

# **UNDT/2020/167, Forteau**

## **UNAT Held or UNDT Pronouncements**

The Applicant's claim of breach of duty of care is not receivable since he did not submit a separate claim for breach of duty of care to the Secretary-General for consideration and decision. While the review of the breach of duty of care claim is requested in the Applicant's request for management evaluation, this does not cure the procedural defect which is the Applicant's failure to request the Secretary-General's consideration and decision. The decision to reject the Applicant's claim under Appendix D Regarding the claim that the Secretary of ABCC did not have the valid delegated authority to make the contested decision, the Tribunal found that the Secretary of ABCC had the valid delegated authority to take decisions with respect to the approval, payment and denial of Appendix D claims, as had previously been delegated to him by the Controller via memorandum. Contrary to the Applicant's claim, there is no requirement that such subdelegation is only valid when it is done through promulgated rules or regulations. The Applicant claims that the contested decision is unlawful having been made without consulting ABCC. However, under the applicable law, ABCC may be consulted regarding Appendix D claims, but the Controller is not required to obtain an advisory opinion of ABCC in all circumstances. The Tribunal found that the Secretary-General reasonably exercised his discretion to conclude that the Applicant's claim was time-barred and no exceptional circumstances existed in this case. The Secretary of ABCC concluded, based on advice from the Medical Services Division (MSD), that the date of onset of illness was 2005. Since MSD considered all relevant medical records, the Tribunal does not find any procedural flaw in MSD's medical findings. Even if the Tribunal accepts the Applicant's claim that he fully recovered from illness in 2005 and onset of the illness was in 2011, his claim, which was filed in 2017, was still six years late. Despite these ongoing reviews of his medical conditions, the Applicant claims that his doctor was only able to connect the 2005 illness to medical conditions in 2017. However, the record does not support such claim. Rather, the Applicant wrote in his 2017 claim submission that he became aware of the existence of Appendix D for the first time and it appears that this is the real reason why he submitted his claim in

belatedly. The Applicant's lack of knowledge of the relevant rules does not constitute exceptional circumstances. Therefore, the Tribunal finds that the Secretary-General did not abuse his discretionary authority in concluding that there were no exceptional circumstances warranting the acceptance of the Applicant's late claim.

## Decision Contested or Judgment/Order Appealed

**Breach of duty of care** The Secretary of the Advisory Board on Compensation Claims (ABCC)'s decision to reject the Applicant's 2017 claim under Appendix D as time-barred on the basis that the date of onset of illness was in 2005 and there were no exceptional circumstances warranting the acceptance of his late claim.

## Legal Principle(s)

A claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D since Appendix D is a workers' compensation system, which is a no fault insurance or scheme whereby employers must cover occupational injury or illness. A claim of gross negligence should be submitted to the Secretary-General for consideration and decision and subsequently for management evaluation for the claim to be considered receivable. The Dispute Tribunal's judicial review of the Secretary-General's decision relating to Appendix D matters 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. The relevant circumstances in which such an extension or waiver should be allowed by the Dispute Tribunal are variable and highly fact-dependent, so long as they are 'exceptional'. While the interests of

justice and a balancing of the rights and interests of the parties should be considered in determining the exceptional circumstances, it stated that the circumstances should meet the test of untypicality or unusualness. The applicant's lack of knowledge of the relevant rules was not an excuse for the delay and thus there were no exceptional circumstances in such case.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Forteau

## Entity

UNS

## Case Number(s)

UNDT/NY/2019/022

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

14 Sep 2020

## Duty Judge

Judge Adda

## 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

Administrative Instructions

- ST/AI/234/Rev.1

Secretary-General's bulletins

- ST/SGB/2015/1

Staff Rules

- Appendix D

## Related Judgments and Orders

2013-UNAT-300

2015-UNAT-601

2010-UNAT-084

2020-UNAT-1035

2018-UNAT-872