



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/104

Judgment No.: UNDT/2024/003

Date: 8 February 2024

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

GUEZEL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Kyung Min Lee, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Background

1. On 13 December 2021, the Applicant filed an application on behalf of the dependents of a deceased staff member, a former P-4 Regional Administrative Officer with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”). The Applicant is the deceased’s sister.

2. The Applicant is challenging an implied administrative decision taken by the Advisory Board on Compensation Claims (“ABCC”) not to compensate the deceased staff member’s dependents for the ABCC’s inordinate delay in processing their compensation claim pursuant to Appendix D to the Staff Regulations and Rules (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations) (“the contested decision”).

3. The reply was filed on 17 January 2022. The Respondent argued that the application was not receivable *ratione personae*, *ratione materiae* and *ratione temporis*. On the merits, the Respondent urged the Tribunal to dismiss claim because the deceased’s dependents were eventually fully compensated in accordance with the prevailing Staff Regulations and Rules.

4. The case was assigned to the undersigned Judge on 24 February 2022.

5. On 17 March 2022, the Applicant filed a response to the reply on the issue of receivability. This Judgment incorporates the Tribunal’s considerations on receivability and on the merits. For reasons given below the application is allowed.

Facts and Procedural Background

6. The deceased staff member passed on 30 June 2018 while on rest and recuperation leave in Thailand.

7. On 18 December 2018, the Applicant, on behalf of the deceased's widow and minor daughter, submitted a claim for compensation to the ABCC under Appendix D to the Staff Regulations and Rules.

8. After not hearing from the Administration, between 4 November and 1 December 2020, the Applicant inquired from the ABCC about the status of the claim.

9. On 4 December 2020, the ABCC informed the Applicant that the claim was still under review by the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH").

10. On 3 June 2021, the acting Secretary of the ABCC informed the deceased's widow that by the Secretary-General's decision of 1 June 2021, the death of the deceased was recognized as attributable to the performance of official duties on behalf of the United Nations and that, therefore, compensation would be awarded to his dependents under art. 3.4 of Appendix D.

11. On 1 July 2021, compensation was paid. On 2 August 2021, the Applicant requested management evaluation of the contested decision.

12. On 15 September 2021, MEU informed the Applicant that her request was not receivable.

13. The Tribunal held a case management discussion ("CMD") on 14 April 2022. At the CMD, the Applicant was directed to file the power of attorney signed by the widow of the deceased staff member as proof that the widow had authorized the Applicant to represent the deceased and his estate and to bring an action on her behalf before the Dispute Tribunal.

14. The Applicant filed the required power of attorney on 27 April 2022.

15. Pursuant to Order No. 63 (NBI/2022) issued on 30 May 2022, the Tribunal determined that the application was receivable and informed the parties that the reasons for the decision would be provided in this Judgment.

16. The Tribunal conducted an oral hearing from 15-17 March 2023 and on 18 October 2023. Four witnesses testified to prove that the contested decision not to compensate the deceased staff member's dependents timely had adverse impact on the dependents and compensable. These witnesses were: Ms. Doknhangkham Insouvanh, the widow; Ms. Chansouk Insouvanh, the widow's sister; Ms. Ursula Minaya, a family friend; and Ms. Sandrine Guezel, the deceased's sister (the Applicant).

Procedural challenges in disposal of the case

17. Several factors caused a delay in the issuance of this Judgment including:
- a. A seven-month gap between the hearing of the witnesses between March and October 2023 occasioned by the unavailability of a witness;
 - b. A three-month delay in obtaining a hearing transcript and getting it translated because of the unavailability of Spanish transcriber/translators during the relevant period; and
 - c. Intermittent deployments of the assigned judge.

Evidence adduced at the hearing

Ms. Doknhangkham Insouvanh

18. Ms. Doknhangkham Insouvanh, testified as follows:
- a. Her husband died in June 2018. He worked for the United Nations. He was the breadwinner of the family;
 - b. Her husband paid for all the family expenses, food, travel costs etc. Their daughter ("D") attended the French international school. Her husband paid the school's tuition fees and for all the other school-related expenses like fuel for the family car to take her to school;

c. After her husband died, she did not have any income. She could not raise the school fees for July and August 2018. She requested for the school to provide some exemptions for her daughter, to allow her not to pay six months' tuition fees. After that, her husband's relatives paid for her daughter's tuition fees;

d. Her elder sister assisted her with her husband's funeral formalities. The Applicant in this case assisted her to submit a claim to the ABCC;

e. The first payment that she received from the United Nations was the widow's benefit. Thereafter she received a second payment for her daughter's tuition fee in about 2021;

f. Because she had no income, she sent her daughter to live with Ms. Guezel in Peru in October 2019;

g. It was hard for her daughter to leave her; she also left her friends and the culture she knew. She had lived with her daughter from birth until she was 11 years old. She missed her daughter but the move was unavoidable; and

h. For the two and a half years when she did not know whether she would receive a payment from the United Nations, she suffered uncertainty, she felt "dark" and sad. She had to borrow money from her relatives for any of her expenses.

19. During cross-examination by Counsel for the Respondent, Ms. Doknhangkham Insouvanh, testified that neither her nor her daughter sought any treatment for any psychological harm caused by the delay in receiving payment from the United Nations. On re-examination by the Applicant's Counsel, she clarified that if she had money at the relevant time, she may have tried to seek some professional psychological help for herself and her daughter.

Ms. Chansouk Insouvanh

20. Ms. Chansouk Insouvanh testified as follows:

- a. She is the elder sister of Ms. Doknhangkham Insouvanh and is D's aunt;
- b. Before Mr. Guezel's death, her sister's family lived comfortably;
- c. Mr. Guezel was the breadwinner of the family at that time, and it was he who paid for the D's schooling. All the expenses were borne by Mr. Guezel because it was only he that worked and Ms. Doknhangkham Insouvanh was a stay-at-home wife/mother. Ms. Doknhangkham Insouvanh did not have any income of her own. She had been unemployed for a long time;
- d. When Mr. Guezel died, Ms. Doknhangkham Insouvanh cried a lot and complained to her that she did not have any income and sought her help constantly. She helped her sister pay for D's tuition fees for one semester right after Mr. Guezel's death, from September to December;
- e. Ms. Guezel helped her sister to submit a claim with the ABCC. Ms. Guezel frequently contacted her and asked her to interpret, because her sister neither speaks English nor French. Her sister communicated to Ms. Guezel through her;
- f. Her sister was without a payment from the United Nations for at least a year. She would frequently borrow money from her. Her sister struggled to pay tuition fees for her daughter and because she also had children of her own, she could not help as much. They therefore had a discussion about what to do with D because her tuition fees at the international school were quite expensive;
- g. Another great expense was the cost of fuel for the car that took D to school. These factors triggered D relocating to Peru to live with Ms. Guezel;

