

UNDT/2012/167, Simmons

UNAT Held or UNDT Pronouncements

The Respondent contends that the application is not receivable because the Applicant did not exhaust the administrative process of seeking reconsideration of her claim pursuant to art. 17 of Appendix D to the Staff Rules. The Tribunal found that the application was receivable as the Respondent's contention is not supported by a proper interpretation of art. 17.

Decision Contested or Judgment/Order Appealed

The Applicant claims that she was unlawfully denied compensation for injuries sustained as a result of a vehicular accident while on official duty.

Legal Principle(s)

Art. 17 of Appendix D to the Staff Rules: If it was the intention to require a staff member, who is dissatisfied with the decision of the Secretary-General, to seek a review as an obligatory first step before filing a claim with the Tribunal, it would have said so in clear terms. *Contra proferentem*: Although not considering that there is any ambiguity in the wording of art. 17 of Appendix D, the Tribunal ruled in favour of adopting the interpretation that gave rise to least injustice by applying the internationally recognized principle of interpretation that an ambiguous term of a contract is to be construed against the interests of the party which proposed or drafted the contract or clause, particularly when dealing with a provision such as art. 17 that has been unilaterally imposed by the Respondent (the principle of *contra proferentem*, affirmed by the Dispute Tribunal in Tolstopiatov UNDT/2010/147, para. 66).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Simmons

Entity

ABCC

Case Number(s)

UNDT/NY/2010/091

Tribunal

UNDT

Registry

New York

Date of Judgement

6 Nov 2012

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Applicable Law

Staff Rules

UNDT Statute

- Article 8.1

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2010/147

2010-UNAT-058

2010-UNAT-073

2012-UNAT-225