



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-538

**Bezziccheri  
(Respondent/Applicant)**

**v.**

**Secretary-General of the United Nations  
(Appellant/Respondent)**

**JUDGMENT**

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**Before:** Judge Inés Weinberg de Roca, Presiding  
Judge Rosalyn Chapman  
Judge Deborah Thomas-Felix

**Case No.:** 2014-615

**Date:** 2 July 2015

**Registrar:** Weicheng Lin

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**Counsel for Ms. Bezziccheri:** François Lorient

**Counsel for Secretary-General:** Zarqaa Chohan

**JUDGE INÉS WEINBERG DE ROCA, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2014/037, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 10 April 2014 in the case of *Bezziccheri v. Secretary-General of the United Nations*. The Secretary-General filed his appeal on 9 June 2014, and Ms. Sonia Bezziccheri answered on 8 August 2014.

**Facts and Procedure**

2. Since April 2002, Ms. Bezziccheri was a staff member with the United Nations Office on Drugs and Crime (UNODC) in Bangkok. In November 2010, she transferred to UNODC in Phnom Penh as an Associate Advisor (HIV/AIDS) at the P-2 level.

3. Between November and December 2007, Ms. Bezziccheri experienced progressively severe pain in her right shoulder due to spending long hours at her computer work station.

4. On 1 January 2008, due to the ongoing pain she was experiencing, doctors in Thailand instructed Ms. Bezziccheri to wear a sling around her right arm. As she continued working using her left arm, she progressively experienced pain in her left shoulder/neck area to the point where it became unbearable.

5. On 6 May 2008, in response to Ms. Bezziccheri's complaints, doctors from the United Nations Regional Centre in Bangkok conducted an ergonomic assessment of her workplace. Noting a series of shortcomings in Ms. Bezziccheri's workplace concerning lighting, seating and air conditioning, they made a number of recommendations as to how to ameliorate her work conditions.

6. On 3 June 2008, Ms. Bezziccheri was hospitalized in Bangkok for three days during which doctors diagnosed her with bulging discs in three parts of her cervical spine and recommended surgery. On 9 June 2008, Ms. Bezziccheri travelled to Rome, Italy, to seek a second medical opinion.

7. On 17 June 2008, Ms. Bezziccheri's doctor in Rome noted that she demonstrated a spinal canal stenosis and advised against pursuing any surgery due to the extreme inflammation of her nerves. He recommended, *inter alia*, complete rest for 30 days.

8. On 17 July 2008, Ms. Bezziccheri's doctor in Rome conducted a further medical examination in which he noted that her symptoms had improved, but recommended a further period of absolute rest.

9. On 1 September 2008, upon further examination of Ms. Bezziccheri, her doctor in Rome considered her condition had improved and would not require surgical intervention, but due to her slow progress in healing, recommended at least four months of part-time rest.

10. On 16 September 2008, Ms. Bezziccheri consulted with a lawyer in Italy, who instructed her to immediately submit to the United Nations a claim for compensation and disability benefit. Ms. Bezziccheri subsequently requested advice from the Human Resources Management Section (HRMS) as to how to lodge her claims, but asserts she did not receive any response.

11. Throughout the four-month period, namely from 15 June to 15 October 2008, Ms. Bezziccheri was on full-time sick leave approved by the United Nations Medical Service.

12. On 16 October 2008, with the approval of the United Nations Medical Service, Ms. Bezziccheri returned to work on a part-time basis for the following three months, until 15 January 2009. Thereafter, as of 16 January 2009, she resumed full-time work.

13. On 26 December 2008, Ms. Bezziccheri e-mailed three fellow UNODC staff members inquiring how to obtain the disability benefit discussed in Section 3.2 of Administrative Instruction ST/AI/2005/3 (Sick Leave) pursuant to the United Nations Joint Staff Pension Fund Regulations.

14. On 9 September 2009, Ms. Bezziccheri was informed by a Human Resources Assistant from the Social Security Office within UNODC's HRMS that Van Breda, an insurance company for United Nations staff members, had advised that it could not cover the costs of household help whom Ms. Bezziccheri had employed to help her in view of her disability, as the same was excluded under the United Nations medical plan.

