

2015-UNAT-601, Karseboom

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT found merit in the Secretary-General's submission that UNDT was not competent to determine or assume that the injury was service-related; to assume that there was a likelihood of the Advisory Board on Compensation Claims (ABCC) would have reached a different conclusion had it followed the correct procedure; that the ABCC made its recommendations based on uncertain facts and inference which were derived, improbably, from the absence of evidence; that after the second accident, the staff member was permanently disabled and unable to work again; that as the medical evidence about causation was in dispute, the probability that the staff member would have succeeded in his claim for compensation was estimated at a conservative 50%; that the violations of the Staff Rules were serious and fundamental and caused the staff member to lose what is, at least, a 50% chance to receive full compensation under Appendix D. UNDT thereby exceeded its own competence and committed errors of law and procedure. Further, UNDT's conclusions supporting its award of damages were based on its own unqualified diagnoses and prognoses. UNAT concurred with the Secretary-General's submission that UNDT, upon determining that the proper procedure had not been followed, should have remanded the case back to the ABCC to convene a medical board to re-examine the case and erred in effectively placing itself in the place of the medical expert and the decision-maker. UNAT also held that the Appellant's argument that the UNDT had no power to remand the case to the ABCC to convene a medical board had no merit. UNAT allowed the appeal, set aside the UNDT judgment, and remanded the case to the ABCC to convene a medical board.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to deny his request for compensation on the grounds that he had not sustained any degree of permanent loss of function due to his leg and knee injuries, and that his spinal injury would not be recognised as

service-incurred. UNDT found that the contested decision was unlawful and void, and awarded material and moral damages.

Legal Principle(s)

It is neither the role of UNDT to consider the correctness of the choice made by the Secretary-General amongst the various course of action open to him, nor to substitute its own decision for that of the Secretary-General.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Karseboom

Entity

MONUC

Case Number(s)

2015-688

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2015

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

Staff Rules

- Appendix D

UNDT Statute

- Article 9.1

Related Judgments and Orders

UNDT/2014/130

2010-UNAT-084

2011-UNAT-132

2013-UNAT-309