

2021-UNAT-1106, Giles III

UNAT Held or UNDT Pronouncements

UNAT agreed that the Secretary-General has implied discretion to revoke benefits if a staff member does not satisfactorily furnish evidence of continued eligibility of existing entitlements, which may arise because of a change in circumstances. UNAT also found that UNDT did not err when it held that the legal frameworks for the two benefit systems are different and that the decisions made under the two legal regimes need not be consistent. Article 33 of the UNSPF Regulations does not require proof of a loss of earning capacity and the requirement of “incapacitation” is a purely medical consideration. This is unlike Article 11.2(d) of Appendix D for the ABCC Benefit that also requires proof of an adverse effect on earning capacity.; The tax returns were relevant to the appellant’s earning capacity. When the ABCC made a request for the tax returns, and the appellant denied the request, the Administration was entitled to make any reasonable inferences from the refusal of the appellant. Thus, it cannot be said that the ABCC considered irrelevant matters or that its determination was absurd or perverse.; The UNAT concluded that the contested decision was, therefore, was legal, rational, and procedurally correct.

Decision Contested or Judgment/Order Appealed

A former staff member sustained an injury at work and was terminated for health reasons. He was awarded a disability benefit under Article 33 of the UNJSPF, and he also received an annual compensation from the Advisory Board on Compensation Claims (ABCC) under Article 11.2 (d) of Appendix D.; The UNJSPF asked the appellant to provide copies of his tax returns from 2011 to 2014 and also a statement detailing the nature of the work he had undertaken since his separation from the Organization. The appellant refused, arguing that the tax returns contained the private information of his spouse. The UNJSPF suspended his disability benefit and also informed the ABCC of its decision. The ABCC followed suit and suspended the appellant's benefit, based on evidence that his earning capacity had changed.; Following an independent medical evaluation, the UNJSPF reinstated the appellant's

benefit. The appellant informed the ABCC of the UNJSPF decision to reinstate his benefit and asked that the ABCC do the same. The ABCC informed the appellant that its findings are independent of the UNJSPF and invited him to submit evidence regarding his earning capacity. The appellant submitted medical reports and affidavits but no tax statements in response to the ABCC request. Upon review of the information, the ABCC did not change its prior recommendation to discontinue the ABCC benefit and advised the appellant that it may consider his request in the future upon submission of his complete and accurate tax returns from 2011 to 2017.; The appellant filed an application to the UNDT challenging the ABCC decision to not change its prior recommendation to the Secretary-General to discontinue his ABCC benefit. The UNDT found that the UNJSPF and the ABCC are two independent bodies governed by different legal regimes. In particular, to be eligible for the ABCC benefit, Article 11.2 (d) of Appendix D requires proof of an adverse effect on earning capacity, whereas UNJSPF Article 33(a) only requires proof of "incapacitation," which is a purely medical factor. The UNDT also found that the ABCC is entitled to its review and determination and need not follow the UNJSPF decision. As such, the UNDT concluded the ABCC decision not to change its prior recommendation to the Secretary-General to discontinue the ABCC benefit was legal, rational, and procedurally correct.

Legal Principle(s)

The Secretary-General has implied discretion to revoke ABCC benefits if a staff member does not satisfactorily furnish evidence of continued eligibility of his entitlements. UNJSPF and ABCC operate under distinct legal frameworks, and their decisions need not be consistent with each other. Article 33 of the UNJSPF Regulations does not require proof of a loss of earning capacity whereas Article 11.2(d) of Appendix D for the ABCC benefit requires proof of an adverse effect on earning capacity. Tax returns are relevant to the determination of an appellant's earning capacity. The Administration can draw any reasonable inferences from the refusal of an appellant to produce such tax statements.

Outcome

Appeal dismissed on merits

Outcome Extra Text

UNAT dismissed the appeal and affirmed the UNDT Judgment.

Full judgment

[Full judgment](#)

Applicants/Appellants

Giles III

Entity

MONUSCO

Case Number(s)

2020-1426

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Mar 2021

President Judge

Judge Sandhu

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)

United Nations Joint Staff Pension Fund (UNJSPF)

Disability

Applicable Law

Staff Rules

- Appendix D
- Rule 2.1

UNDT Statute

UNJSPF Regulations

- Article 33

Related Judgments and Orders

UNDT/2016/100

2015-UNAT-517

2010-UNAT-084

2015-UNAT-506