h. Having D away in Peru was a tragic time for their whole family and not just for her sister. The relationship between her sister and D was very strong because Mr. Guezel was often away on official duty. When her sister returned from Peru to drop the child, she used to cry a lot;

i. D did not want to go to Peru and preferred to stay with her mother. They maintained phone contact when D was in Peru. Her sister could not afford to visit D in Peru;

j. The long distance caused suffering for both D and her mother. D did not cope very well in school, her performance dropped, she did not have friends and she became sad and withdrawn. The phone conversations between D and her mom were heartbreaking because they triggered painful memories;

k. Her sister also became withdrawn. She did not talk much and was angry sometimes. She recommended to her sister to see a psychiatrist because she had access to free counselling services from her employer, but she refused because culturally, seeing a doctor was associated with sickness and she considered the death of her husband and the separation from her daughter, was a normal part of the grieving process; and

l. Her sister was not able to take care of herself or her own house and she would send a maid to help out her sister. Sometimes her sister slept all day.

Ms. Minaya

21. Ms. Minaya testified as follows:

a. She is a close friend of the family;

b. When she met Ms. Doknhangkham Insouvanh and D in 2017, the financial situation of the family was good. The mother and the daughter lived well, travelled, were satisfied and lived happily;

- c. After the death of Mr. Guezel, Ms. Doknhangkham Insouvanh became sad. Financially, the situation was bad because the latter was unemployed. D was accustomed to a different status of life. She went to a private school;
- d. She was aware that Ms. Doknhangkham Insouvanh had presented a claim to the United Nations, but the payment was delayed;
- e. The delay affected Ms. Doknhangkham Insouvanh and D negatively. Ms. Doknhangkham Insouvanh had to take the decision to send D to Peru because she could no longer provide the life she was accustomed to; and
- f. When Ms. Doknhangkham Insouvanh came back from dropping her daughter to Peru she appeared downtrodden. She had not recovered from the loss of her husband; she was worried about her daughter and she used to cry a lot.

Ms. Guezel

22. Ms. Guezel testified as follows:

- a. Mr. Guezel was her only brother. He used to send money to her sister-in-law every month for her and D's living expenses, for paying the bills, tuition fees, and for travelling to meet him in Europe or in Thailand. They had a nice life when he was alive;
- b. Her brother was working in Africa on contracts, and they had two places: one in Laos and one in Thailand where he and her sister-in-law met when he was on leave. At the time, D attended a French school in Vientiane, Laos;
- c. On 28 June 2018, her sister-in-law and D went to meet her brother in Thailand for holidays and D found him lying dead;
- d. When he passed away suddenly, her sister-in-law was unemployed and had no income. She (Ms. Guezel) had to pay for D's tuition fees;

e. She met her sister-in-law in December 2018 who requested her to take in D because she could not afford to keep her and wanted her to get a good education in Peru. She filed the ABCC claim on behalf of her sister-in-law and D in December 2018;

f. In October 2019, following legal formalities, she became D's legal guardian. D moved to Peru then. Her sister-in-law accompanied D and stayed with them in Peru for two or three weeks before returning home to Laos. D was 11 years at the time. If the ABCC had made the payment on time it would not have been necessary for D to move in with her;

g. Her sister-in-law first received money from the United Nations Joint Staff Pension Fund ("UNJSPF") in 2020 amounting to approximately USD650 per month. This amount was not enough for her sister-in-law and D to live on. Her brother used to send them between USD2,000 and USD3,000 monthly;

h. D struggled to cope in Peru. She had to adapt to her new environment and missed her mother terribly. D never spoke Spanish before, so it was difficult for her to cope in her new school. The French school that D attended was expensive and she paid for it with the assistance of her husband;

i. D communicated regularly with her mother on Messenger. Her sister-in-law was stressed and could not afford to travel to Peru;

j. She followed up with the ABCC regularly. The payment was received in June or July 2021. A payment of USD8,353.11 per month was the amount awarded by the ABCC. This was two years after D had moved in with her; and

k. If the money had arrived on time, her sister-in-law and D would not have been separated.

23. In cross-examination, Ms. Guezel testified that D continued to live with her and her family even after the money was paid because it was two years after she was already adopted by her family. It would not have been in her interest to keep moving her around like a toy. She had gotten acclimated to her adoptive family, she had a friend in her cousin, adapted to the school after earlier struggles to learn a new language and the History of a new country. Further, the family had by then moved from Peru to Canada. D was now a teenager, inseparable from her new family. She concluded that although she was not aware of when the ABCC should have made the payment, but in her opinion three years was inordinate delay.

Parties' submissions on receivability

The Respondent

24. The Respondent's submissions on receivability are summarized below:

- a. The application is not receivable under arts. 2(1) and 3(1) of the UNDT Statute. The Applicant is neither a current nor a former staff member of the United Nations. She is not a "person making claims in the name of an incapacitated or deceased staff member". Rather, she is a sister to a deceased staff member and has filed the application in her own name but on behalf of the dependents;
- b. The Applicant does not claim damages on behalf of the deceased staff member but on behalf of the beneficiaries for their suffering. Given that the dependents do not hold a contractual relationship with the Organization, they do not have a right or a standing to claim for damages to themselves and the Applicant cannot purport to bring the claim on their behalf. As such, the Applicant lacks standing;

c. The Applicant does not legally represent the deceased staff member or his estate. The power of attorney attached to the application authorizes the Applicant to exercise the power and discretion on behalf of the spouse of the deceased staff member. It does not authorize her to legally represent the deceased staff member or his estate. Personal jurisdiction is not waivable under the UNDT Statute as there is no language to that effect and the cases construe it strictly. Claimants must prove a representative capacity to the estate to have standing. Accordingly, the Tribunal lacks jurisdiction to pass judgment on the application *ratione personae*;

d. To have *locus standi* to challenge an administrative decision, the Applicant must establish that she has a sufficient interest in the matter, that is, a right or interest at stake. The person's rights or terms of appointment must be affected by the contested decision. The Applicant has not identified any contractual rights of the beneficiaries or herself that were violated by an adverse administrative decision;

