
UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NY/2018/011
UNDT/NY/2018/032
Judgment No.: UNDT/2019/098
Date: 29 May 2019
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

PAPATHANASSIOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Daniel Trup, OSLA

Counsel for Respondent:
Bart Willemsen, UNICEF

Introduction

1. The Applicant, a Programme Specialist with the United Nations Children's Fund at the P-4 level, contests: (a) the

-barred and non-

[reference to annex omitted] However, in this memorandum, the Secretary to the ABCC stated that, with reference to Article 2.1(e) of Appendix D, a waiver of the deadline may be granted for medical incapacity, and should (additional) medical documentation demonstrating such medical incapacity be submitted, the claim may be considered further.

3. On 15 December 2017, the Applicant submitted a request for

4. On 12 January 2018, UNICEF informed the Applicant that the Secretary to the ABCC had informed UNICEF that the ABCC would revisit the decision(s) upon receipt of further information to be submitted by

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proceedings of the present cases and their agreement as to the liability issues, and having

Consideration

Summary judgment

8. Under art. 9 of th , a party may move for

11. In addition to art. 9 of the Rules of Procedure on summary judgments, the Tribunal notes that art. 10.4 of the Statute reads as follows (emphasis added):

4. *Prior to a determination of the merits of a case*, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may, with the concurrence of the Secretary-General of the United Nations, remand the case for institution or correction of the required procedure, which in any case, should not exceed three months. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay to the applicant for such loss as may have been caused by such procedural delay, which is not to exceed the equivalent of three months net base salary.

12. In the joint submission dated 21 December 2018, the Respondent states that he Secretary to the ABCC did not have the authority to refuse the waiver of the time-limit for request for compensation, and that, assuming *arguendo* that the Secretary to the ABCC had such authority, he applied the incorrect version of Appendix D provisions . The Tribunal understands that the parties therefore agree that a procedural irregularity occurred when the ABCC Secretary rejected as time barred as such decision-making authority is properly vested with the ABCC itself. It is further agreed that the ABCC Secretary applied the incorrect version of Appendix D.

13. Similarly, when the Respondent indicates no comment on the order to the effect that, with reference to art. 10.4 of the Dispute para. 31 of *Baracungana* 2017-UNAT-725, the consolidated cases be remanded explicitly indicating that the Secretary to the ABCC

19. It follows that summary judgment under art. 9 of the Rules of Procedure is not suitable in this instance, since such is a judgment on the merits. While the facts regarding what the Tribunal considers to be preliminary and procedural matters are fully pleaded and not disputed, the merits of the substantive issues are not before the Tribunal. Furthermore, the parties disagree on the facts and the law relating to compensation under art. 10.4; and
inextricably woven with disputed facts and/or facts which may require proof by evidence. As the Tribunal is not in a position to award the Applicant any compensation
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compensation for any delay, or for any other compensation howsoever arising, which right is hereby reserved. The Tribunal therefore grants leave to the Applicant to amend both applications with a claim for compensation of three months net-base salary, to be determined and assessed later, unless otherwise resolved by mutual agreement.

Conclusion

20. In light of the above, the Tribunal holds that:

- a. By consent and with the concurrence of the Secretary-General, the claims are remanded to the ABCC for institution or correction of the required procedure

