

# **UNDT/2020/119, Kollie**

## **UNAT Held or UNDT Pronouncements**

Receivability The Tribunal found that the second communication from the ABCC, not the first communication, constituted the notification of the contested decision since it clearly indicated that the ABCC reviewed the Applicant's additional requests and rejected them. The Tribunal found that subsequent communications between the ABCC and the Applicant did not reset the statutory deadline as they were the reiteration of the contested decision. The application was timely filed and receivable. The claim of negligence was already adjudicated in the earlier judgment and therefore is not receivable as it is *res judicata*.

Compensation for permanent loss of function The Tribunal did not find any error in the calculation of the degree of the Applicant's permanent loss of function which was made based on the Medical Services Division (MSD) doctor's review of a detailed medical report submitted by the Applicant. Regarding the decision to use the pensionable remuneration scale prevailing at the date of injury, instead of one prevailing at the date of the contested decision, the Tribunal found that there is nothing in the text that expressly dictates that pensionable remuneration shall be that prevailing at the date of injury, 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. Considering the extreme passage of time (10 years) and the fact that the ABCC initially did not award any compensation for permanent loss of function in 2012 and awarded compensation in 2017 after the medical evaluation of October 2016, the Tribunal found that the calculation of compensation based on the pensionable remuneration scale at the date of injury is absurd and unreasonable and decided that the compensation should be recalculated based on the pensionable remuneration scale prevailing at the date of the contested decision. The Tribunal found that adjusting the compensation in light of the fact that the Applicant was General Service personnel was a reasonable and consistent application of art. 11.3(c) which provided that the amount of compensation for General Service and locally recruited mission personnel may be adjusted "taking into account the proportion which the staff member's salary or wage bears to Headquarters rates".

Payment of the out-of-pocket expenses The Tribunal remanded the Applicant's claim for reimbursement of out-of-pocket expenses to the ABCC and directed the ABCC to provide a reasoned and itemized decision on the Applicant's reimbursement request for out-of-pocket expenses since there was no record of the ABCC's decision on these specific expenses claimed by the Applicant and thus the Tribunal was unable to review and decide the lawfulness of the ABCC's decision in this regard. The compensation for partial or total disability Since the Applicant suffered no loss of earnings from the date of his injury until his separation from the Organization, the Tribunal found that the Secretary-General lawfully decided that the Applicant was not disabled under the applicable Appendix D. While the Applicant testified that since his separation from the Organization he could not secure employment due to his medical condition, this does not mean that the contested decision was incorrect as he was still employed and received full pay at that time. Other remedies The compensation under Appendix D is the sole compensation to which any staff member is entitled for his claim and since the Applicant does not make a case for under what provisions he is entitled to reliefs he requests, the Tribunal upheld the ABCC's decision rejecting the Applicant's request for other reliefs.

## Decision Contested or Judgment/Order Appealed

The Secretary-General's decision accepting the recommendation of the Advisory Board on Compensation Claims (ABCC) awarding USD30,412.29 for a 28 percent permanent loss of function and rejecting request for other reliefs The claim of negligence

## Legal Principle(s)

The reiteration of an administrative decision does not reset the clock with respect to the statutory timelines rather, the time starts to run from the date the original decision was made. The authority of a final judgment cannot be readily set aside. There must be an end to litigation and the stability of the judicial process requires that final judgments not be set aside unless for the gravest of reasons. The Dispute Tribunal's judicial review of the Secretary-General's decision based on the ABCC recommendation is guided by the well-established jurisprudence in Sanwidi 2010-UNAT-084. That is, when judging the validity of the exercise of discretionary authority, the Dispute Tribunal determines if the decision is legal, rational,

procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General. The Dispute Tribunal is not competent to make medical findings and therefore, if there is any procedural flaw relating to a medical issue, the Dispute Tribunal must remand the case to a competent medical body.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Kollie

## Entity

UNMIL

## Case Number(s)

UNDT/NY/2019/061

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

15 Jul 2020

## Duty Judge

Judge Adda

## Language of Judgment

English

French

## 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
- Rule 11.2(b)

## Related Judgments and Orders

2018-UNAT-861

2010-UNAT-079

2012-UNAT-196

2015-UNAT-546

2015-UNAT-557

UNDT/2019/156

2012-UNAT-198

2015-UNAT-601

UNDT/2015/066