e. The Staff Regulations and Rules do not provide time limits for the Organization to process claims under Appendix D or for payment of interest on Appendix D claims. On the contrary, section III of Appendix D expressly prohibits payment of interest on payments for service-incurred death, injury or illness. A claim for compensation for delay does not constitute an administrative decision;

f. Delay is not a cause of action. It is a remedy awarded once there is a finding of liability. The Applicant cannot make a stand-alone argument of delay. She can only challenge the decision not to pay the dependents the death benefits. In this case, the dependents have been paid their full benefits hence there is no justiciable matter before the Tribunal. The Applicant never made a request for payment for delay that was denied. There is no challenge to an administrative decision to support the Applicant's claim for delay. Accordingly, the application is not receivable *ratione materiae*;

g. On 19 November 2020, the Applicant first requested management evaluation of the non-payment of the death benefits and sought compensation and interest for the alleged delay. The MEU responded on 17 January 2021 that the request was not receivable on mootness grounds. Accordingly, whether the Applicant agreed with the management evaluation response or not, she was required to file an application contesting the alleged delay in processing the claim no later than 90 days thereafter, or by 17 April 2021 to preserve her rights to adjudicate the merits of the claim. The Applicant did not file this application until 13 December 2021, 240 days late. Therefore, the application is not receivable *ratione temporis*;

h. The Applicant filed a second management evaluation request on 22 February 2021, again raising the same issues relating to the delay in processing the claim that she raises in the application. The MEU responded to the request on 19 March 2021 informing her that the request was not receivable given that the claim was still pending review by DHMOSH and no final administrative decision had been made. Based on the second management evaluation response, the Applicant should have filed an application contesting the alleged delay in processing the claim no later than 90 days thereafter, or by 17 June 2021. The Applicant filed the application on 13 December 2021, 179 days late;

i. The Applicant filed a third management evaluation request on 2 August 2021 challenging the contested decision. The MEU responded to this request on 15 September 2021. It was only after this response that the Applicant filed the application challenging alleged delay in processing the claim; and

j. The Applicant should have filed an application challenging the alleged delay in processing the death benefits within 90 days of receiving the two management evaluations of 17 January 2021 and 19 March 2021 but waited over six months to file the present application. The Appeals Tribunal has reiterated that repetition of the same request for an administrative decision, as was

previously refused, cannot reset the clock with respect to statutory timelines. Rather, time starts to run from the date on which the original decision was made. The application should be dismissed *ratione temporis*.

The Applicant

25. The Applicant's submissions on receivability are summarized below:

a. Contrary to the Respondent's contention, the application in the present case has been brought on behalf of the deceased staff member. From the power of attorney annexed to her application, she is representing her deceased brother and his estate to which she was authorised by her late brother's wife. Her late brother's wife does not speak English or French and, considering the family tragedy that she faced, she has been incapable of dealing with the overwhelming and complicated administrative procedures following his death. Her late brother's daughter is a minor child, and she is under the Applicant's legal guardianship;

b. The widow and daughter have standing to claim compensation for the ABCC's delay within the internal justice system which follows from their standing to bring an ABCC claim. It is inherent to their right to bring an ABCC claim and results directly from the latter. A direct contractual relationship with the Organization is in that case not necessary as the Organization itself has vested the beneficiaries with a right to bring an ABCC claim as survivor dependants of a deceased staff member and with standing to pursue the latter—if necessary—within the internal justice system. Otherwise, a right of the survivor dependants of a deceased staff member to submit an ABCC claim pursuant to Appendix D would be a dead letter - a hollow legal provision without a possibility to implement it and without any procedural guarantees;

c. Section V of Appendix D does not make any distinction between “staff members” and other claimants but refers only to “claimants” when allowing them to review and appeal the administrative decisions. The latter gives them standing before the Tribunal in case of an unsuccessful management evaluation;

d. The Administration accepted the Applicant’s standing, including the power of attorney in the ABCC proceedings. At no stage - until now - have they contested the Applicant’s authorization to represent the deceased’s contractual rights and those of his estate as well as his surviving dependents and their rights. Therefore, by applying principles of good faith, the Administration is estopped from raising any alleged challenges to the receivability *ratione personae*;

e. The *locus standi* contested by the Respondent follows from the Administration’s obligation to act transparently, fairly, and justly and the principle of prompt dealing with matters of the staff members and their dependents, including the lack of undue delays, as submitted in the application. The right correlated thereto applies not only to staff members but also their surviving dependents as also the latter have rights and obligations following from Appendix D;

f. The protracted delays violate the Administration’s duty to address the matters of staff with promptitude and they contradict the required highest standards of care and due diligence. Thus, the Administration’s delays directly violate the staff member’s and the beneficiaries’ rights granted to them by the respective legal provisions. Whereas the decision of the ABCC to compensate the dependents for the deceased’s death in service was issued in their favour; the decision not to compensate them for the delay of the ABCC constitutes an adverse administrative decision that is contestable like any administrative decision served on staff members and their dependents;

g. The Respondent's contention that the application in the present case is allegedly time-barred is incorrect and misleading. As it follows from the 19 March 2021 MEU letter, MEU deemed the request for management evaluation of an implied administrative decision not to grant the ABCC claim irreceivable since the case was still pending before the Medical Services and ABCC. In other words, MEU deemed the request premature, and they concluded that they were not able to assist the Applicant "at the time". The final ABCC decision granting the requested compensation and, yet, denying at the same time any compensation for the delay of the ABCC was issued on 3 June 2021. On 2 August 2021, a management evaluation request was filed and on 15 September 2021, MEU issued its evaluation. Therefore, the application filed on 13 December 2021, was filed within the 90-calendar day deadline following the receipt of the management evaluation of the contested administrative decision; and

h. The management evaluation request and the evaluation of MEU resulting from it relied upon by the Respondent concerned the protracted failure of MINUSCA to pay death benefits and other outstanding entitlements and, hence, a different administrative decision. It did not refer to the decision not to grant a compensation for the delay of the ABCC. It was impossible to contest the latter at the time as no final ABCC decision ending the proceedings before ABCC and, thus, enabling to assess the delay, was issued at the time. It was the final 3 June 2021 ABCC decision that triggered the necessity to submit a request for management evaluation and the subsequent application in the present case.

Consideration on receivability

26. The Respondent challenged the receivability of the application on three grounds: *ratione personae*; *ratione materiae* and *ratione temporis*.

27. The Applicant filed a rejoinder urging the Tribunal to find that the application is receivable on all grounds.

28. After reviewing the arguments, the Tribunal concluded that the application is receivable and reserved its reasons. Below the Tribunal sets forth the reasons for finding that the application is within the Tribunal's competence pursuant to art. 8 of the UNDT Statute providing in relevant parts that,

1. An application shall be receivable if:
 - (a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;
 - (b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;
 - (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and
 - (d) The application is filed within the following deadlines:
 - (i) In cases where a management evaluation of the contested decision is required:
 - a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission;

Receivability ratione personae

29. The Dispute Tribunal is competent under art. 2.1 of its Statute "to hear and pass judgment on an application filed by an individual, as provided for in art. 3.1 of the Statute, against the Secretary-General as the Chief Administrative Officer of the United Nations".

30. Art. 3.1(c) of the UNDT Statute states that the Tribunal shall entertain applications from "[a]ny person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes" subject to compliance with the limitation period provided under art.8 reproduced above.

31. When interpreting art. 3.1(c) of the Dispute Tribunal’s Statute, the United Nations Appeals Tribunal (“UNAT”) reasoned that the provision is wider than what is expressly provided, being, “claims [brought] in the name of an incapacitated or deceased staff member of the United Nations”. UNAT found that:

Despite the apparently narrow wording of the third category of lawful claimant, its intention is clearly to at least allow claims made by, for example, the executor or other administrator of the estate, of a deceased staff member.¹

32. UNAT further reasoned that interpreted literally, claims made in **the name of a deceased staff member** would severely limit the classes of persons, for example immediate family members, from making such claims (footnote number 5, *Larriera* 2022-UNAT-1271).

33. In the case at bar, the Respondent argued that: the Applicant is neither a current nor a former staff member of the United Nations; she is not a person making claims in the name of an incapacitated or deceased staff member; she does not claim damages on behalf of the deceased staff member but on behalf of the beneficiaries for their suffering; the dependents do not hold a contractual relationship with the Organization therefore they do not have a right or a standing to claim for damages to themselves; the Applicant cannot purport to bring the claim on their behalf; the Applicant does not legally represent the deceased staff member or his estate; the power of attorney does not authorize her to legally represent the deceased staff member or his estate; personal jurisdiction is not waivable under the UNDT Statute as there is no language to that effect and the cases construe it strictly; and the Applicant has not proved a representative capacity to the estate in order to have standing. In addition, the Respondent argued that the Applicant has not established that she has a sufficient interest in the matter, she has not identified any contractual rights of the beneficiaries or herself that were violated by an adverse administrative decision.

¹ *Larriera* 2022-UNAT-1271, para. 27.

34. In response, the Applicant dismissed the Respondent's arguments and averred that the deceased staff member's widow,

does not speak English or French and, in light of the family tragedy that she faced, she has been incapable to deal with the overwhelming and complicated administrative procedures following Mr. Guezel's death. Therefore, she requested Ms. Guezel's assistance and she authorized her sister-in-law to represent the deceased Mr. Guezel and his estate Mr. Guezel's daughter [D] is a minor child, under Ms. Guezel's legal guardianship. Both Mrs. Insouvanh and Ms. D. Guezel are Mr. Yann Guezel's legal successors/beneficiaries and surviving dependents.²

35. It is clear from the Applicant's submissions that she is a legally authorized representative of the deceased staff member to bring an action on behalf of the deceased staff member for the benefit of his lawful dependents who are themselves legally incapacitated to bring the action on account of semi-illiteracy and age. The dependents' right to bring the action arise from the Staff Regulations and Rules, whose purpose and scope as provided in art. 1.1 of Appendix D is, to

provide for compensation for death, injury or illness attributable to the performance of official duties on behalf of the United Nations... Compensation shall be provided solely to staff members and **their dependents**, in accordance with the terms and conditions contained in the present rules. (Emphasis added).

36. The provision gives the Applicant a right to bring an action to seek compensation on behalf of the dependents. There is no requirement for a special format to be used by the Applicant under the rules. The Respondent has not provided any legal basis for discrediting the power of attorney. The Respondent did not challenge the Applicant or the widow concerning their standing in this Tribunal during the hearing. Furthermore, the record shows that the Administration recognises the Applicant as the deceased estate's representative. He has communicated and dealt with her throughout the processes leading to the present claim. The Respondent has not adduced any document or evidence to show that the ABCC or any agent of the Administration questioned or

² Applicant's Submissions Pursuant to the Dispute Tribunal's Order No. 030 (NBI/2022), dated 17 March 2021, para. 3.

refused to recognise the Applicant. As a matter of fact the Administration made decisions on account of the communication and correspondence with the Applicant.

37. In view of the legal framework, the Tribunal finds that the Applicant falls within the definition of “claimant” under art. 3.1(c) of the Tribunal’s Statute and is therefore eligible under art.8.1(b) of said Statute to bring an application before the Tribunal. The application is receivable *ratione personae*.

Receivability ratione materiae - Delay as a reviewable administrative decision

38. The Respondent submitted that the Applicant is not appealing a reviewable administrative decision as described under art. 2.1(a). In his view, he is under no legal obligation under Appendix D to pay in service death compensation within any specified time. A delay according to him, does not give rise to a cause of action for judicial review.³

39. The Respondent’s position is not supported by law or jurisprudence. Firstly, the fact that a time limit is not attached to an administrative action does not give the Administration authority to act unfairly or in bad faith or without justification or without transparency or accountability, or without due diligence or to act negligently.

40. In this regard, the Applicant argued citing *Dahan*⁴ that the protracted delay was inconsistent with the Administration’s duty to address matters affecting staff members with promptitude. The inordinate delay is a violation of the required highest standards of care and due diligence expected of the Administration. It follows that the Administration’s delay directly violates the staff member’s and the beneficiaries’ rights granted to them by the respective legal provisions.⁵

41. Secondly, the jurisprudence recognises an inordinate delay as a reviewable administrative decision.

³ Reply, para. 14.

⁴ 2018-UNAT-861, para. 26 and *Kisia* UNDT/2019/019, para. 89.

⁵ Paragraph 7 of the Applicant’s 17 March 2022 submission.

42. For instance, the Appeals Tribunal has held that an alleged delay in reaching a decision, may be challenged in the context of an appeal after the conclusion of the entire process.⁶ This is consistent with the course of action that the Applicant took in these proceedings. In *Auda*, a case concerning delay in conducting administrative processes, the Appeals Tribunal found that:

Ultimately, once the investigation has been concluded, its outcome and administrative consequences, as well as **any related acts or omissions, can be challenged in their own right** via management evaluation and before the Dispute and Appeals Tribunals.⁷ (Emphasis added)

43. The position of the law and jurisprudence is that although time limit is not provided within which the Respondent should pay compensation under Appendix D, he is still under a legal obligation to act promptly when dealing with a matter.⁸ The discretion accorded to him in matters of administering compensation under the ABCC is not absolute. There are individuals behind every ABCC claim, some like those in this case, destitute and hence failure to exercise managerial discretion reasonably promptly is a ground for judicial review. The Tribunal finds on the circumstances of this case that the contested decision is identifiable and reviewable. The application is receivable *ratione materiae*.

Receivability ratione temporis

44. An application is receivable under art. 8 of the Dispute Tribunal's Statute where an applicant has previously submitted the contested administrative decision for management evaluation and the application is filed within 90 calendar days of the receipt of the management evaluation response.

45. The Respondent argued that the application was not filed in a timely manner and hence it ought to be adjudged irreceivable. The Respondent seems to confuse the present application with previous management evaluation requests filed by the same

⁶ *Birya* 2015-UNAT-562, para. 47.

⁷ 2017-UNAT-786, para. 35.

⁸ *Sergio Baltazar Arvizu Trevino* 2022-UNAT-1231.

party trying to compel the Administration to consider the dependents' claim for payment. Hence, the Applicant argues that the present application was filed in a timely manner. The Tribunal agrees.

46. It is on record that the Applicant had filed at least three management evaluation requests relating to decisions or lack of decisions arising from the same event, i.e., the death of the staff member. It was however the management evaluation request of 2 August 2021, challenging the Administration's refusal to compensate the dependents for the delay in processing the death benefits which culminated into these proceedings. The response of MEU was received on 15 September 2021. The application was filed on 13 December 2021.

47. In her application before this Tribunal, the Applicant contests the delay of the ABCC in processing compensation, asserting that the more than two-and-a-half-year long inability and unwillingness to process compensation constituted undue delay hence a violation of the Administration's obligations. She sought to be compensated for the delay and for interest to be calculated on the two-and-half-year delay on the amount that was eventually paid on 3 June 2021 as compensation for the in-service death.⁹

48. It is clear from the facts on the timelines that the application meets the requirements under art.8.1(a), (c) and (d)(i)a of the UNDT Statute. The Respondent has not disputed the chronology of events leading to the present action. It is found that the application is receivable *ratione temporis*.

The Parties' submissions on the merits

The Applicant

49. The Applicant's submissions on the merits are summarized below:

⁹ Page 2 of 13 of the application.

a. There is an obligation to compensate an undue delay by the Administration. There is an obligation to treat staff and their dependents fairly, justly and transparently, including how decisions are taken. There is an obligation on the Administration to address staff and their dependents' concerns with promptitude and to adhere to the highest standards of care and due diligence. Undue delay on the Administration's side is compensable;

b. There was an undue delay in the present case resulting from the Administration's negligence and violation of its duty to act promptly:

i. It took the Administration more than two and a half years to grant compensation for an orphaned minor child and a widow of a deceased staff member. This constitutes an undue delay resulting from the Administration's negligence considering the following factors;

ii. All the relevant documentation, including all the relevant medical reports necessary to assess the case, were submitted with the ABCC claim of 18 December 2018. Thus, both ABCC and DHMOSH had all the information necessary to promptly evaluate the submitted claim;

iii. The undue delay by DHMOSH cannot be treated as a justification of the overall undue delay in the assessment process of ABCC. On the contrary, the Administration is responsible for the overall delay of its entities, especially considering that the DHMOSH technical assessment is an integral part of the evaluation of ABCC;

iv. The Covid-19 pandemic, quoted by the Respondent as an excuse for the Administration's delay started in March 2020. On 11 March 2020, the World Health Organization ("WHO") declared the Covid outbreak a global pandemic. The claim before the ABCC on behalf of the deceased staff member seeking to compensate his widow and his orphaned minor daughter was filed on 18 December 2018 almost two years earlier. Therefore, the global pandemic can hardly be seen as a justification of the

Administration's inaptitude or unwillingness to act with the required promptitude;

v. The Applicant submits that the Respondent mentions in his reply that the Applicant's case could not have been handled at the expense of the overall flow of the ABCC operations. Neither Mrs. Insouvanh nor D expected any preferential treatment from ABCC or DHMOSH. They expected only a prompt, transparent and fair treatment of the submitted claim. Yet, the Administration's statement itself shows that there has been a systemic problem with the promptitude of the overall flow of the ABCC process when handling the claims submitted by staff and dependents. The fact that the Administration has been aware of this systemic problem with the length of the overall flow and has not done anything to remedy is sufficient proof in itself of the Administration's negligence in handling the matters without undue delay;

vi. Whereas in the cases quoted in the reply, a 14-month-long delay in handling a staff member's claim did not trigger a duty to compensate by the Administration, the Applicant submits that in the present case the delay is considerably longer, i.e., at least two and a half years. The length of this undue delay clearly indicates negligence on the Administration's part and a duty to compensate Mr. Guezel's dependents; and

vii. The Respondent has not provided any valid reason as to why it took the Administration more than two and a half years to analyse an autopsy report of four pages, one medical letter (half a page long) and two emails from a medical expert (each shorter than one page) in more than two and a half years. The ABCC claim submitted in December 2018 contained not only the above but also all the information necessary regarding the malaria types in the Central African Republic and Thailand, provided both by the WHO and the Centre for Disease Control. The length of handling the

ABCC claim cannot be explained in any other way than by the Administration's negligence.

- c. The Applicant is entitled to compensation for the undue delay:
 - i. Art. 20 of the UNDT Rules of Procedure provides for a possibility to compensate applicants before the Tribunal for the procedural delays by the Administration. There is also a possibility to grant moral damages in cases where there is harm to psychological or physical well-being which needs to be compensated; and
 - ii. Contrary to the Respondent's statement, the observations of Ms. Guezel constitute independent third-party evidence as required by the Tribunal's case law. The fact that Ms. Guezel is Mr. Guezel's relative does not disqualify her *per se* from providing independent evidence regarding the hardships and mental state of both Mr. Guezel's daughter and his widow. Ms. Guezel is also best suited to provide such evidence as a witness since she was present when Mrs. Insouvanh and D lost respectively the husband and father and she has observed how this loss affected the family and their well-being. She also witnessed how the Administration's undue delay in handling the ABCC claim affected the family and caused devastating hardship for both the widow and the orphaned child. The Respondent failed so far to provide any specific reason as to why Ms. Guezel's testimony lacks credibility or independence.

