

# 2017-UNAT-725, Baracungana

## UNAT Held or UNDT Pronouncements

UNAT held that UNDT did not have the power to remand the case back to the ABCC, since an order under that provision requires the concurrence of the Secretary-General to that effect. UNAT held that the only proper course for UNDT to take was either to remand the case to the ABCC with the Secretary-General's concurrence or to consider whether the procedural flaws warranted the rescission of the impugned administrative decision. UNAT held that UNDT, by making an order to remand the case to the Administration without the concurrence of the Secretary-General, exceeded its competence and committed errors of law and procedure. UNAT allowed the appeal in part, set aside the UNDT judgment except for its finding on the receivability of the application, and remanded the case for a hearing de novo before a different UNDT Judge.

## Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant challenged the decision made on behalf of the Secretary-General with regard to his Appendix D claim. UNDT found the decision to be unlawful as it breached the Applicant's due process rights. UNDT remanded the matter back to the Advisory Board on Compensation Claims (ABCC) for the procedural errors to be corrected and the Applicant's Appendix D claim reconsidered. UNDT awarded compensation for the procedural delay.

## Legal Principle(s)

The jurisprudence of the former UN Administrative Tribunal, though of persuasive value, is not a binding precedent for the UNDT and UNAT to follow. Article 17 of Appendix D to the Staff Rules does not make it obligatory for the staff member to request that a medical board be convened to review the Secretary-General's determination, nor does it institute such a request as a condition of receivability of

the application for judicial review of the relevant (negative) administrative decision taken on behalf of the Secretary-General.

## Outcome

Appeal granted in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Baracungana

## Entity

UNHCR

## Case Number(s)

2016-963

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

31 Mar 2017

## President Judge

Judge Raikos

## 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 10.4

## Related Judgments and Orders

UNDT/2016/092