

Background

1. On 2 April 2020, the Applicant filed an application challenging the Staff Rules as a surviving spouse of a staff member killed in the course of official duties on 19 August 2003. The Respondent argued that the application is not receivable *ratione personae*. The Tribunal agrees and dismisses the application as not receivable.

Facts and Procedure

2. Through a motion dated 30 April 2020 and pursuant to art.19 of the Dispute
motion to suspend proceedings
pending the United Nations Appeals Tribunal written Judgment dismissing the
benefit. The Respondent argued that the substance of the claim in that appeal, that the Applicant was a surviving spouse of the decedent, was similar to the question for determination in the instant application. The Appeals Tribunal may have made factual and legal findings on this point which would guide this Tribunal under the principle of *stare decisis*.

3. On 13 May 2020, the Tribunal issued Order No. 091 (UNDT/2020) which suspended the proceedings pending the publication of the reasoned judgment by the

6. By Order No. 031 (NBI/2021) of 5 February 2021, the Tribunal directed the parties to file submissions addressing the findings made in Judgment No. 2020-UNAT-1004 on the issue of whether the Applicant qualifies as a surviving spouse under the Staff Rules.

7. On 12 February 2021, the Applicant filed a motion to adduce additional evidence and informed the Tribunal that she would address the impact of Judgment No. 2020-UNAT-1004 in her further submissions. The Tribunal directed the Respondent to file a response to the motion which he did on 19 February 2021.

8. The Tribunal noted from the submissions that the UNAT decision dealt with legal provisions of UNJSPF and not Appendix D of the Staff Rules which forms the basis of the claim in this application.

9. Therefore, the Tribunal called for
19 August 2021.

10. At the CMD, the parties agreed that the applicable Appendix D is the one D/Rev.1, of 1 January 1966, as amended by ST/SGB/Staff Rules Appendix D/Rev.1/Amend.1 of 8 January 1976, and by ST/SGB/Staff Rules/1/Rev.7/Amend.3 of 1 January 1993).

11. The Applicant clarified that her request to the Advisory Board on ABCC was to re-open the Appendix D claim made in 2003
accordance with the Staff Rules.

12. The Respondent invited the Tribunal to find that the claim for compensation was not receivable *rationae temporis* as it was filed late.

13. The parties also agreed that the Tribunal should make a preliminary finding of whether the application is receivable *ratione personae*.

14. The parties further agreed that the Tribunal should decide on whether the impugned decision was made *ultra vires* by an unauthorized officer.

15. On the merits, the parties agreed that the decisive legal issue for determination the Applicant qualifies as such.

16. The parties agreed that an oral hearing is not necessary and the case may be decided on the papers.

17. The parties filed closing submissions on 10 September 2021.

Applicant's submissions

18. are summarized below:

a. This application is receivable as it rests upon a final decision by the Secretary-General rejecting the requests of the Applicant and of the Permanent Mission of Brazil and of Argentina to recognize her status as a survivor of Mr. M as determined by the courts and Government of Brazil.

b. to request the correct application of the Staff Regulations and Rules both as a staff member and as a claimant to challenge the refusal to have her proper legal status, confirmed as equivalent to marriage by the Government of Brazil, recognized by the Organization.

c. spouse and his estate were represented, the courts and governmental

ognized

therefore entitled to a residual benefit under Appendix D. The Applicant did not submit a new claim on behalf of the deceased staff member. Rather, under art. 9 of Appendix D, she brought a claim as a person entitled to reopen the case made for Mr. M in order to amend the previous award to his survivors.

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widow of a deceased staff member the Applicant is entitled to receive a share in the residual benefits as surviving spouse of Mr. M.

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until his death, the deceased staff member reported one marriage only, the one to his wife in France.

Considerations

26. The Applicant sion to reject her claim for compensation under Appendix D to the Staff Rules as a surviving spouse of a staff member killed in the course of official duties on 19 August 2003.

27.

appeal an administrative decision that it alleged to be in non-compliance with the terms of appointment or the contract of employment.

31. The individual referred to above who is entitled to file an application in the UNDT is defined in art. 3(1) of the UNDT statute as:

- a. Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;
- b. Any former staff member of the United Nations, including United Nations Secretariat or separately administered United Nations funds and programmes;
- c. Any person making claims in the name of an

35. It would be an error of law to proceed and address the rest of the issues that arose in this application after a finding that the Applicant has no standing *ratione personae* to bring a claim in this Tribunal⁵.

Judgment

36. The application is not receivable *ratione personae*. It is dismissed.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 21st day of September 2021

Entered in the Register on this 21st day of September 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁵ *Khan* 2017-UNAT-727, para. 30.