50. Considering the above, the Applicant requests the Dispute Tribunal to grant the application in its entirety. The Applicant prays for the following reliefs:

- a. Rescission of the decision not to grant Mr. Guezel's dependents compensation for the delay of the ABCC in processing their claim and to grant Mr. Guezel's dependents compensation for the delay in the amount of seven months' net base salary of her late brother, Mr. Guezel; and

- b. Compensation for moral harm suffered by Mr. Guezel's dependents, in the amount of six months' net base salary of her late brother, Mr. Guezel.

The Respondent

51. The Respondent's case is summarized below:

- a. The deceased staff member's dependents have received full compensation under Appendix D. The Staff Rules do not contain timelines for processing claims, and it is not for the Dispute Tribunal or for applicants to arbitrarily impose one. The Appeals Tribunal has rejected the attempt to do so;
- b. The Applicant has produced no evidence or even argued that her claim was treated any different than similar claims on the docket of the ABCC which reviews claims for workplace injuries for the global secretariat of 40,000 staff members as well as the funds and programmes. A team of three professional staff members perform this work and must consider the facts and circumstances of each claim in the order received;
- c. There was no undue delay in processing the Applicant's claim. The deceased staff member passed away on 30 June 2018. The Applicant submitted the claim to the ABCC after six months. During the following 18 months, it was reviewed in the normal course. There is no factual or legal basis for finding a delay;
- d. The ABCC completed its review of the claim one month after it received the advice of DHMOSH on the claim, and the Controller accepted that recommendation two weeks afterwards. The time required by DHMOSH to review and advise on the medical aspects of the claim was reasonable in the context of the Covid-19 world-wide pandemic, which imposed competing priorities on the Organization's medical professionals, calling upon them to prioritize Organization-wide response to the unprecedented health care crisis; and

e. The dependents received full compensation under art. 3.4 of Appendix D. They received the full retroactive compensation payment of USD293,641.63, covering the period from 1 July 2018 to 30 June 2021, and were receiving USD8,353.11 per month, beginning on 1 July 2021. The child benefit element of the compensation will also be paid until the age of 18 or 21 if the minor dependent is in full time attendance in college.

52. The Respondent requests the Tribunal to dismiss the application because compensation cannot be awarded when no illegality has been established. The Respondent submits that there is no breach of the Applicant's rights or administrative wrong in need of repair.

53. The Respondent further submits that the Applicant's claim of moral harm is not corroborated by reliable independent evidence. Her observations of the impact of the deceased staff member's death on his dependents lacks corroboration. Nor do they establish causation. The staff member's family was in a state of mourning caused by their loss, not by any legal violation by the Organization.

Consideration on the merits

54. This case involves a deceased staff member who died in service leaving behind a semi-illiterate housewife and a minor child both of whom were fully dependent on him. They lived in a remote part of the world, in Laos, meeting the deceased staff member during his holidays only. The widow was not conversant with any of the official United Nations' languages or procedures. She had primary school education only. The child was 11 years old. It took more than two and half years for the Administration to process their ABCC compensation claim. They received no updates during the process, a mere assurance that the claim was being attended to was all they got in that period. They brought this application to claim compensation for the inordinate delay and damages for psychological and mental harm caused by the undue delay.

55. The Appeals Tribunal has consistently held that it is not the role of the Tribunals to interfere with the internal procedures of the Organization. It does, however, have

a mandate to ensure that correct procedures are followed, and that staff do not suffer unjustly when management fails to live up to its procedural obligations. United Nations procedures exist to facilitate fair and transparent substantive decisions, and the failure to abide by required procedures is no mere “technicality”, but instead undermines substantive fairness.¹⁰

56. The Staff Regulations and Rules provide no time limitation for disbursing ABCC compensation. It has been held, however, that in his dealing with staff members, the Secretary-General has a duty of care and must in all cases exercise his discretion in good faith. Duty of care includes acting promptly. Good faith may involve taking reasonable steps to deal with a matter expediently. UNAT has observed the issue of administrative delays with concern as follows:

we wish to note that this appeal highlights the troubling issue of the Administration’s delays in responding to staff and staff related issues. It is of paramount importance that the Administration addresses staff concerns with promptitude and adheres to the highest standards of care and due diligence.¹¹

57. UNAT agrees with this Tribunal that an untimely payment of an entitlement to a staff member is a breach of the general principle of due diligence and good faith towards staff members enshrined in the Charter of United Nations which constitutes a structural principle of good management practice:

In the context of examining whether [staff member] had suffered any material damage from the delay in payment..., the UNDT reasonably noted the non-observance in the present case of “a general principle of due diligence and good faith towards staff members enshrined in the Charter of United Nations” which “constitutes a structural principle of good management practice”, and came to the correct conclusion that “by making the payment ... almost eleven months after it should have been effected had normal workflows been respected, despite the various

¹⁰ *Almasri* 2023-UNAT-1377, para. 80.

¹¹ *Dahan* 2018-UNAT-861, para. 26.

follow-ups ..., the Administration failed to fulfil its obligation to make a timely payment of ... entitlement ... under the Staff Rules and Regulations”.¹²

58. In *Kallon*, UNAT expounded that “mutual trust and confidence between the employer and the employee is implied in every contract of employment. And both parties must act reasonably, fairly and in good faith”.¹³

59. In the case at bar, the Respondent is of the view that since the Applicant was eventually paid, she does not have a reviewable claim. Further, that the Applicant has not proved that she suffered moral harm.

60. Oral hearings were conducted at which four witnesses including the Applicant gave evidence to prove that the delay was inordinate and that the dependents suffered moral harm. The Applicant, the widow, the widow’s sister and the widow’s family friend gave evidence.

61. It was decided at the CMD that the child, who was the first person to discover her father’s dead body after he failed to react to her excitement about a good school report she was showing him, would be too traumatized to testify.

62. At the hearing conducted on 15 March 2023, the widow, Ms. Doknhangkham Insouvanh, testified that her husband worked for the Organization and died in service in June 2018. She was a housewife, only the husband worked. She is not employed. Her highest educational attainment is at primary school in Laos. Prior to her husband’s death, she considered her economic status as middle class. After death of her husband, she became destitute. Her only income ceased abruptly due to the suddenness of the death of the bread winner. She could not support her child or herself. She sought financial assistance from relatives and close friends to survive. She could not send her child to school. She was forced by circumstances beyond her control to send away her only child to Peru soon after her husband’s death to enable her attend school and live

¹² *Ho* 2017-UNAT-791, para. 25.

¹³ *Kallon*, *op. cit.*, para. 18.

a life she was accustomed to. She didn't understand what was happening to her- fate. She was sad and helpless. This evidence was corroborated by the witnesses who testified. A summary of the evidence of all four witnesses is set out below with verbatim quotes in relevant parts for emphasis.

Life before death

63. The widow testified and this was corroborated by the three witnesses, that she and her family lived a middle-class life before the death of her husband. The deceased staff member was sending money every month for paying the bills, school tuition and expenses and for travelling to meet him in Europe or to meet him in Thailand during his rest and recuperation holidays. Financial crisis that affected school fees for the dependent child.

64. The deceased staff member paid tuition in the sum of around USD4,000-5,000 per term and related expenses including food and fuel for a family car. The mother took care of the home and drove the child to and from her school, situated 12-14 kms away.

65. After the staff member's death in June 2018, the family had no money to send the child back to school. The mother had to plead with the school to allow her to pay the tuition fees in instalments and sought help from her relations to pay the fees.

Submission of ABCC claim on 18 December 2018

66. The widow cannot speak or read any United Nations official language. She only speaks Lao. She therefore was assisted in filing the ABCC claim by the deceased staff member's sister through a power of attorney and her own sister who translated the communication between the Applicant as the personal representative in the ABCC claim and the widow.¹⁴

¹⁴ Laos into English and vice versa.

67. The Applicant received neither response nor news from the Organization after submitting the claim in 2018. In February 2021 she sent a letter to the Organization in which she repeated the circumstances of the deceased staff member's death, the emotional, psychological and financial effects of the delayed payment on the family and implored the Organization to promptly review the case.¹⁵

68. The ABCC compensation was made from 1 July 2021. However, the money came too late after the family had experienced suffering and dislocation.

Relocation of child from Laos to Peru in October 2019 and to Canada in August 2020

69. In October 2019 the child was relocated to Peru to live with her aunt on the father's side, the Applicant. In August 2020 due to Covid-19 the child and her aunt's family moved to Canada.

70. The decision to separate the widow from her daughter was hard to make. Her husband had died. She did not want her child to leave home. The child did not want to leave home, but the mother forced her to go as the only way of securing her education and future. If she had been certain about the payment from the Organization, she would not have sent her child away. She had raised the child for 11 years until the decision to give her custody away.

71. In cross-examination, the Respondent wished to know why the child was not sent back to her mother in Laos after the ABCC payment in June 2021. In response the Applicant said:

because it was two years after she was already adapted with our family. This kid is not a toy. We cannot move her like this and like that. She got adapted to her cousin, you know, to the school.¹⁶ We moved to Canada. She [is] now a teenager, we cannot play with her and move her back like this.¹⁷

¹⁵ Annex 20 to the application.

¹⁶ The record shows that the child's school grades are alleged to have dropped soon after the father's death.

¹⁷ Page 23 of 32 of the trial transcript of 18 October 2023.

Psychological and emotional effects of delayed payment

72. The widow and the witnesses testified that the sudden death of the deceased staff member, the lack of income and the separation of the child and mother stressed her and made life difficult for the child and the whole family. After escorting the child to Peru, the mother wept for three days prior to her going back home to Laos without her child. While in Laos she communicated with the child through *Messenger*, but both the child and the mother were stressed. The uncertainty surrounding their living status was undesirable. They had no money to visit each other, and they had not heard anything from the Administration concerning the claim.¹⁸

73. The child did not fare well either in Peru. She had to adapt to a new environment, a new way of life, family, food, discipline, school curriculum and language among others. She didn't like her new situation, she was missing her mother and wanted to go back to her in Laos.¹⁹

74. The widow had to borrow money from relatives for her upkeep. When asked whether she sought treatment for the mental and emotional stress, she said:

No, we did not receive any treatment. It's only between a mother and a child, my husband died, and it's just me and you now, and we need to rely upon one another" when my husband recently died. That's what I talked to my daughter.²⁰

75. On the mental and emotional state of the widow, her sister stated that she communicated regularly with the widow. She observed that the widow had changed as follows:

she [widow] came here and cried with me all the time because it was unbearable for her. The [daughter] and [widow] are together, because [deceased staff member], he went to work here and there. Now and then, they're there together, but often because [the deceased] went off on assignments. But [widow] and [daughter], they're just only together, so

¹⁸ *Ibid.*, at page 14 of 32.

¹⁹ *Ibid.*, at page 14-15 of 32.

²⁰ Page 14 of 17 trial transcript of 15 March 2023.

after deliver [daughter to Peru] she constantly broke down... It was quite tragic, not only for my sister but all the family here ... the relationship with mother and child, I mean, you can't describe it. If you're a mother by yourself, you know. If—a decision to give the child away is—is unbearable.”²¹

The widow was withdrawn, she didn't express herself, she displayed anger, and defeatist behaviour. The sister testified that, ... I recommended her to - to see a psychiatrist, but then she was not—“No, I'm not sick” because in here, in our culture [Lao], if we see a doctor, that mean you sick and she's not associated with - with the depression of it, the way she coped and things. And I tried to explain to her, you know, the way you behave, the way you do thing, it's just normal, it's just the normal grieving process. You lost your husband not less than a year, and then, you know, the decision to let your daughter to go and stay with somebody else, the mental state that you go through, it's normal. You should seek help and - and to see psychiatrist, and I will pay for you, but - but she refused, because of—yeah, again because of the culture thing, and she's coping by herself ...

... It was - it was not very good, and - and to the point that she couldn't take care of her own house, the house that they live, I—I have to have—myself, I have another maid go in to help her to clean the house and—and to shake her up sometimes. Sometimes she slept all day and that—that's why I was like, “No, you can't sleep all day, you have to get up. You have to do something. You know, talk to someone ...

... And then she's like, “No, I'm not sick, I just feel tired. I just want to sleep more.” And then it's just - “It's not about sleeping more, it's about, you're not ... enough - you're not - you're not coping enough.”

So those kind of things back and forward, you know.²²

76. When asked whether money was a hindrance to obtaining medical help for mental health, the sister witness explained that Laos had an organization that gave free services to women suffering from mental health problems and that the widow could have sought these services.²³ However, the widow did not seek the mental health

²¹ Page 11 of 21, trial transcript of 16 March 2023.

²² *Ibid.*, at pages 16-17 of 21.

²³ Page 18 of 21 trial transcript of 16 March 2023.

services because she feared that she was going to talk and talk about the same painful thing and therefore suffer more.²⁴

77. The widow concluded her testimony by stating that the delay was unfortunate. She sent her child away because she had no means of supporting her. If she had a choice, she would have had her child with her especially being an only child and soon after the death of her father/husband.²⁵

78. The failure to seek medical attention for mental health was caused by cultural beliefs. It is a valid reason under the circumstances of this case considering the nature of the dependents, in particular, the dependent child, their educational status, their environment and other social factors. However, jurisprudence provides that means other than medical reports may be used and allowed to corroborate a claim for moral damages.²⁶

79. The Respondent submitted that there is no automatic entitlement to compensation on death.²⁷ The Respondent has not cited any legal basis for this assertion. The question of whether death is service incurred is factual to be ascertained on a case-by-case basis but whether the deceased staff member's dependent is entitled to compensation under Appendix D is a matter of law which is triggered automatically after a factual finding that death is service incurred.

80. It is quite disheartening that the Respondent seems to glorify his inefficiency in handling death benefits. The Respondent states that the whole department has three professional staff members and that it is "normal" to experience such long periods in processing death benefits because there is a multitude of claimants. This even in the face of the revelation that the cause of death from the short death report of around four pages long was clear and unequivocal and that all necessary and relevant documents to

²⁴ *Ibid.*

²⁵ Page 15 of 17 trial transcript of 15 March 2023.

²⁶ See for example the majority opinion in *Kallon* 2017-UNAT-742, para. 80.

²⁷ Reply para. 25.

support the claim were submitted timely. It is hard to imagine how this matter would have ended had the widow and child not been availed the Applicant's assistance to make the claim and follow it up as she did.

81. The Tribunal does not place any weight on the Respondent's argument that COVID-19 contributed to the delay. This was never communicated to the Applicant and according to the chronology of events, it is highly unlikely that the pandemic contributed to the inordinate delay. The Tribunal finds that the lack of justifiable explanation on the part of the Respondent for the delay from December 2018 to June 2021 can only be attributed to lack of due care and diligence, transparency, accountability and good faith. It is so found. Therefore, under our jurisprudence, the delay is compensable.²⁸

Moral damages

82. The only challenge to the Applicant's claim for moral damages is that her evidence lacked corroboration as required under art. 10.5(b) of the Dispute Tribunal Statute as interpreted and applied in this jurisdiction. The provision provides that:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

83. The question of what constitutes moral injury justifying an award of compensation and what kind of evidence is sufficient or necessary to prove such injury was settled in *Kallon*:²⁹

²⁸ *Ho, op. cit.*; *Meron* 2012-UNAT-198 and *McKay* 2013-UNAT-287/Corr.1 (distinguishable).

²⁹ *Op. cit.*

60. Accordingly, compensation may only be awarded for harm, supported by evidence. The mere fact of administrative wrongdoing will not necessarily lead to an award of compensation under Article 10(5)(b) of the UNDT Statute. The party alleging moral injury (or any harm for that matter) carries the burden to adduce sufficient evidence proving beyond a balance of probabilities the existence of factors causing harm to the victim's personality rights or dignity, comprised of psychological, emotional, spiritual, reputational and analogous intangible or non-patrimonial incidents of personality.

84. The Applicant has proved that the more than two-year delay in compensating the dependents of the deceased staff member was inordinate and compensable. The Applicant has also proved beyond a balance of probabilities that the mental and emotional harm suffered by the dependents is directly attributable to the Administration's negligent handling of the matter.³⁰ The Applicant's testimony was sufficiently corroborated. In *Kallon*, the Appeals Tribunal held that moral harm can be proved by evidence produced by way of a medical, psychological report or otherwise. It is since accepted that credible external evidence independent of the Applicant's testimony whether medical or otherwise constitutes adequate corroborative evidence. In the case at bar, the deceased's widow, her sister and family friend corroborated the Applicant's evidence on moral harm. They proved to be credible witnesses. Their testimony was consistent, solid and reliable. The Tribunal finds that the claim of moral harm is sufficiently proved to the requisite standard.

Reliefs

85. The Applicant is seeking rescission of the decision not to grant Mr. Guezel's dependents compensation for the delay of the ABCC in processing their claim, and to grant Mr. Guezel's dependents compensation for the delay in the amount of seven months' net base salary of her late brother, Mr. Guezel, as well as compensation for moral harm suffered by Mr. Guezel's dependents, in the amount of six months' net base salary of her late brother, Mr. Guezel.

³⁰ *Ho* 2017-UNAT 791, para. 23 citing *Diatta* 2016-UNAT-640; *Israbhakdi* 2012-UNAT-277. See also *Mihai* 2017-UNAT-724, para. 21.

86. The Tribunal finds that the nature of the violation in this matter was serious. The suffering brought upon the widow and her daughter was attributed to extreme negligence. The affront to the widow and the child's dignity, family rights, economic and educational rights demand sufficient award of compensation to assuage the grievance.

87. The Respondent did not oppose the periods as specifically pleaded. The Tribunal finds the awards to be fair, reasonable and adequate compensation capable of restoring the dependents' trust and confidence in the Organization and possibly place them in a position of state of mind that they would have been in but for the violation.

Conclusion

88. In view of the foregoing, the Tribunal DECIDES that:

- a. The decision not to grant Mr. Guezel's dependents compensation for the delay of the ABCC in processing their claim and to grant Mr. Guezel's dependents compensation for the delay is rescinded;
- b. The claims for compensation for inordinate procedural delay and compensation for moral harm are allowed;
- c. The Respondent shall pay the equivalent of the late Mr. Guezel's seven months' net base salary for procedural delay and six months' net base salary for moral harm to the widow and the dependent child through the Applicant;
- d. The aforementioned compensation shall bear interest at the United States of America prime rate with effect from the date this Judgment becomes executable until payment of said compensations. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable; and

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e. The claim for interest on the award of compensation made to the widow in July 2021 is denied for lack of legal basis.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 8th day of February 2024

Entered in the Register on this 8th day of February 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi