ("DPKO"), submitted the initial documentation on the claim to the ABCC.

15. In May 2007, the Organization proceeded to pay to his heirs the staff member's final emoluments, including death benefits, totaling USD106,167.2.

16. On 10 May 2007, the UNIFIL Commander convened a Board of Inquiry to investigate and report on the circumstances of the decedent's death. The Board of Inquiry rendered its conclusions in a report dated 6 June 2007, transmitted to the Under-Secretary-General for Peacekeeping Operations in New York on 22 June.

17. The statements of staff interviewed point out—as the Applicant herself does—that UNFIL had advised its staff to contact local medical services in case of medical emergencies, given the contact information required for that purpose and encouraged staff members to share this information with the people living with them.

18. The ABCC considered the Applicant's claim on 21 August 2008 and issued a recommendation, on 19 September 2008, that:

(i) although the staff member died of natural causes which were not directly related to the performance of his official duties on behalf of the United Nations, based on the Report of the Board of Inquiry, which indicated that the staff member did not receive medical assistance on a timely basis due to lack of responsiveness on the part of UNIFIL Security, the death should be recognized as attributable to the performance of official duties on behalf of the United Nations on those grounds; and, therefore, compensation should be awarded to the dependent survivors under article 10.2 of Appendix D to the Staff Rules; and

(ii) directly related costs should be reimbursed, as per existing United Nations policy provisions.

19. The above recommendation was approved by the Controller on behalf of the Secretary-General on 2 October 2008.

20. On 23 September 2009, the Applicant filed an application with the Dispute Tribunal requesting the release of the Board of Inquiry report, payment of certain expenses and compensation for failing to afford the decedent due protection while in service. This application was registered with Case No. UNDT/GVA/2009/65.

21. Following an oral hearing held on 13 April 2010, the Tribunal issued Order No. 43 (GVA/2010) directing the Respondent to provide the Applicant with a copy of the Board of Inquiry Report and to make a decision without delay on, at least, those expenses which clearly were directly related to the death of the decedent and had been duly submitted to the ABCC. It also granted one week to the Applicant to consider whether she wished to withdraw her application, without prejudice to her right to initiate new proceedings on the same substantive questions.

22. Following a motion for withdrawal submitted by the Applicant on 19 April 2010, the Tribunal decided to close the proceedings in Case No. UNDT/GVA/2009/65 by Judgment UNDT/2010/067.

23. Pursuant to Order No. 43 (GVA/2010), the Respondent provided a copy of the Board of Inquiry Report to Counsel for the Applicant on a confidential basis on 23 April 2010 and, on 4 May 2010, he provided information on the expenditures claimed to be outstanding by the Applicant. In summary, he advised that no claim for reimbursement had been submitted regarding a significant number of expenditures claimed and that many of them either had already been paid or could not be authorized in any case, but some would be allowed if a request in due form was presented.

24. On 16 June 2010, the Applicant submitted a request for management evaluation of the refusal to provide compensation to the estate of the decedent for negligence contributing to his death and for expenses incurred in administering the estate, as reflected in the response to the above-mentioned Order from the Dispute Tribunal: the administrative decision of 23 April 2010 to release the Board of Inquiry Report and the decision of 4 May to take no further action on the Applicant's claims.

25. At the request of the Management Evaluation Unit ("MEU"), United Nations Secretariat, New York, the Applicant submitted on 26 July 2010 certain documents, notably her revised claims on costs incurred following her husband's death, including the Voucher for Reimbursement of Expenses (Form F.10) of the payments claimed, which was forwarded to the Administration for action.

26. In its response dated 30 July 2010, MEU distinguished between the claims for certain outstanding costs incurred following the death of the staff member and the decision by the Controller on behalf of the Secretary-General. Concerning the former, it informed the Applicant that the Administration would re-examine her claims, submitted to MEU on 26 July 2010, and that her request for management evaluation in this connection was therefore moot. As to the latter, MEU deemed that the Controller's decision was based on advice from the ABCC, that is, a

technical body within the meaning of staff rule 11.2; hence, an application could be filed directly with the Dispute Tribunal.

