
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/049

Judgment No.: UNDT/2012/052

Date: 17 April 2012

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

WAMALALA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Miles Hastie, OSLA

Counsel for Respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

medical information, the claimant should be awarded a compensation in the

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The Respondent's submissions

6.

receivable under Articles 2.1(a) and 8.1

7.

f the Administration
is not an administrative decision subject to appeal, and a management evaluation
is a necessary step in the appeal process.

8.

13. That the Tribunal must reject the Applicant must have submitted the negligence claim for consideration and determination by the Administration and only a denial by the Secretary-General of a claim for compensation can be challenged before the Dispute Tribunal.

Consideration

Whether the conduct of the Administration is or is not an administrative decision subject to an appeal

14. What is an administrative decision? In *Andronov*,² the former UNAT held that an administrative decision is one which is unilaterally taken by the administration in a precise individual case, with direct legal consequences for a staff member. *Andronov* has been endorsed in several other cases for this proposition³. The issue then becomes whether the conduct of the Administration in tc0.an of of

Whether the Tribunal has jurisdiction to review the compensation amount awarded by the ABCC

22. On the compensation issue, the Respondent submits that there has been no management evaluation requested by the Applicant and therefore the matter is not receivable.

23.

valid reasons for such a non-access. What the Applicant is therefore attempting to do is vindicate his rights that he avers were denied to him and that denial has an impact on his right to work. He cannot therefore be denied access to the Tribunal in the absence of a clear and express provision to that effect.

27. It is interesting to note here that Article 7(g) of the Code of Conduct for Judges adopted by the General Assembly (A/Res/66/106) dated 13 January 2012

of professional competence and to keep themselves informed about relevant development in international administrative and employment law as well as international human rights. Maintaining the necessary level of professional competence in these areas surely would also mean applying them in judicial decisions whenever applicable.

28. In the case of *Tadonki* UNDT/2009/016, this Tribunal stated in paragraphs 8.2.7 and 8.2.8 that the rules and regulations of the United Nations relating to employment should be interpreted and applied in a manner that takes into account the international human rights standards and that [t]he way in which the employment is terminated should therefore be considered in the context of the rights of the employee to due process and the compliance of the decision maker to international law and principles of the

29. It therefore follows that in applying the above stated legal principles, the Code of Conduct for Judges and the UNDT Statute dealing with cases that do not require management evaluation, the Applicant should have his case heard by the Tribunal.

Conclusion

30. The Application is receivable. In the circumstances, the Tribunal has jurisdiction to entertain it.

