

# **UNDT/2016/059, Peglan**

## **UNAT Held or UNDT Pronouncements**

Provision of adverse material to the Applicant: The Tribunal noted that the ABCC had information before it that was adverse to the Applicant's claim when it reached its recommended decision but did not disclose to the Applicant. The Tribunal concluded that the Applicant should have been given the opportunity to see and comment on the adverse material. In failing to afford him this basic right the ABCC violated the principles of natural justice and audi alteram partem. Service incurred injury: The Tribunal concluded that it was not within the competence of the MSD medical advisor to provide advice on whether the incident alleged by the Applicant occurred as described because that is patently not a medical matter. Additionally, the questions posed by the Secretary of the ABCC to MSD were neither framed nor answered in terms of the principles in Appendix D relating to compensation for injury. The question is not whether the incident was "directly related to the performance of official duties" but whether the injury or illness is "attributable to the performance of official duties". Therefore, some of the material ABCC relied on was derived from the opinion of a non-expert who did not apply the correct principle in art. 2 of Appendix D for determining the nexus between the Applicant's employment with the United Nations and his injuries and illness. In addition, it considered irrelevant evidence and did not take into account relevant evidence that was available to it. Consequently, the ABCC did not properly determine the nexus between the Applicant's employment with the United Nations and his injuries and illness.

## **Decision Contested or Judgment/Order Appealed**

The Applicant challenged the decision by the ABCC which rejected his request for compensation for an injury he allegedly suffered during the course of his duties. The Tribunal concluded that the ABCC did not properly determine the nexus between the Applicant's employment with the United Nations and his injury. Accordingly, the case was remanded to the ABCC for a full and proper reconsideration of the Applicant's

claim.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Peglan

## Entity

UNOCI

## Case Number(s)

UNDT/NBI/2015/60

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

13 May 2016

## Duty Judge

Judge Shaw

## 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

Staff Rules

- Appendix D

UNDT Statute

- Article 8.1

## Related Judgments and Orders

2010-UNAT-003

2010-UNAT-084