2020-UNAT-1049, Kisia

UNAT Held or UNDT Pronouncements

UNAT held that exceptional circumstances existed on the basis that the Appellant was suffering from a medical condition, hospitalized and unable to file the appeal on a timely basis. UNAT waived the deadline for appeal and held the appeal to be receivable. UNAT held that, in his appeal, the Appellant largely repeated the submissions and allegations raised before UNDT, without identifying the specific errors of law or errors of fact that resulted in a manifestly unreasonable decision. On the Appellant's claims relating to the use of and access to the closed-circuit television (CCTV) video footage, UNAT held that these allegations had been previously litigated and decided upon in the first UNDT judgment. In addition, UNAT held that the Appellant's allegations of improper motives on the part of the ABCC or others, including claims of intentional doctoring of the CCTV video footage and the log entries were provided with no supporting evidence and therefore they had no merit. UNAT held that weighing the evidence was the discretion of the ABCC and, in turn, the Secretary-General. UNAT held that by finding that the exercise of the Secretary-General's discretion was lawful, rational, procedurally correct, and proportionate, UNDT did not err in law or fact that resulted in a manifestly unreasonable decision. UNAT held that the ABCC (and the Secretary-General) considered all relevant matters and did not consider irrelevant matters, in weighing the evidence and making its findings and inferences. Noting that it is not the role of UNDT or UNAT to review the correctness of the impugned decision, UNAT held that the decision was rational and lawful. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to deny his claim for compensation under Appendix D to the Staff Rules for injuries and illnesses which he claimed resulted from a single motor vehicle incident. Following a previous application to UNDT, the matter was remanded to the Advisory Board on Compensation Claims (ABCC) to

correct three procedural irregularities. Following this correction by the ABCC and a second application to UNDT, UNDT held that the Secretary-General properly exercised his discretion in denying the Appellant’s claim. UNDT dismissed the application.

Legal Principle(s)

There are two elements that must be established for a claim under Appendix D to the Staff Rules: (i) the medical assessment of whether the claimant suffered from the injury or illness as alleged; and (ii) the non-medical factual determination of whether the illness or injury was attributable to the performance of official duties on behalf of the Organisation. The burden of proving any allegations of ill-motivation rests with the appellant.

Outcome

Appeal dismissed on merits

Full judgment

Full judgment

Applicants/Appellants

Kisia

Entity

DSS

Case Number(s)

2020-1366

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Sandhu

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

Staff Rules

- Appendix D

UNAT RoP

- Article 30
- Article 7.2

UNAT Statute

- Article 7.1(c)

- Article 7.3

Related Judgments and Orders

UNDT/2019/182
2010-UNAT-084
2015-UNAT-601
2010-UNAT-081
2012-UNAT-201
2010-UNAT-035
2010-UNAT-051