

UNDT/2018/002, Dahan

UNAT Held or UNDT Pronouncements

The claim the Applicant filed on 27 March 2013 was out of time and subject to the Secretary-General's discretion exercisable "in exceptional circumstances" because she did not submit the claim within four months of knowledge of the injury as required by art. 12 of Appendix D. With respect to the existence of exceptional circumstances, the ABCC disregarded evidence and information provided by the Applicant regarding her medical condition which impeded her ability to direct her attention to the claim for service incurred injury. The ABCC did not consider these reasons, apportion appropriate weight to them and then either accept or reject them as not satisfying the test of exceptional circumstances. The ABCC refused to waive the time limit on the ground of insufficient explanation for the delay rather than the applicable norm of whether there were exceptional circumstances. The application of the test of "exceptional circumstances" under article 12 of Appendix D was narrowly circumscribed by the ABCC as applying solely to the reasons for delay. Whether there are exceptional circumstances includes, but is not restricted to, delay. The ABCC erred in failing to properly apply the discretion vested in them under Appendix D to the Staff Rules. Under the circumstances, the Tribunal considered that the best course of action was to remand the case to the ABCC, with the concurrence of the Secretary-General, in accordance with art. 10.4 of the UNDT Statute.

Decision Contested or Judgment/Order Appealed

The decision of the Advisory Board on Compensation Claims (ABCC) to deny the Applicant's claim for compensation under Appendix D to the Staff Rules on the ground that it was not filed within the requisite time limit.

Legal Principle(s)

In accordance with the provisions of art. 12 of ST/SGB/Staff Rules/Appendix D/Rev. 1 (Appendix D), claims must be filed within four months of the injury or onset of the illness, if applicable. However, the Secretary-General has discretion to accept for consideration a claim made at a later date if there are exceptional circumstances. This is a wide discretion which is not qualified in any way by the applicable regulatory framework. So long as this discretion is properly exercised it is immune from challenge. The exercise of discretion by the Secretary-General to accept a late claim for consideration has been entrusted to the ABCC and it is not for the Tribunal to exercise that discretion. Pursuant to art. 10.4 of the UNDT Statute, prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may, with the concurrence of the Secretary-General of the United Nations, remand the case for institution or correction of the required procedure.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Rescission of the ABCC decision and the remand of of the Applicant's claim to the ABCC for proper consideration in accordance with art. 10.4 of the UNDT Statute.

Full judgment

[Full judgment](#)

Applicants/Appellants

Dahan
Entity
ICTR
Case Number(s)
UNDT/NBI/2016/076
Tribunal
UNDT
Registry
Nairobi
Date of Judgement
11 Jan 2018
Duty Judge
Judge Meeran
Language of Judgment
English
French
Issuance Type
Judgment
Categories/Subcategories
TEST -Rename- Benefits and entitlements-45
Compensation
Applicable Law
Staff Rules

- Appendix D

UNDT Statute

- Article 10.4

Related Judgments and Orders
2018-UNAT-861