27. Further to the Applicant's resubmitting her claims for outstanding expenses in July 2010, UNIFIL and the Department of Field Support at Headquarters jointly reconsidered the same and allowed payment of certain of the outlays presented, while refusing to pay others, notably the flight costs of family members' travelling to Lebanon in January and March 2007 and subsequently to New York.

28. The application at hand was filed before the Geneva Registry of the Dispute Tribunal on 13 September 2010. The Respondent transmitted his reply on 15 October 2010. On 2 December 2011, the Applicant filed a motion for the admission of additional evidence, to wit, a statement by the Applicant and the report of a periodic medical examination undergone by the decedent on 10 February 2003, while serving at the United Nations Mission for the Referendum in Western Sahara.

29. On 16 December 2011, a hearing took place, to which the Applicant and Counsel for the Applicant participated by phone and Counsel for the Respondent via videoconference.

Parties' submissions

30. The Applicant's principal contentions are:

- a. This case arises from an administrative decision following a recommendation of the ABCC only partially compensating the decedent's family for their loss. The further claim for damages beyond what is provided in Appendix D arises from the refusal to share the findings of the final inquiry into the decedent's death and the institutional silence into the claim that the Organization had failed in its contractual duty of care towards the deceased staff member, causing or contributing to his death. The refusal of access to relevant information compounds the breach of duty of care and amounts to a fundamental denial of due process;

b. Staff regulation 1.2(c) provides that “the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them”. This includes access to proper emergency medical care in difficult or dangerous locations, such as Lebanon, as recognized by the former UN Administrative Tribunal;

c. The staff member did not receive medical assistance on a timely basis due to lack of responsiveness on the part of UNIFIL Security. The Board of Inquiry Report established a *prima facie* case of gross negligence contributing to his death, which is further underscored by the fact that the Respondent has undertaken efforts to improve the emergency procedures following the incident;

d. The decedent’s family has a right to a full and unequivocal explanation for his death, as well as to the timely and proper management of any final entitlements and claims of the estate. In its Judgment No. 1204, *Durand* (2004), which relates to a similar set of circumstances, the former UN Administrative Tribunal emphasised the Organization’s legal obligation to protect its staff and held it responsible for having withheld information on the circumstances of the concerned staff member’s death. In fixing the compensation, it stated that Appendix D does not apply to limit the compensation claimed on the basis of a violation of a staff member’s terms of employment or contract. It also granted compensation for further negligence and delay in processing the estate’s entitlements and awarded costs in view of the mishandling of the case;

e. The decedent’s family has only been given partial and conflicting information about its legal rights and entitlements. For years, the Respondent has failed to disclose information, delayed the settlement of valid estate’s claims, and created unnecessary stress and anxiety to the decedent’s relatives by his lack of transparency and responsiveness;

f. The award of legal expenses is justified in view of the exceptional circumstances surrounding the case and the need to file not one but two applications owing to the Respondent's incorrect arguments of law. Without professional legal advice, which the Applicant decided to retain out of frustration over the Organization's inaction, this case would never have reached the Tribunal.

31. The Respondent's principal contentions are:

a. The application is not receivable concerning the decision of the Controller pursuant to the ABCC recommendation, as it relates to a favourable decision. Appendix D—in particular articles 10.1 and 10.2—establishes a scheme for the compensation of staff members in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations. In this case, the ABCC recommended, and the Controller accepted, that full compensation under article 10 of Appendix D be awarded to the survivors of the decedent. The Tribunal stated in *Glavind* UNDT/2010/008 that a staff member can only contest before it an administrative decision which violates his or her rights as prescribed in his or her contract or by the relevant staff rules;

