

UNDT/2012/052, Wamalala

UNAT Held or UNDT Pronouncements

Staff Rule 11.2(b) provides that a staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure taken pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation. Staff rule 11.2(b) exempts the necessity of a management evaluation in two sets of cases, namely, in cases regarding advice obtained by the Administration from technical bodies and a decision taken after a disciplinary measure. It is further to be noted that in the Guide to Resolving Disputes, “[a] management evaluation is not required if the contested decision was taken by the administration based on the advice of an expert or advisory board, such as the Advisory Board on Compensation Claims (ABCC) or a medical board. The Applicant is challenging the administrative decision made by the ABCC, an advisory board, therefore there was no requirement for him to go through the management evaluation procedure. The Applicant in this case however does not have an avenue for addressing his grievances, other than bringing the Application to the Tribunal. In the case of Tadonki, this Tribunal stated in paragraphs 8.2.7 and 8.2.8 “that the rules and regulations of the United Nations relating to employment should be interpreted and applied in a manner that takes into account the international human rights standards” and that “[t]he way in which the employment is terminated should therefore be considered in the context of the rights of the employee to due process and the compliance of the decision maker to international law and principles of the rule of law”. It therefore follows that in applying the above stated legal principles, the Code of Conduct for Judges and the UNDT Statute dealing with cases that do not require management evaluation, the Applicant should have his case heard by the Tribunal.

Decision Contested or Judgment/Order Appealed

The Applicant is appealing the decision by the Advisory Board on Compensation Claims (ABCC) to award him \$49,114.03 for permanent loss of function of his right leg as a result of injuries sustained in a road accident. The Applicant further asserts claims for gross negligence against the Secretary-General for failing to adequately ensure his safety and security in connection with the accident.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Wamalala

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2011/049

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

17 Apr 2012

Duty Judge

Judge Boolell

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Agreements, conventions, treaties (etc.)

- International Covenant on Economic, Social and Cultural Rights

GA Resolutions

- A/Res/66/106

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Rule 10.2
- Rule 11.2(b)

UNDT Statute

- Article 8.1

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2010-UNAT-030

2010-UNAT-013

UNDT/2012/028

UNDT/2010/112

UNDT/2010/111

UNDT/2010/108

UNDT/2009/086

UNDT/2009/016