

UNDT/2015/066, Laca Diaz

UNAT Held or UNDT Pronouncements

Interpretation of art. 11.3(c) of Appendix D Article 11.3(c) is ambiguous. Pensionable remuneration scales are adjusted regularly and there is no explicit statement or guidance in Appendix D to indicate the relevant or operative date for assessing the pensionable remuneration at grade P-4, step V in any given case. Past practice...it is clear from the afore-stated email that the ABCC Secretary's personal experience of the consistent practice as at 21 June 2013 spanned a mere period of two years, and that in his experience, this practice has been used without exception. The statement does not differentiate between new and stale cases or exceptions, and begs the question as to what would happen in an exceptional case which the Secretary-General has accepted for consideration, if the claim was filed more than four months after the injury, as in the Applicant's case. The previous practice of the ABCC therefore, cannot in itself be a constraint to the correct interpretation of art. 11.3(c).

Delay in reaching maximum medical improvement The assessment of the date of MMI is a medical determination and the length of time taken to reach such a status will depend on the nature of the injury and response to medical treatment and rehabilitation. It is not reasonable to assume that MMI will always be reached within four months of an injury. One obvious reason for requiring a determination of MMI before awarding compensation under art. 11.3(c) is that, through treatment and rehabilitation, a staff member may fully recover from an injury and suffer no permanent impairment or loss of function at all, or, if there is a permanent impairment it may, after treatment and rehabilitation, be substantially reduced so as to reduce the eventual liability of the Organization. Other compensation received by Applicant Article 11.3(b) explicitly states that payment of lump-sum compensation under art. 11.3 "shall be in addition to any other compensation payable under article 11". Articles 11.1 and 11.2 of Appendix D deal with the payment of salary and allowances to compensate a staff member for loss of income, which compensation is explicitly based on salary and allowances "at the date on which he last attended at duty". In contrast, the payment of lump-sum compensation under art. 11.3 shall be made "whether or not the permanent disfigurement or loss of member or function

affects the staff member's earning capacity". A similar statement has been included in the relevant provision on permanent loss of function since the May 1952 provisional rules. Conclusion By accepting the Applicant's claim 21 years later under what are exceptional circumstances, considering the applicable time limits, the Organization cannot then apply the requirements of a normal claim. Due to the extreme passage of time and in fairness to justice and to prevent any iniquity, the Applicant's case calls for exceptional treatment. In light of the legislative history, the provisions of Appendix D regarding adjustments to wages and salaries and actuarial lump-sum payments, the fact that "pensionable remuneration" is by definition adjusted from time to time, and the particular facts of this case, the Tribunal finds that the computation of compensation based on the salary scale at the time of injury in the Applicant's case was unreasonable. The only logical and reasonable conclusion is that the compensation should be calculated on the salary scale as at the date of MMI, particularly more so based on the Respondent's admission that no assessment could be made until such time as the Applicant had reached full MMI, at which point his claim would have crystallized and he would have been entitled to payment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the computation of the Advisory Board on Compensation Claims ("ABCC") in determining the amount of compensation to which he was entitled under Appendix D (Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations) to the Staff Rules. Article 11.3(c) of Appendix D to the Staff Rules links compensation for permanent loss of function to the amount of pensionable remuneration at grade P-4, step V.

Legal Principle(s)

In the past practice of the ABCC under art. 11.3(c) of Appendix D, the delay of nearly 21 years between the date of the injury and the claim, and other compensation received by the Applicant. The Tribunal found that the Applicant's case was one of exceptional circumstances, as evident from the Secretary-General's decision to accept his claim after the usual deadline established by art. 12 of Appendix D, which states that claims shall be submitted within four months of injury.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Laca Diaz

Entity

DPI

Case Number(s)

UNDT/NY/2013/90

Tribunal

UNDT

Registry

New York

Date of Judgement

24 Jul 2015

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

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

Applicable Law

Secretary-General's bulletins

- ST/SGB/Staff Rules/Appendix D
- ST/SGB/Staff Rules/Appendix D/Rev. I/Amend. 1
- ST/SGB/Staff Rules/Appendix D/Rev.1

UNDT RoP

- Article 9

Related Judgments and Orders

UNDT/2010/015

UNDT/2011/209

UNDT/2011/216

UNDT/2014/045

UNDT/2015/011

2012-UNAT-225

2012-UNAT-276