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JUDGE S

of computers for work purposes and that his injury was caused by “professional error” on the part of the eye doctor during the cataract surgery.

... On 9 August 2012, the ABCC forwarded the Applicant’s claim to the Director of the Medical Services Division (MSD) of [the Office of Human Resources Management (OHRM)] for review and advice.

MSD's findings and conclusion that the Applicant's illness was not found to be directly related to the performance of his official duties. This was communicated to the Applicant on 28 January 2013.

... The Applicant wrote to the ASG/OHRM again on 6 and 7 May 2013. On 23 May 2013, the Director of MSD responded to the Applicant on behalf of the ASG/OHRM. She reiterated that the 37 Military Hospital Medical Board was part of the hospital's internal procedures and had not been convened under the authority of the United Nations. She assured him that the Report of the 37 Military Hospital Medical Board had not been submitted to the ABCC and had not been considered by it during its deliberations. She then advised him that if his medical condition prevented him from performing his duties, MSD could recommend his case to the Pension Fund for consideration.

... The Applicant responded to the Director of MSD on 27 May, disagreeing with her response of 23 May and reiterating his request for compensation and separation.

... At its 463<sup>d</sup> meeting on 11 June 2013, the ABCC considered the Applicant's claim for compensation under Appendix D and concluded that his injury was not service-incurred.

... On 16 July 2013, the Controller, on behalf of the Secretary-General, approved the ABCC recommendation of 11 June 2013 to deny the Applicant's request that his illness (bilateral cataracts and loss of vision in the right eye due to corneal damage) be recognized as service-incurred.

3. On 10 August 2013, Mr. James filed an incomplete application with the UNDT, which he completed on 25 September 2013, "challenging the 'rejection of [his] claim for compensation for loss of one eye' by the [ABCC]", as well as "UNMIL's alleged negligence in referring him to a sub-standard medical facility for cataract surgery".<sup>2</sup> Mr. James sought the following remedies:<sup>3</sup>

a) An "unequivocal declaration" that UNMIL is fully responsible for the failed cataract surgery, "which resulted in the loss of [his] right eye";

b) An "unequivocal declaration" that he is fully entitled to benefits under Appendix D of the United Nations Staff Rules [...] for the loss of his right eye, and rescission of the decision by "the UN authorities" to deny him such benefits;



Submissions

Mr. James' Appeal

8. Mr. James contends that his referral to the Korle-Bu Hospital and the decision not to separate him immediately from service for health reasons were based on the advice of a technical body as set forth in Staff Rule 11.2(b). He was therefore not required to request management evaluation before applying to the UNDT.

9. Mr. James further contends that the UNDT should have ruled that Mr. James' obligation to submit the contested decisions for management evaluation or reconsideration in the case of the Appendix D claim was fulfilled when he asked for the ASG/OHRM's intervention. Even if the ASG/OHRM was not regularly authorized to evaluate disputed administrative decisions, she created a false impression of authority when she responded to Mr. James' queries. The UNDT should have determined that his requirement to submit the contested decisions to the Management Evaluation Unit (MEU) had been satisfied.

10. Mr. James claims that the UNDT Case Management Orders and Judgment were biased in favour of the Secretary-General, and he gives three examples of alleged bias, namely: (a) the apparent inaccuracy in the wording of UNDT Order No. 248 (NBI/2014), which was a deliberate attempt by the UNDT to prejudice his rights; (b) the UNDT's refusal to permit him to submit additional pleadings on the merits in response to the

Code by Tolson or his subordinates in Secm ND.7(G)-Tof.8(ralore )-54ms.5(d I sub)-32.5s.5(d ncubmit h-6.5(D







additional pleadings on the merits that had been adequately addressed in his initial pleadings. We find no fault in the exercise of the UNDT's discretion on the filing of those additional pleadings.

21. Mr. James' third example is the UNDT's refusal to sanction the Secretary-General for failing to communicate to him the Controller's decision of 16 July 2013, and for lying under oath in this regard. At the time the UNDT Judgment was issued, the Controller's decision had not yet been communicated to Mr. James. The UNDT therefore ordered the communication of the Controller's decision to

submit a request for management evaluation of these decisions before proceeding with his application to the UNDT.

26. Pursuant to Staff Rule 11.2(a), a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertin

Accordingly, the UNDT correctly concluded that Mr. James' correspondence with the ASG/OHRM cannot substitute his obligation to request management evaluation.

31. Finally, Mr. James makes multiple claims regarding the merits of the substantive case, which are not admissible as the impugned Judgment addresses only the receivability issue.

32. We find no merit in this appeal.

Judgment

33. The appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Chapman

*(Signed)*

Judge Lussick

Entered in the Register on this 30<sup>th</sup> day of December 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar