

# UNDT/2011/174, Baron

## UNAT Held or UNDT Pronouncements

The Applicant requested the Tribunal to find that he suffered a prejudice equivalent to a 60% permanent loss of ENT functions and a 10% permanent loss of respiratory functions and to compensate him accordingly. He further requested the Tribunal to award him two years' net base salary as compensation for the prejudice suffered as a result of the Organization's failure to ensure the security and safety of its staff in Bagdad. The Tribunal found that the latter request was not receivable as it did not stem from a refusal decision by the Secretary-General, a decision which, in any event, should have previously been submitted to the Secretary-General for management evaluation. As regards the Applicant's claim for additional compensation, the Tribunal found that it was receivable even though the Applicant had failed to request the Secretary-General to reconsider his decision as provided for under article 17 of appendix D to the Staff Rules. However, before rendering a decision on the merits of the claim, the Tribunal ordered that a medical evaluation be conducted by a medical board established under conditions defined by the Tribunal and which is to report its findings to the Tribunal.

Exception to the principle of compulsory administrative review It appears from a reading of article 8.1 of the Statute and staff rule 11.2 that the drafter's intent was to institute an administrative review as a compulsory preliminary step, so as to allow the Administration to correct its own mistakes and thus reduce the number of appeals before the Tribunal. However, the relevant rules also provide for an exception to the compulsory administrative review, that is, when the contested decision is taken pursuant to advice obtained from technical bodies, the reason for that being that the entity responsible for reviewing the requests for management evaluation may face difficulties to assess the legality of technical decisions.

Exception to the exception to the principle of compulsory administrative review / Interpretation of article 17 of appendix D to the Staff Rules As regards article 17 of appendix D, the Tribunal must interpret the drafter's intent and determine whether or not the request for review provided for under art. 17(a) is a compulsory preliminary step. Article 17 of appendix D introduces an exception to the above-mentioned exception as regards decisions on the attributability of an injury or illness to the performance of official duties and on the type and degree of disability resulting thereof. In view of the specificity of medical questions, art. 17(b) institutes a review by a medical board of the decision previously taken by the Secretary-General on the advice of the ABCC. This medical board, which is competent only in cases where the request for review is based on medical grounds, is composed exclusively of medical practitioners, one of which at least shall not be a medical officer of the United Nations. The Tribunal found that only such a procedure may allow the Secretary-General, when his first decision is contested on medical grounds, to make an informed decision; such a procedure also guarantees the rights of both the staff and the Organization. Thus, the drafter's intent was to make the request for review provided for under art. 17 of appendix D a compulsory preliminary step before an appeal could be filed with the Tribunal. The Tribunal found nevertheless that the drafting of article 17(a) was ambiguous as the word "may" was used instead of "shall". Therefore, even though this provision must be interpreted as creating an obligation for a staff member to first request the Secretary-General to reconsider his decision before filing an appeal with the Tribunal, such ambiguity in the provision must lead the Tribunal to find the application receivable.

## Decision Contested or Judgment/Order Appealed

On 19 August 2003, the United Nations headquarters in Baghdad, Irak, suffered a bomb attack, resulting in the death of 22 persons and the injury of over 150 persons, including the Applicant who was serving as a Security Officer. In August 2009, the Applicant was separated from service for health reasons, subsequent to the Staff Pension Committee's decision to grant him a disability benefit pursuant to art. 33 of the UNJSPF Regulations. Before the Tribunal, the Applicant contests the Secretary-General's decision of 29 October 2010 to approve the ABCC recommendation rejecting his request for additional compensation for the permanent loss of ENT and

respiratory functions.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

UNDT issued an interim judgment, with a further judgment on outstanding claims to be decided at a later date.

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Full judgment

[Full judgment](#)

Applicants/Appellants

Baron

Entity

UNOG

Case Number(s)

UNDT/GVA/2011/006

Tribunal

UNDT

Registry

Geneva

Date of Judgement

7 Oct 2011

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Applicable Law

Staff Rules

- Appendix D
- Rule 11.2(b)

UNDT RoP

- Article 19.1

#### UNDT Statute

- Article 8.1
- Article 9.1