

2015-UNAT-600, James

UNAT Held or UNDT Pronouncements

UNAT affirmed UNDT's finding that the staff member's claim that the Organisation was negligent in carrying out his unsuccessful cataract surgery, owed him compensation of USD 2 million, and failed to separate him in a timely manner on health grounds were not receivable since he had failed to request management evaluation under Article 8.1(c) of the UNDT Statute and Staff Rule 11.2(a). UNAT rejected his contention that the impugned decisions were based on the advice of technical bodies, namely the ABCC, the Medical Services Division, and the Medical Board and that he was therefore not required to request management evaluation under Staff Rule 11.2(b). UNAT noted that a claim of gross negligence against the Administration is a separate action that cannot be included in a claim made by a staff member under Appendix D. The staff member was therefore required to submit a request for management evaluation of these decisions before proceeding with an application to UNDT.

Decision Contested or Judgment/Order Appealed

The staff member filed a claim for compensation under Appendix D of the Staff Rules with the Advisory Board on Compensation Claims (ABCC) for the loss of vision in one eye. The ABCC concluded that the staff member's injury was not service-incurred, and the Controller, on behalf of the Secretary-General, approved the ABCC's recommendation to deny the staff member's request that his illness (bilateral cataracts and loss of vision in one eye) be recognized as service-incurred. The staff member filed an application with UNDT challenging the rejection of his claim for compensation under Appendix D, the Organisation's alleged negligence in referring him to a sub-standard medical facility for cataract surgery, and the Organisation's failure to separate him in a timely manner on health grounds. UNDT found that the staff member's negligence claim, as well as his claim for separation on health grounds, were not receivable under Article 8.1(c) of the UNDT Statute as the staff member had failed to file a request for management evaluation. UNDT further found

that the staff member's Appendix D claim was not receivable because he had not requested reconsideration of the Controller's decision to reject his claim, as required by Article 17(a) of Appendix D.

Legal Principle(s)

UNDT is not competent to hear and pass judgment on a claim that has not been the subject of an administrative decision and thereafter, management evaluation. A claim of gross negligence against the Administration is a separate action that cannot be included in a claim made by a staff member under Appendix D.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

James

Entity

UNMIL

Case Number(s)

2014-680

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2015

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Management Evaluation

Time limit

Applicable Law

Staff Rules

- Appendix D
- Rule 11.2(a)
- Rule 11.2(b)

UNDT Statute

- Article 8.1(c)

Related Judgments and Orders

UNDT/2014/135

2013-UNAT-329

2010-UNAT-062

2013-UNAT-354

2013-UNAT-300

2015-UNAT-564

2015-UNAT-521

2013-UNAT-299