15. On 2 October 2009, Ms. Bezziccheri responded to the e-mail from HRMS enquiring why Van Breda would not reimburse 100 per cent of her medical expenses, given that her injury was work-place related. She further enquired how she should go about claiming a disability benefit.

16. The same day, the Benefits Assistant in the Social Security Office in UNODC's HRMS replied to Ms. Bezziccheri and attached information on the procedures for submitting compensation claims to the Advisory Board on Compensation Claims (ABCC) and the claim form.

17. From 5 to 24 October 2009, Ms. Bezziccheri travelled to Sri Lanka to receive Ayurvedic treatment for canal stenosis and other symptoms. The treatment cost EUR 1,200.

18. On 9 November 2009, Ms. Bezziccheri submitted a claim to the ABCC entitled "Claim for compensation claim under Appendix D" by which she sought reimbursement of expenses incurred in relation to her illness, in particular the cost of her June 2008 plane ticket to Rome, and her October 2009 Ayurvedic treatment. In her claim, she stated that the nature of the injury/illness was spinal canal stenosis and that the date of injury/illness was 1 January 2008. In explaining the reasons for the delayed submission of her claim, Ms. Bezziccheri stated that she only returned to work on a full-time basis in January 2009 and that despite her ongoing requests for information as to how to claim, she only received specific advice on 2 October 2009.

19. In October 2010, Ms. Bezziccheri underwent the same Ayurvedic treatment at her own expense.

20. On 19 November 2010, the ABCC considered Ms. Bezziccheri's case and made a recommendation to the Secretary-General that her compensation claim not be accepted.

21. On 5 February 2011, the Controller, on behalf of the Secretary-General, approved the ABCC's recommendation and on 17 February 2011, the ABCC notified Ms. Bezziccheri of the Secretary-General's decision to reject her compensation claim. It noted that while Ms. Bezziccheri's illness was diagnosed on 1 January 2008, her claim, which was filed on 9 November 2009, was out of time and that her explanation for the delay was not sufficient to justify waiving the time limits prescribed in Appendix D, Article 12.<sup>1</sup>

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<sup>1</sup> Appendix D, Article 12 provides: "Claims for compensation under these rules shall be submitted within four months of the [...] onset of the illness; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date."

22. On 9 June 2011, Ms. Bezziccheri filed her application with the UNDT contesting the Secretary-General's decision to reject her compensation claim as time-barred. She submitted that the ABCC erred as it did not take into account her exceptional medical circumstances, hospitalization and total disability which prevented her from filing her claim with the ABCC earlier. Moreover, given that her illness only progressively worsened, she argued that the precise date of the onset of her illness was unknown.

23. On 4 December 2012, by Order No. 331 (NY/2012) the UNDT rejected the Secretary-General's challenge to the receivability of Ms. Bezziccheri's UNDT application, and found it receivable.

24. On 10 April 2014, the Dispute Tribunal issued the Judgment currently under appeal, in which it found, in part, in favour of Ms. Bezziccheri. The UNDT considered whether the ABCC had proper regard to all of the facts of Ms. Bezziccheri's situation before it determined that her belated claim did not present exceptional circumstances. In this regard, the UNDT considered that "exceptional circumstances" exist for the late filing of a claim where an initial diagnosis or treatment changes during the course of an illness such that claims in connection thereto cannot reasonably be made within the prescribed four months from the onset of the illness. Accordingly, the UNDT considered that in view of Ms. Bezziccheri's health condition and difficult recovery from October 2008 to January 2009, time began to run for filing her claim with the ABCC as of the date on which she returned to work on a full-time basis, being 15 January 2009. Consequently, the last date by which she could have filed any claim under Appendix D to the Staff Rules was 15 May 2009. The UNDT thus agreed with the ABCC's determination that the claim concerning the June 2008 plane ticket was filed out of time, but found that the ABCC erred in finding no exceptional circumstances existed in relation to the claim for the October 2009 Ayurvedic treatment, which the UNDT found to be timely filed. The UNDT ordered the partial rescission of the ABCC decision in respect of the October 2009 Ayurvedic treatment and remanded this sub-claim to the ABCC for its consideration.

### **Submissions**

#### **The Secretary-General's Appeal**

25. The UNDT erred in concluding that the ABCC improperly exercised its discretion in rejecting Ms. Bezziccheri's claim as time-barred. The UNDT correctly noted that staff members

are expected to be aware of their obligations under the Staff Regulations and Rules and the relevant deadlines to file a claim, and that ignorance of procedures is not an excuse, as has been held by this Tribunal's jurisprudence. Ms. Bezziccheri's main excuse for her belated claim was that she was not advised how to file a claim. Despite the clear jurisprudence of the Appeals Tribunal, the UNDT erroneously found that Ms. Bezziccheri had provided a sufficient explanation to justify that there were exceptional circumstances.

26. The UNDT<sup>2</sup> erred in re-interpreting the deadline for the submission of the claim for the 2009 Avuverdic treatment. Article 12 of Appendix D unambiguously provides that the starting point for the deadline to make a claim is the date of the injury or the onset of the illness, and the UNDT did not have the competence to establish a new starting point for the deadline for making a claim, contrary to the clear language of Appendix D, and as per this Tribunal's jurisprudence in *Mebtouche*.<sup>3</sup> Further, the UNDT's finding appears to be premised on a misunderstanding of how Appendix D works. The ABCC does not expect that staff members will claim all future expenses within four months of the injury or illness. Rather, the ABCC's practice is to certify whether a timely claim for an injury or illness is work-related in accordance with Appendix D, after which a staff member may be reimbursed for future expenses as they arise. The UNDT's approach, which posits that claims may be submitted for future medical expenses in connection with an injury or illness even when incurred years later, would frustrate the duty of the ABCC pursuant to Appendix D, which is principally to assess whether the injury or illness was service-incurred.

27. The UNDT also exceeded its competence in substituting its judgment for that of the ABCC in concluding that Ms. Bezziccheri had a permanent disability attributable to the performance of her official duties. The UNDT was not competent to determine whether Ms. Bezziccheri's injury was service-related, nor was it appropriate for the UNDT to assume that the injury was service-related. The determination as to whether an injury is service-incurred under Appendix D rests solely with the ABCC, with input from the Medical Services Division.

28. The Secretary-General requests that the Appeals Tribunal vacate the Judgment.

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<sup>2</sup> Although the Secretary-General's submission refers to the "Appellant", we infer that he intends to refer to the UNDT.

<sup>3</sup> *Mebtouche v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-033, para. 11.

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**Ms. Bezziccheri's Answer**

29. Concerning the UNDT's alleged misinterpretation of the date of the "onset of illness" and corresponding filing deadlines, it is not clear when and what was the actual "onset of the illness" which triggered the four-month filing deadline required under Article 12 of Appendix D. Ms. Bezziccheri herself cannot give a precise date. Both the ABCC's decision and the Secretary-General fail to identify what should be considered as the actual "onset" date of Ms. Bezziccheri's spinal stenosis. The Administration construed its own artificial and arbitrary "onset" date as sometime in 2008. Whatever Ms. Bezziccheri's understanding or subjective perception of her illness may have been in January 2008, her condition was only finally diagnosed on 24 October 2009 as a peculiar spinal stenosis requiring specific treatments, which the UNDT correctly recognized. Accordingly, the ABCC's decision that Ms. Bezziccheri's claim was time-barred was purely arbitrary and not based on any scientific or objective medical basis and the UNDT had no choice but to review and overrule it.

30. While the Secretary-General challenges the UNDT's competence to determine the starting point of Ms. Bezziccheri's illness, the ABCC is equally not competent to make such a determination. It must be presumed that the determination on the "onset of an illness" belongs exclusively to the staff member's physician together with the United Nations Medical Service, and not with the ABCC. Consequently, the ABCC was not competent to make a determination as to the date of the onset of Ms. Bezziccheri's spinal stenosis, and the ABCC provided no objective indication or rationale as to how it reached its decision that her claim was time-barred. The jurisprudence of the Appeals Tribunal in *Sanwidi*<sup>4</sup> requires that the exercise of a discretionary power by the Administration be underpinned by a rational, sound and objective reasoning, which in the instant case is non-existent. Faced with this void, the UNDT was entitled and competent to weigh the uncontested facts and documents on record, and to rule as to whether exceptional circumstances justified waiving the four-month time-limit.

31. The UNDT did not improperly substitute its judgment for that of the ABCC insofar as it stopped short of making a definitive finding; it only held that the illness *appeared* to be attributable to the performance of Ms. Bezziccheri's duties.

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<sup>4</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084.

32. The Administration violated its own management procedures insofar as the ABCC failed to seek from Ms. Bezziccheri, her physicians or her supervisors any information which could enlighten the circumstances explaining the delay between the first ailment signs and the final October 2009 diagnosis, or to consult the Medical Service's records, Van Breda, or any medical experts before deciding the claim was time-barred. The ABCC also failed to consider the responsibility of Ms. Bezziccheri's supervisors, who were also ignorant of the claim procedures and failed to advise her in a timely manner of her rights. The UNODC Executive Office should have provided an explanation to the ABCC concerning its own role in Ms. Bezziccheri's delay. The ABCC closed her claim without fully considering whether exceptional circumstances potentially existed, although her medical evaluations were complex and non-conclusive for many months, and the filing of any earlier claim would likely have been rejected by ABCC as premature.

33. Ms. Bezziccheri requests compensation in the amount of at least two years' net base salary for the moral suffering, anxiety and distress that resulted from the violations of her due process and contractual rights, and the Administration's subsequent abusive proceedings before the UNDT and the Appeals Tribunal which seriously aggravated Ms. Bezziccheri's condition. She also requests payment of her legal costs in the sum of USD 10,000 which she was forced to incur as her illness hampered her ability to represent herself.

### **Considerations**

34. Article 2(1) of the Appeals Tribunal Statute provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

35. Article 12 of the Secretary-General's Bulletin ST/SGB/Staff Rules/Appendix D/Rev.1 titled "Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations" (Appendix D to the Staff Rules) provides:<sup>5</sup>

Claims for compensation under these rules shall be submitted within four months of the death of the staff member or the injury or onset of the illness; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date.

36. The UNDT noted that since Ms. Bezziccheri did not dispute that her compensation claim with the ABCC was not timely filed, it would limit itself to reviewing whether the ABCC properly considered all the relevant facts that led the ABCC to conclude that there were no exceptional circumstances justifying the late filing of her claim.<sup>6</sup> In view of Article 12, the Dispute Tribunal grappled with how to determine whether "exceptional circumstances" existed for the late filing of a claim in relation to the "onset of illness". The UNDT concluded that "exceptional circumstances" existed for the late filing of a claim where an initial diagnosis or treatment changed during the course of an illness such that claims in connection thereto could not reasonably be made within the prescribed four months from the onset of the illness. To hold otherwise would render illusory a staff member's right to claim all the costs related to his or her illness when he or she could not possibly be expected to anticipate and claim all possible future costs related to an illness which may be unknown at the time of its onset or within the ensuing four months.<sup>7</sup> The UNDT effectively concluded that time to file a claim with the ABCC should run from the date of the new diagnosis or from the date on which the costs of the new treatment became effectively known by the staff member.<sup>8</sup> Applying this new rule to Ms. Bezziccheri's claims, the UNDT found that her compensation claim for the cost of her June 2008 plane ticket to Rome was time-barred, although her request for the costs of her October 2009 Ayurvedic treatment was timely. The UNDT remanded the latter part of Ms. Bezziccheri's claim to the ABCC for reconsideration.

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<sup>5</sup> ST/SGB/Staff Rules/Appendix D/Rev.1 (Appendix D to Staff Rules), in effect as of 1 January 1966, amended on 8 January 1976 and 1 January 1993.

<sup>6</sup> Impugned Judgment, paras. 41 and 43.

<sup>7</sup> *Ibid.*, paras. 58-59.

<sup>8</sup> *Ibid.*, para. 59.

37. The Secretary-General submits that the UNDT erred in law in reinterpreting the calculation of the filing deadline for claims to the ABCC. This Tribunal has previously held that neither the UNDT nor the Appeals Tribunal has the authority to amend any regulation or rule of the Organization which it finds restrictive, though it may comment on what it considers to be a deficiency in a regulation or rule and recommend a reform or revision.<sup>9</sup>

38. At paragraph 59 of its Judgment, to counter purported unfairness to staff members, the UNDT established a new deadline from which filing a claim should be calculated (namely, the date of the new diagnosis or from the date on which the costs of the new treatment become effectively known by the staff member), while at paragraph 51 the UNDT erroneously considered that “the latest date by which time can be considered to have started to run under Appendix D was four months from the date on which she returned to work on a full-time basis - 15 January 2009”. In view of our jurisprudence, we find that the UNDT erred in unilaterally establishing new starting points for time to run for the purpose of filing claims with the ABCC that were contrary to the express text of Article 12 of Appendix D to the Staff Rules.

39. The UNDT’s reasoning also conflated the distinct issues of determining a definitive starting point to mark the “onset of illness” for the purpose of calculating filing claims, which is the first prong of Article 12, and the issue of “exceptional circumstances” justifying the late filing of claims, the second prong of Article 12. As discussed above, while the UNDT erroneously established new deadlines for the filing of claims at paragraphs 51 and 59 of the Judgment, paragraphs 58 and 61 of the Judgment show that the UNDT remanded the matter to the ABCC for having failed to consider the objective difficulties faced by Ms. Bezziccheri in filing her claim, and finding that the same constituted “exceptional circumstances”, pursuant to the second prong of Article 12.

40. Quite simply, this is a matter where the staff member failed to appreciate the filing deadlines in order to lodge her compensation claims. Ms. Bezziccheri acknowledged that she had received legal advice as early as 16 September 2008. Notwithstanding the legal advice and the fact that she returned to work on a full-time basis as of January 2009, she did not file her compensation claim until 9 November 2009. While she largely claims that this delay was attributable to the Administration’s failure to respond to her requests for information, the same is not borne out by the evidence before us. Further, we have consistently held that staff members

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<sup>9</sup> *Mashhour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, para. 28, citing *Mebtouche v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-033, para. 11.

have to ensure that they are aware of the Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations' internal justice system and that ignorance of the law is no excuse for missing deadlines.<sup>10</sup>

41. In view of this, we consider that it was open to the ABCC to find that Ms. Bezziccheri's explanation for her delay did not constitute exceptional circumstances justifying the waiving of the four-month time limit prescribed in Article 12 of Appendix D. In our view, the UNDT clearly erred in embarking upon an exercise to establish from when time limits should run, and finding otherwise than in accordance with the ABCC.

42. Having regard to the foregoing, we uphold the Secretary-General's appeal and consequently vacate the UNDT Judgment, as well as its consequent order partially rescinding the 5 February 2011 decision and remanding this aspect of Ms. Bezziccheri's claim for reconsideration. We affirm the decision that Ms. Bezziccheri's compensation claim was filed out of time and that her explanation for the delay was not sufficient to justify waiving the time limits prescribed in Article 12 of Appendix D.

43. In her answer to the Secretary-General's appeal, Ms. Bezziccheri requests "at least two years' compensation" for the moral suffering, anxiety and distress. The Appeals Tribunal finds no merit to Ms. Bezziccheri's claim in light of our foregoing determinations and her claim for compensation is rejected. We also reject her claim for legal costs in the sum of USD 10,000 as no abuse of process by the Secretary-General has been established.

### **Judgment**

44. The appeal is granted and the UNDT Judgment is vacated in its entirety.

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<sup>10</sup> *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, citing *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218 and *Jennings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-184; *Nianda-Lusakueno v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2014-UNAT-472; *Azzouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-432; *Diagne v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067.

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of July 2015 in Geneva, Switzerland.

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 20<sup>th</sup> day of August 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar