



Judgment No. 2017-UNAT-737



JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Dorah Namasiku Likukela against Judgment No. UNDT/2016/180 issued by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 30 September 2016. Ms. Likukela filed her appeal on 25 October 2016. The Secretary-General filed his answer on 23 January 2017.

Facts and Procedure

2. Ms. Likukela is a former investigator (P-3) with the United Nations Integrated Mission in Timor-Leste (UNMIT). In her application before the UNDT, she contested the decision by the Secretary-General to uphold the recommendation of the Advisory Board on Compensation Claims (ABCC) rejecting her claim for compensation under Appendix D of the Staff Rules (Appendix D) for alleged injuries incurred during the course of a medical examination conducted at UNMIT on 3 August 2011.

3. Considering that the matter involved a detailed account of Ms. Likukela's medical condition which was not of interest to the public and in order to protect her right to privacy, references to her medical condition were redacted from the published version of the UNDT Judgment and are therefore not contained in the following fact section.

4. On 3 August 2011, Ms. Likukela attended a consultation with the UNMIT Medical Services Section. On the same day, Ms. Likukela reported to the UNMIT Security Special Investigations Unit that she had been victim of an incident during this medical examination.

5. Between August 2011 and June 2013, Ms. Likukela was examined several times, undergoing, among others, ultrasound and diagnostic surgery.

6. On 15 October 2013, Ms. Likukela filed a request before the ABCC under Appendix D for compensation for injuries she claimed to have incurred during the medical examination of 3 August 2011.

7. By memorandum of 10 March 2015, Dr. R. of the Medical Services Division (MSD), New York, in consultation with the Medical Director, advised the ABCC as to whether Ms. Likukela's condition could be considered to be directly related to the medical

examination that was conducted on 3 August 2011. He stated in his report that “the Medical Director ... confirmed that there [was] no evidence of medical malpractice and, in this case, no evidence of sexual assault”. Regarding Ms. Likukela’s specific claims, Dr. R. found that:

- a) The practice used during the examination is reasonable and appropriate medical practice for a patient presenting with the symptoms that Ms. Likukela had;
- b) The pathology examination following surgery confirmed that Ms. Likukela had a developmental condition (present from birth) that was consistent with her symptoms.

8. On 12 May 2015, the ABCC, at its 483rd

have the expertise to do so. The proper way for [Ms. Likukela] to request reconsideration of the conclusions reached by the [MSD] was to make use of art. 17 of Appendix D, to have the matter re-examined by a group of medical experts.”¹ The Dispute Tribunal further found that Ms. Likukela’s request for review of the allegedly erroneous recovery of USD 587,428.65 by the United Nations Federal Credit Union (UNFCU) as a scheme to defraud her of her benefits, fell beyond the scope of the case and would thus not be considered. Finally, the Dispute Tribunal held that there was no indication that the procedure set forth in Appendix D for determining Ms. Likukela’s claim for compensation had not been correctly followed.

Submissions

Ms. Likukela’s Appeal

14. Ms. Likukela submits that the UNDT exceeded its jurisdiction and erred on a question of fact in its summary of the medical findings of the case. She further argues that since the UNDT is “not a medical expert to draw up those facts”, it erred on a question of law in its application of the relevant standard of review. Moreover, Ms. Likukela states, *inter alia*, that the involved medical experts used incorrect procedures and reached faulty medical conclusions; she asserts further that the sexual assault that allegedly occurred during the medical exam conducted on 3 August 2011 was not properly dealt with by the Administration.

15. She reiterates that the UNFCU intended to defraud her of her benefits when it “generat[ed]” a payment of approximately USD 587,000 for what she believed to be compensation for her alleged injury and then recovered part of the amount. In addition, the UNDT exceeded its jurisdiction when it separated the issue regarding the UNFCU payment from the questions of sexual assault and medical malpractice.

16. It is Ms. Likukela’s submission that “[t]he UNDT should have referred the case back to the Secretary[-]General for accountability” in accordance with Article 17 of Appendix D rather than issuing a judgment. In this regard, she notes that she was previously not aware of the procedure stipulated in Article 17 of Appendix D as she was “merely given the contested decision and advised to appeal to the MEU, who thereafter advised [her] to appeal to the UNDT”.

¹ Impugned Judgment, para. 28.

21. Therefore, the Secretary-General prays the Appeals Tribunal to affirm the impugned

27. She argued before the UNDT that these medical conclusions were wrong. Needless to say, the UNDT was not swayed by her own opinions on the medical evidence. The UNDT also correctly regarded itself as not competent to make medical findings contradicting the medical evidence.

28. The UNDT was cognizant of its obligation to determine if the Secretary-General's decision was legal, rational, procedurally correct and proportionate, but that it was not its role to consider the correctness of the choice made by the Secretary-General from amongst the various courses of action open to him, nor to substitute its own decision for that of the Secretary-General.²

29. We find that the UNDT made no error in its finding that the ABCC's recommendation had no connection with the attempted recove

32. We find no reason to disagree with the UNDT's finding that Ms. Likukela had not pointed to any procedural irregularity which would justify overturning the contested decision. Her arguments on appeal are essentially that she disagrees with the conclusions of the medical practitioners and seeks to persuade us to accept her views, just as she did with the UNDT.

33. It is not sufficient for Ms. Likukela merely to submit that she disagrees with the UNDT decision and to repeat the arguments she put to that court. The appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.⁵

34. We find that Ms. Likukela has failed to demonstrate that the UNDT committed any error of fact or law in arriving at its decision.

35. The appeal must fail.

Judgment

36. Judgment No. UNDT/2016/180 is affirmed and the appeal is dismissed in its entirety.

⁵ *Hassan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-504; *Khashan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-502.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Knierim

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar