



Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Abena Kwakye Berko

DAHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Nicole Washienko, OSLA

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM

INTRODUCTION

1. On 19 October 2016, the Applicant filed an application in which she contested the decision of the Advisory Board on Compensation Claims (ABCC) to deny her claim for compensation under Appendix D to the Staff Rules on the ground that it was not filed within the requisite time limit

2. It is the Applicant's case that the ABCC was incorrect in finding that her claim was not filed in time. Further, that in rejecting her request for a waiver of the time limit in light of the exceptional circumstances in her case, the ABCC did not properly and lawfully exercise its discretion

3. By reply dated 21 November 2016, the Respondent submitted that the claim should be rejected on the grounds that it was filed almost 9 years after the expiration of the time limit and that the refusal by the ABCC to grant a waiver of the time limit was a lawful and proper exercise of the Secretary's discretion under Article 2(h)19(a)3(t)-22()-30(t)-

particular, the following dates and events are relevant to a determination of the issues in the case

- a. On 12 September 2008, the Applicant emailed her supervisor complaining of back pain and requesting the provision of an appropriate chair to perform her duties. This complaint was referred to the Court Management Section. In the absence of

e. A m

appropriate chair. She submitted that in the circumstances and notwithstanding the fact that she was suffering from back pain for several years prior to that her claim was nevertheless within time since it was made within the requisite time beginning with a definitive diagnosis. She also submitted that the fact that she was suffering from cancer and undergoing medical treatment over an extended period inhibited her from filing a claim at an earlier stage.

9. Having filed her claim on 27 March 2013, the Applicant's counsel made numerous follow up enquiries and was informed that the matter was under review. At no stage during this review, which the facts indicate took three years, was she asked for any explanation, clarification or

Recommendsto the Secretary General that due to the insufficient explanation for the delay in claim submission, the claimant's request to waive the provisions of Article 12 of Appendix D be denied, and the claim therefore be denied.

THE APPLICABLE LAW

14. Article 12 of ST/SGB/Staff Rules/Appendix D/Rev.1("Appendix D") states

Claims for compensation under the rules shall be submitted within four months of the death of the staff member or the injury or onset of the illness; provided, however, that in exceptional circumstances the Secretary General may accept for consideration a claim made at a later date.

THE ISSUES

15. The issues for determination are:
- a.

17. Claims must, in accordance with the provisions of article 12 of Appendix D, be filed within four months of the injury or onset of the illness, if applicable. However, the Secretary General has discretion to accept for consideration a claim made at a later date if there are exceptional circumstances. This is a wide

consideration on its merits. Before examining this question further, it will be helpful to produce the ABCC minutes recording the decision in its entirety.

The Advisory Board on Compensation Claims,

Having considered at its 49th meeting on 14 June 2016, the claim submitted by the above-referenced claimant for compensation under Appendix D to the Staff Rules for injuries (neck and back pain) sustained in connection with her use of inadequate work chairs during her employment with the ICTR from 2000 to 2012 in Arusha, Tanzania,

Having also considered the statement from the claimant and her OSLA representative's brief regarding the significant delay in claim submission, the emails documenting the claimant's ul

for institution or correction of the required procedure, which, in any case, should not exceed three months. [...].

25. In compliance with the ruling in *Baracungana* 2017-UNAT-725, in which the United Nations Appeals Tribunal (“UNAT”) emphasized the need for this Tribunal to have the concurrence of the Secretary General to remand a case to the ABCC, this case is so remanded.

JUDGMENT

26. The decision of the ABCC to deny the Applicant’s request for consideration of her claim for compensation under Appendix D to the Staff Rules is rescinded

27. Subject to the concurrence of the Secretary General, this claim is remanded to the ABCC for proper consideration in accordance with art. 10.4 of the UNDT Statute.

(Signed)

Judge Goolam Meeran

Dated this 1st day of January 2018

Entered in the Register on this 1st day of January 2018