

UNDT/2022/051, Arvizu Trevino

UNAT Held or UNDT Pronouncements

Regarding the applicable Appendix D to the present case, the Tribunal notes that in the current Appendix D (ST/SGB/2018/1/Rev.1), it is stated that “[f]or claims filed for incidents that occurred prior to the entry into force of the present revised rules, the previously applicable rules will be applied” (see art. 6.1(b)). According to the Applicant’s own factual submissions, whereas his compensation claim was submitted on 29 June 2018, it concerned incidents that occurred somewhere between 2015 and until his medical leave started in August 2017. The applicable Appendix D is therefore one appended to ST/SGB/2017/1, which was effective from 1 January 2017 and until 1 January 2018. The Senior Medical Officer’s medical opinion did not question whether the Applicant actually suffered from any illness as it acknowledges without doubt that the Applicant suffered from the illness as alleged. Rather, it concerns whether the Applicant’s illness was attributable to the performance of official duties on behalf of the Organization. Whereas it can therefore be regarded as a finding on causation, the actual opinion of the Senior Medical Officer is based on a medical assessment of the Applicant’s illness and its consequences for him. While the assessment of whether an illness is service-incurred is a factual determination and often not of a medical nature, DHMOSH framed this assessment as a medical opinion in the present case by arguing that it is likely that the illness is endogenous, because of its medical aspects (“the nature of its illness, the nature and evolution of his symptoms, and by their failure to resolve once he was removed from the stressors of the workplace”), without assessing the work environment of the Applicant. Under Applicant 2021-UNAT-1133, the Tribunal has no authority to review the medical opinion of DHMOSH or its relevancy related to the Applicant’s claim before the ABCC. As the contested decision correctly reflected the conclusions of this opinion, the Tribunal concludes that the contested decision is lawful. On the other hand, even if the Tribunal has the competency to review DHMOSH’s finding on causality, at least to the limited extent stated in the dissenting opinion in Applicant and the Dispute Tribunal in Applicant UNDT/2020/116/Corr.1, the Tribunal finds that the ABCC and the Controller lawfully exercised its discretion when rejecting the

Applicant's claim on the basis of DHMOSH's medical opinion. This finding is based on that in the contested decision, no "relevant matters" were ignored and/or no "irrelevant matters" considered, and on its own terms, it did not lead to an "absurd or perverse" decision. Rather, the Tribunal finds that the contested decision was "legal, rational, procedurally correct, and proportionate" (in line herewith, see Sanwidi 2010-UNAT-084, para. 40). There is an ambiguity in the framework on whether the letter of the Senior Medical Officer of DHMOSH should be regarded as a "medical determination", with reference to art. 1.7 of Appendix D, which may include a finding on the causality between an illness and an incident and/or the performance of work, or a "recommendation" to the ABCC, as per in art. 2.2 of Appendix D. Next, the Tribunal finds that the process, which took approximately two-and-half years, was indeed unduly and inordinately protracted, in particular as this was the result of the Controller twice remanding the case back to the ABCC for a renewed review. Based on the case record, there is no basis for finding that these two remands were as such caused by the Applicant, at least the Respondent has not made any submissions to this end. Rather, it would appear that the Controller was unconvinced by the ABCC's recommendations in light of the Applicant's appeals to the Management Evaluation Unit and the Dispute Tribunal. The Tribunal therefore finds that the process unlawfully protracted as per Dahan and Kebede. Finally, with reference to the 6 October 2020 medical report, the Tribunal finds that the Applicant has established the required nexus between his harm and the protracted process. Regarding the compensation amount, the Tribunal finds that the present case falls within the lower end of compensable non-pecuniary harm for the specific type of harm and illegality. Accordingly, the Tribunal awards the Applicant USD2,500 in non-pecuniary damages under art. 10.5(b) of the Dispute Tribunal's Statute.

Decision Contested or Judgment/Order Appealed

The Controller's decision of 30 December 2020 to deny the Applicant compensation under Appendix D of the Staff Regulations and Rules

Legal Principle(s)

Regarding the judicial review of a medical assessment provided by DHMOSH, the Appeals Tribunal held in Applicant 2021-UNAT-1133 that the Dispute Tribunal did not have the competence to decide that the "medical advice rendered by it to the ABCC

was incorrect” and thereby question the sufficiency and relevance of a given medical assessment to a certain claim. In the dissenting opinion, an Appeals Tribunal Judge, however, specified that the Dispute Tribunal did not do so, but rather assessed whether the relevant medical opinion, based on its assessment and narrative content, was adequate and on point for the ABCC to make a recommendation on the pertinent question before it. The Tribunal notes that the Appeals Tribunal has affirmed the principle that the Administration has a duty to respond in timely fashion to the requests of staff members. In Dahan 2018-UNAT-861, for instance, it held that the “appeal highlight[ed] the troubling issue of the Administration’s delays in responding to staff and staff related issues” and emphasized that “[i]t is of paramount importance that the Administration addresses staff concerns with promptitude and adheres to the highest standards of care and due diligence” (para. 26). Under the jurisprudence of the Appeals Tribunal, harm to an applicant, such as stress, caused by a process that was unduly and/or inordinately protracted have also been compensated under art. 10.5(b) of the Dispute Tribunal’s Statute (see, for instance, Benfield-Laporte 2015-UNAT-505, Applicant 2020-UNAT-1001 and Appellant 2021-UNAT-1137). When assessing whether an alleged injury is then compensable, the Appeals Tribunal generally requires an applicant to establish three elements, namely: “the harm itself, an illegality and a nexus between both” (see para. 20 of Kebede 2018-UNAT-874 as affirmed in, for instance, Dieng 2021-UNAT-1118 and Laasri 2021-UNAT-1122).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Arvizu Trevino

Entity

UNJSPF

Case Number(s)

UNDT/NY/2021/26

Tribunal

UNDT

Registry

New York

Date of Judgement

26 May 2022

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-pecuniary (moral) damages

Compensation for injury, illness or death attributable to service (Appendix D to Staff Rules)

Compensation

Benefits and entitlements

Applicable Law

Secretary-General's bulletins

- ST/SGB/2017/1
- ST/SGB/2019/2

Staff Regulations

- Regulation 6.2

Staff Rules

- Appendix D

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

2021-UNAT-1157

2021-UNAT-1133

UNDT/2020/116/Corr.1

2010-UNAT-084

2018-UNAT-861

2015-UNAT-505

2020-UNAT-1001

2021-UNAT-1137

2018-UNAT-874

2021-UNAT-1118

2021-UNAT-1122