b. In order for an application to be receivable, the Applicant must (a) identify the administrative decision contested and (b) have requested management evaluation within 60 days of the decision. In the present application, it is unclear which is the specific decision contested. The Applicant requested management evaluation of the decision of 23 April 2010 to release the Board of Inquiry Report, a decision in her favour, which implies that this claim is not receivable. She did not challenge the alleged initial failure to provide her with this report in her request for management evaluation. It does not appear that the Applicant has ever submitted any claim for compensation for breach of duty of care, or for any kind of additional compensation, to the Secretary-General or to the ABCC; it is thus illogical to suggest that such a claim was refused by the Administration. Furthermore, no decision "limiting compensation to the

estate of the decedent and his survivors to the reimbursement of expenses and death benefits” was contested in the request for management evaluation. The Applicant also questions the Respondent’s answer on expense claims given on 4 May 2010 pursuant to Order No. 43 (GVA/2010) as a decision to take no further action on these claims, which is incorrect. The Respondent responded to each of these claims, allowing some of them and they were reconsidered by the Department of Field Support and UNIFIL. The claim on this matter is hence moot;

c. Further, the Applicant’s request for management evaluation was made almost two years after the decision of the Controller on 2 October 2008, whereas she seems to make her claim for additional compensation on the basis of this decision. The application is therefore time-barred. This claim for additional compensation, furthermore, does not fall within the scope of staff rule 11.2(b), which allows for an exception to the requirement of requesting management evaluation regarding decisions taken pursuant to advice of technical bodies. Indeed, the ABCC is not competent to consider further claims for damages beyond what is provided in Appendix D. MEU analysis on this matter is incorrect;

d. On the merits, the Applicant was granted full compensation under Appendix D;

e. As regards the alleged breach of the duty of care, the decedent’s death was not the result of any breach of such duty. UNIFIL had implemented a series of security/emergency arrangements and measures and several staff members took action on the day of the incident. Everything possible in the circumstances was done to assist the decedent. In any event, there was no causal link between the alleged failures of the Respondent and the decedent’s death. Medical evidence strongly suggests that he was dead even before his wife raised the alert. Moreover, while the Applicant alleges that the Organization has elaborated emergency plans for locations with inadequate medical facilities such as Lebanon, she does not cite specific procedures, apart from the medical evacuation procedures,

which are irrelevant since the decedent's case was not one of medical evacuation;

f. As to the alleged outstanding payments, the Applicant filed a claim for reimbursement of certain "related" costs on 26 July 2010 and the Administration provided a detailed response, allowing some and justifying the rejection of others. Payments under article 10.2 of Appendix D were processed. All entitlements outside the scheme of Appendix D have been paid;

g. Regarding the claim that the exact cause of the decedent's death was never reported to the family, both the attending doctor at the hospital and UNIFIL Chief Medical Officer concluded that he died of natural causes. The exact cause, nevertheless, could not be established due to the decedent's family's refusal to have an autopsy performed, which the Organization respected. If, apparently, an autopsy was performed upon arrival of the remains to the United Kingdom, the Respondent was not involved in this decision and has not been informed of the findings of the autopsy;

h. The Board of Inquiry Report was provided to the Applicant in compliance with Order No. 43 (GVA/2010);

i. The Applicant failed to demonstrate that the Respondent has manifestly abused the proceedings before the Tribunal, as required by article 10.6 of its Statute for costs to be awarded.

Consideration

32. At the outset of these considerations, it matters to clarify what the contested decision is in the present case, since the application is ambiguous on this crucial point.

33. For this purpose, it is worthwhile to recall that Appendix D to the Staff Rules establishes the "Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United

Nations”, setting a regime of objective responsibility for such events, by which the Organization is to afford compensation regardless of whether it bears any fault in the matter. Its article 10.2 provides that, in case of service-incurred death of a staff member, the Organization shall pay an annual compensation to the widow and each unmarried child of the deceased staff member, while article 10.1 stipulates:

In addition to any compensation payable under article 10.2. the United Nations shall pay:

- (a) A reasonable amount for the preparation of the remains and funeral expenses;
- (b) The expenses of return transportation of the deceased staff member and his dependents ...:
 - (i) To the place where the Organization would have had an obligation to return the staff member on separation;
- ...
- (c) All reasonable medical, hospital and directly related costs.

