

2013-UNAT-287, McKay

UNAT Held or UNDT Pronouncements

UNAT held that the grounds for appeal were not substantiated. UNAT held that the alleged delay in the disposal of the case at the lower level did not have any impact on the outcome of the case and was partially tolerated by the Appellant. On the merits, UNAT upheld the UNDT's reasonable decision to accept the opinions of the attending doctor at the hospital and the UNIFIL Chief Medical Officer concerning the approximate time of Mr McKay's death being some hours prior to Mr McKay arriving at the hospital. UNAT held that it was correct to conclude, as UNDT did, that, regardless of any deficiency in the Organisation's duty of care towards its staff member, Mr. McKay had died before his wife called for help, and that as this conclusion was not manifestly unreasonable, the appeal could not be allowed. UNAT held that no other entitlements or compensation were due to Mrs. McKay or to Mr. McKay's estate, other than those already granted. On the matter of the quantum of compensation and alleged undue delay, UNAT held there was no merit in the appeal. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the non-payment of certain outstanding costs incurred following her husband's death which was attributable to his service. UNDT was not able to conclude that the alleged breach of the duty of care, contributing to Mr. McKay's death, had occurred or that the measures in place in response to health emergencies were insufficient. UNDT concluded that no excessive delay could be identified in handling Mrs. McKay's claims to justify an award of compensation. UNDT rejected Mrs. McKay's claims for reimbursement of airfares for her children as none of those expenses satisfied the test of "reasonable and directly related" costs. UNDT rejected Mrs. McKay's claim for costs against the Respondent for abuse of process. UNDT rejected the application.

Legal Principle(s)

Left deliberately blank.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

McKay

Entity

UNIFIL

Case Number(s)

2012-314

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Mar 2013

President Judge

Judge Simón

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)

Due process

Delay

Applicable Law

UNAT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2012/018