

UNDT/2016/040, Kisia

UNAT Held or UNDT Pronouncements

As results from the evidence and from the Respondent's submissions, the contested decision consisted in the UNCB's recommendation against awarding the Applicant any compensation, which was included in the minutes of UNCB's 343rd meeting of 20 February 2014 submitted for the ASG/Controller's consideration on 4 April 2014. The Tribunal, after reviewing the content of the contested decision, finds that instead of making her own final and reasoned decision on the Applicant's claim, the ASG/Controller appears to have only signed off on the recommendation made by the UNCB to deny the claim on 23 April 2014, as admitted by the Respondent. The Tribunal observes that the signature of 23 April 2014 is not affixed next to the name of the person who signed off and/or the position of the decision-maker. The Tribunal granted the application. Consequently, the contested decision, together with the UNCB's recommendation, were rescinded. The Applicant's claim was remanded for a new examination by the UNCB on receivability and, if receivable, on the merits. Based on the UNCB recommendation, the ASG/Controller will then have to make a separate, reasoned and final decision on the claim. The entire process was to be completed within 90 days of the publication of the present judgment.

Decision Contested or Judgment/Order Appealed

The Applicant, a former Security Officer with SSS/DSS, contested the decision of the Controller to approve the recommendation of the United Nations Claims Board (UNCB) to deny his claim for compensation of USD2,277.53 for damage to his car following an accident that occurred on 27 July 2013 at security post no. 103, United Nations Secretariat building, New York.

Legal Principle(s)

The Controller's failure of making a decision: Section 18 of ST/AI/149/Rev.4/1993 states that "The [UNCB] shall act in an advisory capacity to the [ASG/Controller] and shall transmit its recommendation regarding the settlement of each claim to the [ASG/Controller]". According to this mandatory provision, the UNCB's recommendation does not constitute the final decision regarding whether to grant compensation for damage to personal effects attributable to service, and as such the decision is only to be made by the ASG/Controller based on UNCB's recommendation. Compliance with this provision is mandatory and the ASG/Controller is required to take his/her own decision, which must be a completely separate and reasoned decision from the UNCB's recommendation.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only spec. perform. (incl. rescission with \$ alt.)

Full judgment

[Full judgment](#)

Applicants/Appellants

Kisia

Entity

DSS

Case Number(s)

UNDT/NY/2014/61

Tribunal
UNDT
Registry
New York
Date of Judgement
25 Apr 2016
Duty Judge
Judge Greceanu
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Administrative decision
Compensation
Applicable Law
Administrative Instructions

- ST/AI/149/Rev.4

Staff Rules

- Rule 6.4
- Rule 6.5

UNDT RoP

- Article 35
- Article 7

UNDT Statute

- Article 2
- Article 3.1
- Article 8