

UNDT/2022/055, Applicant Applicant

UNAT Held or UNDT Pronouncements

The logical consequence of rescinding the contested administrative decision would be to remand the case to DHMOSH for a new consideration in light of the Tribunal's findings in the present case. As the basic legal premise for the contested administrative decision was flawed, the Tribunal find that this would be the most appropriate remedy in the present case (in line herewith, see the Appeals Tribunal in Gueben et al. 2016-UNAT-692, para. 48). In this regard, the Tribunal notes that it has no jurisdiction as to directing the work of a potential medical board or the ABCC. The Tribunal finds that considering that the Applicant has not established that the infringement his rights was, at minimum, negligent, there is no basis in the present case for referring anyone to the Secretary-General for accountability under art. 10.8 of the Statute of the Dispute Tribunal (in line herewith, see the Appeals Tribunal in Chhikara 2020-UNAT-1014, paras. 38 and 39).

Decision Contested or Judgment/Order Appealed

The decision of the acting United Nations Medical Director to deny the Applicant's "request to establish a medical board" of 6 April 2021.

Legal Principle(s)

From art. 1.7(a) follows that DHMOSH is to assess the causality between the alleged illness and an incident and/or the performance of official duties. In other words, it is to appraise if the relevant illness was "service-incurred" as stated in other places of Appendix D. In art. 2.2(c), this review is specifically contextualized as part of the review of the claimant's eligibility for coverage. Nothing in arts. 1.7(a) and 2.2(c), elsewhere in Appendix D or in any other place in the applicable legal framework as much as implies that this responsibility under art. 2.2(c) is to be distinguished as being different from the general role of DHMOSH as stated in art. 1.7(a). In accordance with the legal principle of non distinguit, nec nos distinguere debemus as affirmed by the Appeals Tribunal in Faust 2016-UNAT-695, "where the law does not distinguish, neither should we distinguish" (para. 34). Rather, it follows from art. 1.7(a) that DHMOSH "shall make a medical determination for consideration" by the ABCC. As a matter of definition, the ABCC only has to consider DHMOSH's findings, and it therefore does not necessarily need to follow them. The significance of the DHMOSH's medical determination is consequently solely that of a recommendation for the ABCC. This is also what is envisioned in art. 2.2(c). The Tribunal, however, understands the confusion as the role of DHMOSH could be much more clearly defined in Appendix D due to the incoherent use of terminology throughout its provisions.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant Applicant

Entity

UNJSPF

Case Number(s)

UNDT/NY/2021/038

Tribunal

UNDT

Registry

New York
Date of Judgement
10 Jun 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)
Rescission
Compensation
TEST -Rename- Benefits and entitlements-45
Remedies
Applicable Law
Administrative Instructions

- ST/AI/2019/1

Staff Rules

- Appendix D

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

2020-UNAT-1049
2020-UNAT-1049
2016-UNAT-692
2018-UNAT-874
2020-UNAT-1014