

# UNDT/2019/098, Papathanassiou

## UNAT Held or UNDT Pronouncements

As the parties concur that the correct procedure for the ABCC was not applied and the cases should be remanded to the ABCC for institution or correction of the required procedure, the Tribunal will, by consent, so order. However, since art. 10.4 of the Statute explicitly states that such remand shall be done “prior to a determination of the merits of the case”, the Tribunal is not in a position to pronounce on the substance of the cases (at least Case No. UNDT/NY/2018/011, concerning the ABCC’s initial rejection of the compensation claim and not the subsequent rejection by its Secretary), and to issue a summary judgment. It follows that summary judgment under art. 9 of the Rules of Procedure is not suitable in this instance, since such is a judgment on the merits.

## Decision Contested or Judgment/Order Appealed

(a) The Advisory Board Compensation Claims’ (“ABCC”) decision rejecting the Applicant’s claim for compensation for Post-Traumatic Stress Disorder (“PTSD”) as time-barred, but conditional upon a reassessment upon submission of additional documentation demonstrating medical incapacity (Case No. UNDT/NY/2018/032) and (b) the ABCC Secretary’s subsequent rejection of his claim on the basis that the Medical Service Division had concluded that there was insufficient evidence concerning the Applicant’s medical incapacity such as to grant a waiver for late submission (Case No. UNDT/NY/2018/011).

## Legal Principle(s)

A cursory overview of common law jurisdictions is indicative of the position that summary judgment is normally granted on the filing of affidavits on substantive claims and is not a procedure normally used for disposal of matters on receivability or admissibility or other preliminary matters.

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

By consent and with the concurrence of the Secretary-General, the claims are remanded to the ABCC for institution or correction of the required procedure in accordance with the parties' submissions and art. 10.4 of the Dispute Tribunal's Statute.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Papathanassiou

## Entity

UNICEF

## Case Number(s)

UNDT/NY/2018/011

UNDT/NY/2018/032

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

29 May 2019

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

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

## Applicable Law

UNDT RoP

- Article 9

UNDT Statute

- Article 10.4

## Related Judgments and Orders

UNDT/2011/216

2012-UNAT-275

2017-UNAT-725