34. Against this background, it appears that, by approving that the decedent’s survivors be awarded compensation under article 10.2, and reimbursed for “directly related costs ... as per existing United Nations policy provisions”, the Controller granted the Applicant the maximum compensation foreseen in her circumstances within the framework of Appendix D. To this extent, as stressed by the Respondent, this decision was in favour of the Applicant.

35. However, the Controller’s decision of 2 October 2008 is not in itself challenged in the instant case. While failing to specify the impugned decision, the application does state that it “arises from the administrative decision following a review of the ABCC only partially compensating the decedent’s family for their loss”, and adds: “[T]he further claim for damages beyond what is provided in Appendix D arises from the initial refusal to share the findings of the final inquiry into the decedent’s death and the institutional silence into the claim that the Organization had failed in its contractual duty of care thereby causing or contributing to his death.” Moreover, the Applicant requests, as part of the relief sought, that the “decision of the Secretary-General limiting compensation to the estate of [the decedent] and his survivors to the reimbursement of expenses and death benefits” be rescinded. Accessorily, it is worth noting that the request for management evaluation which preceded the application at hand was aimed against

“the refusal of the [R]espondent to provide compensation to the estate of [the decedent] for negligence contributing to his wrongful death and for expenses incurred in administering the estate”.

36. It is thus sufficiently clear, despite some inconsistencies in the formulations cited above, that the Applicant, while acknowledging that the Organization recognised and paid certain entitlements under Appendix D, considers she has a right to further compensation following her husband’s death. In claiming so, she relies essentially on three grounds: (1) an alleged breach of the duty of care of the Organization vis-à-vis its staff; (2) the alleged mishandling of the family’s claims following the decedent’s demise; and (3) certain expenditures which she deems directly related to her husband’s death. Accordingly, what she contests is the implicit decision not to grant her additional compensation on these accounts.

37. This is an individual decision, unilaterally taken by the Administration and creating legal consequences for those concerned. In other words, it is an administrative decision within the meaning of article 2.1(a) of the Tribunal’s Statute and, as such, it is open to appeal before the Tribunal.

38. Having identified the contested decision as defined above, the Tribunal must reject the Respondent’s preliminary objection that the Applicant is precluded from requesting further compensation by virtue of article 3 (Sole Compensation) of Appendix D, which prescribes (emphasis added):

The compensation payable under these rules shall be the sole compensation to which any staff member or his dependents shall be entitled in respect of any claim *falling within the provisions of these rules*.

39. The Applicant’s claims, unlike what is provided in the above-quoted article, fall beyond the purview of Appendix D; they concern the alleged non-compliance with the terms of appointment of the late staff member, this being the reason why a request for management evaluation was indeed required. As the former UN Administrative Tribunal put it in Judgment No. 1204, *Durand* (2004):

Where the compensation claimed by a staff member is compensation that relates to a violation of one of the terms of the staff member's employment or is contractual in nature, Appendix D does not apply to limit such compensation. (See Judgement No. 505, *Daw Than Thin* (1991), and Judgement No. 872, *Hjelmqvist* (1998).)

40. At this stage, each of above-mentioned grounds invoked by the Applicant in seeking further compensation in relation to her husband's passing will be analysed separately, to conclude with her claim for the award of costs.

Breach of the Organization's duty of care

41. Staff regulation 1.2(c) in force at the material time enshrined an obligation of duty of care incumbent on the United Nations vis-à-vis its staff, as follows:

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

42. Furthermore, the existence of such duty has been consistently upheld by different international administrative tribunals (see, among others, *Edwards* UNDT/2011/022; former UN Administrative Tribunal Judgments No. 872, *Hjelmqvist* (1998), No. 1125, *Mwangi* (2003), No. 1204, *Durand* (2004), and No. 1273 (2006); International Labour Organization Administrative Tribunal Judgment No. 402, *In re Grasshoff* (Nos. 1 and 2) (1980); Asian Development Bank Administrative Tribunal Decision No. 5, *Bares* (1995)).

43. The duty of care encompasses that of securing prompt and adequate treatment for those serving in hazardous duty stations in the event of medical emergencies (see former UN Administrative Tribunal Judgments No. 872, *Hjelmqvist* (1998), No. 1204, *Durand* (2004), and No. 1273 (2006)).

44. After careful scrutiny of the available evidence, the Tribunal is unable to find that a breach of the duty of care contributing to the staff member's death occurred in the present case.

45. Due note has been taken of the ABCC statement in its recommendation dated 19 September 2008 according to which the Board of Inquiry Report “indicated that the staff member did not receive medical assistance on a timely basis due to lack of responsiveness on the part of UNIFIL Security”. Yet, nothing in this Report or in the rest of the information on file allows to conclude that the measures in place at the relevant time to face health emergencies were insufficient.

46. UNIFIL repeatedly advised its staff members to contact local medical services if confronted with a medical emergency; the security and medical services had provided them with the necessary information to do so and had urged them to share it with any person living with them, including visitors. The decedent’s residence in Naqoura was about 100 meters away from a hospital with appropriate facilities, and there was no particular obstacle for UNIFIL staff to have access to it. Globally, these procedures appear to be adequate.

47. It is true, nonetheless, that two UNIFIL staff members attempted to contact the Security Officer on duty through the Emergency Security Number in the early morning of 28 January 2007, to no avail. The question is whether this dysfunction may have had an impact on the decedent’s fate. In this regard, it should not be forgotten that a number of UNIFIL staff actively undertook to assist the decedent and his wife as soon as they became aware of the situation, an ambulance was called and apparently arrived at the spot only ten minutes later and barely 30 minutes after the Applicant first tried to call for help on the radio.

48. In any event, the medical evidence on the incident strongly indicates that the decedent, unfortunately, had died hours before his wife raised the alert and several of his colleagues strove to save him. The local doctor who attended to the decedent at the Najem hospital certified that there was no presence of vital signs upon arrival—at approximately 6.40 a.m.—and estimated the death to have happened probably some five hours earlier. The UNIFIL Chief Medical Officer, a specialist pathologist who examined the deceased staff member by 7 a.m.—i.e., some half an hour after he reached the hospital—concluded, based on the colour

and temperature of the body and the fact that *rigor mortis* had already started, that he must have died two to three hours before.

49. In the absence of an autopsy report revealing the exact cause and time of the decease, due weight must be given to the converging professional opinions of two qualified doctors having examined the decedent's remains. Consequently, the Tribunal cannot but assume that the manner and timing in which UNIFIL staff reacted to the Applicant's calls for help at around 6 a.m. could no longer have made any difference in the tragic outcome of the incident.

50. Under these circumstances, the Organization cannot be held liable for any breach of its duty of care.

Mishandling of the Applicant's claims

51. The Applicant submits that the Organization failed to provide the decedent's survivors appropriate support after the incident, thereby compounding their distress. In this connection, she qualifies as a lack of due process the alleged delays, dereliction and deficient information in processing the estate's entitlements, on the one hand, as well as the refusal to disclose the Report of the Board of Inquiry on the circumstances surrounding her husband's death, on the other hand.

52. Concerning the alleged unresponsiveness and delays in fulfilling the administrative formalities after the staff member died, the chronology of events shows that, contrary to the allegations, the Administration did not procrastinate, nor did it fail to act with due diligence.

53. The incident took place on 28 January 2007; UNIFIL personnel handled the arrangements for the decedent and his escorts to travel to the United Kingdom immediately after; in March 2007 the Applicant returned to Lebanon and attended to the required paperwork with UNIFIL Administration; on 27 April 2007, the Applicant had confirmation from UNIFIL Administration that UNIFIL had forwarded the documentation to the Personnel Management and Support Service, DPKO, at Headquarters, for its onforwarding to the various departments as

appropriate; on 10 May 2007, the Board of Inquiry was convened; in May 2007 the Organization paid the decedent's net final pay, including death benefits; on 29 May 2007, the Chief of Operations, DPKO, submitted the initial documentation on the claim to the ABCC, dated 27 May 2007; the Board of Inquiry finalized its report on 6 June 2007; the final report was transmitted to New York on 22 June 2007; the ABCC reviewed the claim on 21 August 2008, then issued its recommendations on 19 September 2008, which were endorsed by the Controller on 2 October 2008.

54. Hence, although the paperwork required to launch procedures was only finalized with the decedent's family in March 2007, UNIFIL for its part completed the necessary steps within the following month, so did the relevant departments at Headquarters by the end of May 2007. Likewise, the Board of Inquiry was convened within a reasonable period after the incident and conducted a comprehensive investigation, then drafted a complete report, within approximately a month; the final report was sent to Headquarters less than two months after the Board had been convened.

55. The consideration of the claim under Appendix D lasted from its transmittal to the ABCC on 29 May 2007 to the Controller's approval on 2 October 2008, although it could not effectively start without the Board of Inquiry Report, received at the end of June 2007. Most of this time accounts for the period during which the claim was before the ABCC. After that, it took barely two weeks for the Controller to make the final decision.

56. Even though the 14 months it took for the ABCC, after receipt of the Board of Inquiry Report, to review the claim may be seen as a non-negligible wait, this time span does not amount to an inordinate delay calling for compensation. It results from the case law that the Tribunal generally awards compensation for undue delay only when confronted with procedures having dragged on for several years (see, e.g., *Aly et al.* UNDT/2010/195; *Edwards* UNDT/2011/022; *Kamal* UNDT/2011/034; *Megherbi* UNDT/2011/161). Also, the Appeals Tribunal found no inordinate delay in *Ardisson*

2011-UNAT-136, where the Pension Board took slightly over a year to dispose of an appeal.

57. Like in *Ardisson*, the procedure in question in the instant case was a relatively complex one, involving the review by a body, the ABCC, holding limited sessions per year. In fact, the processing of the Applicant's claim did not exceed the average duration for this type of cases.

58. Additionally, it is noted that the Applicant received in May 2007 the net final pay of her late husband, including death benefits. Therefore, whilst the processing of Appendix D entitlements took over a year, the Applicant had not been left without any resources in the meantime, but had at her disposal a considerable amount of money—more than USD100,000—within a reasonable time after she lost her husband.

59. In conclusion, no excessive delay could be identified in handling the Applicant's claims that would justify an award of compensation.

60. Regarding the denial of access to the Board of Inquiry Report to the decedent's relatives, it must be stressed that, on 23 April 2010, the Respondent provided the Applicant with a copy of the Report. Any related claim, hence, is limited to the alleged initial refusal to share it prior to this date.

61. The Applicant asserts that she asked for the Report on several occasions. However, at no stage did she provide any evidence of such requests to the Tribunal, which is thus not in a position to verify her assertion. Even accepting this assertion as a fact, it is unknown when and to whom she addressed the said requests. Presumably, she must have asked for the report only after taking cognizance of the ABCC recommendation, i.e., in October 2008, which made reference to the "lack of responsiveness on the part of UNIFIL Security".

62. In this context, the Tribunal does not consider the delay as excessive and therefore rejects any claim for compensation.

Related expenses

63. This claim concerns the practical application of article 10.1 of Appendix D to the Staff Rules. What is in contention is not whether, as a matter of principle, the Organization must pay the expenses resulting from the decedent's demise. This is undisputed from the moment the Controller endorsed the ABCC recommendations on 2 October 2008. Rather, the litigious point lies in determining, concretely, which expenses are to be regarded for this purpose as sufficiently linked to the death of the staff member.

64. In the relevant decision, the Controller authorized the reimbursement of related costs "as per existing United Nations policy provisions". The said article 10.1 is the main provision on the matter and it sets the standard by stipulating, *inter alia*, that the Organization shall pay "[a]ll *reasonable* medical, hospital and *directly* related costs" (emphasis added).

65. Initially, the Applicant sought reimbursement of a series of expenditures allegedly originating from her husband's death. Since then, the Administration has carried out a fresh examination of such claims as resubmitted in mid-2010. At the outcome of this review, some of the payments requested were allowed, and others rejected with an explanation of the motives for their refusal. After debate at the hearing, the parties agreed that the only claims of this nature still pending at this point are those regarding travel costs for family members to Lebanon and New York, namely: (1) airfares for travel of three family members to Beirut immediately after the incident, in January 2007; (2) airfares for travel to Lebanon of the Applicant and her daughter in March 2007, during which the administrative steps required to begin the processing of entitlements were completed; (3) airfares and daily subsistence allowance for travel of the Applicant and her daughter to New York, during which they inquired about the progress in the processing of the entitlements.

66. When looked at closely, none of the above expenses satisfy the article 10.1 test of being reasonable and directly related costs.

67. The specific case of the January 2007 travel is addressed in section 3.2 of administrative instruction ST/AI/2000/14 (Coordination of action in cases of death of staff members: Travel and transportation in cases of death or health-related emergency), which provides in section 3.2:

(b) In case of death of a staff member, ...

(i) Travel of an eligible family member may be authorized to the duty station or mission area to attend the burial and/or to accompany the remains to the place to which the deceased was entitled to return travel ...

68. As per the above, the Organization covers the travel expenses of only one family member escorting the deceased staff member to his or her home country. The Applicant, who was present at the duty station, was the eligible family member authorized under ST/AI/2000/14 and her flight ticket to the United Kingdom was paid by the Organization, whereas the travel costs of the three other relatives accompanying the decedent's remains were recovered. Indeed, the above-quoted provision offers a valid basis for this course of action, for it is part of the "existing United Nations policy provisions" referred to in the ABCC recommendations which allow to draw the line between the expenses for which it is reasonable for the Organization to pay and those for which it is not.

69. The subsequent trips of two family members to Lebanon and New York are not reimbursable either under Appendix D. They are presented as expenses incurred in administering the decedent's estate. Nonetheless, without questioning that the Applicant and her daughter conducted during these travels certain administrative actions pertaining to the decedent's estate, they can hardly be seen as resulting from the staff member's passing. In sum, such costs do not meet the requirement of being "directly related" to the decedent's death.

Costs

70. Article 10.6 of the Statute makes clear that costs may be awarded against a party exclusively inasmuch as the latter has manifestly abused the proceedings before the Tribunal.

71. The Applicant holds that she had to file not one but two applications “due to the Respondent’s incorrect arguments of law”, which constitutes an abuse of process. This argumentation does not stand.

72. On the one hand, the withdrawal of the first application addressing the same substantive questions was due to receivability issues which in no manner are related to the Respondent’s arguments or procedural conduct. On the other hand, having carefully reviewed the parties’ contentions, the Tribunal cannot find any submission by the Respondent which exceeds the limits of legitimate representation of the Organization’s interests.

73. Hence, no costs are to be awarded in this case.

74. The Tribunal bears in mind the sad events giving rise to this case and is sympathetic to the Applicant’s sorrow. It remains that, from a legal perspective, no further compensation is warranted on any of the grounds raised.

Conclusion

75. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 9th day of February 2012

Entered in the Register on this 9th day of February 2012

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry