

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

SIMMONS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. On 13 September 2010, the Applicant filed a claim challenging the decision not to award her compensation for injuries sustained from a vehicular accident. She contends that when the accident occurred she was commuting from work and therefore on official duty. The administrative decision that is being challenged was made on the recommendation of the Advisory Board on Compensation Claims (“ABCC”).

Scope of the case

2. The Tribunal has identified the following two issues:
- a. Were the ABCC justified in insisting that the Applicant produce further details, including documentary evidence, to prove that she had a legitimate reason for travelling in the direction opposite to her home?
 - b. Was it a proper and lawful exercise of the discretion of the ABCC not to recommend that the Applicant’s claim be accepted because she refused to answer certain questions and to provide information that would enable them to apply properly the test to determine whether she was on official duty?

Procedural history

3. The Respondent’s contention that the application was not receivable because the Applicant did not exhaust the administrative process of seeking reconsideration of a claim pursuant to art. 17 of Appendix D to the Staff Rules was the subject of a Judgment on receivability issued on 6 November 2012 (Judgment No. UNDT/2012/167). The Tribunal found that the application was receivable. The parties were ordered to file and serve any further concise submissions not

exceeding three pages, or, alternatively, to state that they rely on the submissions made already and had nothing further to add. They were also asked if they agreed to a determination of the substantive merits of the claim on the basis of the documents.

determining applications for compensation, but also the principal reason advanced by the Respondent justifying the refusal of the claim as being the Applicant's unwillingness to provide further particulars explaining the reason why she did not adopt a direct route on her way home from the office. The Respondent decided not to refer the matter for a review by the ABCC on the ground that the Applicant had not yet provided relevant particulars regarding the route that she had taken which was not the most direct from the UN to her home.

7. The Applicant produced a detailed reply to Order No. 240 (NY/2012) and the Respondent provided an explanation as to why the case could not be referred to the ABCC for review. The Respondent stated that the Applicant's submission dated 19 November 2012 did not provide the information requested by the ABCC. The Respondent contended that the Applicant's evasive submissions to the ABCC and to the Tribunal are insufficient to establish any facts, adding that if the Tribunal considered it necessary to determine why the Applicant was travelling in the opposite direction to her home then a hearing was necessary. In the event that a hearing was convened, the Respondent wished to call the Applicant and her passenger mentioned in the police report in order to verify the facts regarding the question whether the Applicant had a legitimate reason for travelling in the opposite direction to her home.

8. In Order No. 11 (NY/2013) dated 17 January 2013, the Tribunal considered the available evidence on file, noted the Applicant's preference for a determination on the documents and took into account the Respondent's cautionary note regarding the requirement for the Tribunal to establish as a fact the question whether or not the Applicant was on duty on behalf of the United Nations at the time of the accident. The Tribunal decided, in the circumstances, to accede to the Applicant's request that there be a judicial determination on the documents.

14. On 2 December 2009, the Applicant informed the Secretary of the ABCC that her written statement, the police report, and the statement she gave to the United Nations Safety and Security Service was adequate information for the ABCC's

from her son's school or day camp confirming that he had been enrolled there and was in attendance on the date of the accident.

19. On 7 June 2010, the Applicant forwarded additional comments to the ABCC.

Parties' submissions

23. It is the Applicant's case that the accident, which occurred while she was driving her private vehicle, was in the course of service with the United Nations as she was commuting from the United Nations Headquarters in New York to her home in the borough of the Bronx, New York, USA.

24. The Respondent resists the claim on the ground that there were no errors of law or fact committed by the ABCC when they rejected the Applicant's claim for compensation since the ABCC found that, when the accident occurred, the Applicant was not travelling by the most direct route possible between her office at the United Nations and her residence.

Applicable law

25. The relevant provisions regarding a staff member's entitlement to compensation for injuries incurred while on official duties are promulgated in Appendix D to the Staff Rules. The general principles governing the payment of compensation for service incurred injury are to be found in ST/SGB/Staff Rules/Appendix D/Rev.1 (Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations), which in art. 2(a) and (b) states that:

The following principles and definitions shall govern the operation of these rules:

(a) Compensation shall be awarded in the event of death, injury or illness of a staff member which is attributable to the performance of official duties on behalf of the United Nations, except that no compensation shall be awarded when such death, injury or illness has been occasioned by:

- (i) The wilful misconduct of any such staff member; or
- (ii) Any such staff member's wilful intent to bring about the death, injury or illness of himself or another;

(b) Without restricting the generality of paragraph (a), death injury or illness of a staff member shall be deemed to be attributable to the performance of official duties on behalf of the United Nations in the absence of any wilful misconduct or wilful intent when:

- (i) The death, injury or illness resulted as a natural incident of performing official duties on behalf of the United Nations; or
- (ii) The death, injury or illness was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area involving special hazards to the staff member's health or security, and occurred as the result of such hazards; or
- (iii) The death, injury or illness occurred as a direct result of travelling by means of transportation furnished by or at the expense or direction of the United Nations in

expectancy on the part of the Applicant that she was entitled to such compensation (see *Sina* UNDT/2010/060, as affirmed by the Appeals Tribunal in *Sina* 2010-UNAT-094 on liability). Such expectancy is subject to the requirement of proof that the injury in question was sustained in connection with the performance of official duties. There would therefore be an obligation on a claimant to respond to reasonable requests for information to enable the ABCC to make a determination as to eligibility to claim compensation.

Consideration

28. Appendix D does not specifically provide for compensation in a situation such as that of the Applicant. However, under the practice of the ABCC, staff members are entitled to compensation when commuting via the most direct route to and from work.

29. In the present case, the accident clearly did not occur on the most direct route of the Applicant from her office to her home as the accident occurred 1.7 miles south of her office whereas her home was located 10 miles to the north of her office. The Applicant submits that the reason for her detour was that she had to pick up her son.

30. It is implicit from the manner in which the ABCC dealt with the Applicant's claim that the fact that she was not on the most direct route home from work did not in itself disentitle her to compensation. However, the ABCC expected the Applicant to provide the information requested so that they could have made an informed decision as to her eligibility. An examination of the exchange of correspondence between the Applicant and the ABCC indicates that the Applicant was less than cooperative in the manner in which she responded to the ABCC. The Tribunal is not satisfied that the information requested was unreasonable or otherwise unjustified.

31.

about her trip from work to home since she was not travelling via the most direct route. The ABCC made the request several times. The Applicant consistently refused to provide all the information requested. Eventually, the ABCC concluded that the intransigent attitude of the Applicant in refusing reasonable requests for information left it with no alternative, but to draw the inference that the Applicant was not on a direct route home from her office and recommend that she should not be compensated for her injuries.

32. The Tribunal finds that the ABCC was correct in rejecting the Applicant's claim for compensation for injuries suffered from the car accident.

Conclusion

33. The application is dismissed in its entirety.

(Signed)

Judge Goolam Meeran

Dated this 26th day of March 2013

Entered in the Register on this 26th day of March 2013

(Signed)

Hafida Lahiouel, Registrar, New York