

UNITED NATIONS DISPUTE TRIBUNAL

6. On 9 October 2014, Mr. Kevin James, Chief Executive Officer, Hostile Control Tactics LLC, issued a letter to attest that the Applicant had never been an employee of their company and that he was featured on their website as a freelance, independent contractor (see paragraph 23 below).⁴

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informed that for purposes of the Fun retroactive amount, he was required to provide a sworn statement stating that he had not undertaken any paid employment besides the employment he declared that he undertook in 2012.¹³

16. On 27 April 2017, and signed statement as requested to UNJSPF.¹⁴ The information was also shared with

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the ABCC with his renewed request of 14 June 2017 made the request a new one, and so the 29 December 2017 decision was an administrative decision. The Applicant's challenge to it was within 90 days of it in accordance with staff rule 11.4(b). The application is receivable *rationae materiae* and *rationae temporis*.

25. The key issue for determination is whether the ABCC properly determined that the Applicant does not qualify for the Appendix D benefit under art. 11.2(d).

26. Since this determination was a matter of discretion on the part of the ABCC, in line with established legal principles,¹⁹ the Tribunal will only examine whether the decision is legal, rational, procedurally correct and proportionate and whether relevant matters were ignored and irrelevant matters considered in making the contested decision.

27. The Applicant laid five arguments for challenging the decision and they will be resolved in the order in which they were presented.

28. In the first ground the Applicant maintains that the benefits in both the UNJSPF and the ABCC are governed by a claimant's earning capacity, and since the UNJSPF reinstated the benefit to the Applicant, the ABCC should follow suit to avoid inconsistency in a situation where the applicable standards are the same.

29. The Respondent countered that the system for the award of compensation under Appendix D to the staff regulations and rules is distinct from the award of disability benefit under art. 33 of the UNJSPF Regulations. That being so, the fact that the UNJSPF awarded the Applicant a disability benefit under art. 33 of its regulations does not entitle him to a benefit under art. 11.2(d) of Appendix D.

30. The Tribunal's jurisprudence²⁰ has clarified that the UNJSPF and the ABCC are independent bodies,

frameworks and that they also have different decision-makers.

31. A cursory reading of the legal provisions relevant to the issue will lead to the same position. Article 11.2(d) of Appendix D provides thus;

Where, upon the separation of a staff member from United Nations Service, it is determined that he is partially disabled as a result of the injury or illness in a manner which adversely affects his earning capacity, he shall be entitled to receive such proportion of the annual compensation provided for under article 11.1 (c) as corresponds with

medical evidence and in relation to loss of earning capacity in his normal occupation or an equivalent occupation appropriate to his qualifications and experience.(Emphasis added).

a disability benefit shall be payable to a participant who is found by **to be incapacitated for further service in a member organization due to injury or illness constituting an impairment to health which is likely to be permanent or of long** (Emphasis added).

It is clear that while art. 11.2(d) requires proof of an adverse effect upon earning capacity in an to his qualifications and experience art. 33(a) does not require proof that an applicant suffered a loss of earning capacity.

32. The Applicant s argument that the issue of whether the injury he sustained had an impact on his earning capacity can be resolved without ruling out the possibility that he can earn is a fallacy and it is premised on an erroneous assumption that

loss of earnings only requires medical evidence to prove incapacitation, while medical evidence of disability and a finding as to loss of earning capacity is required to prove loss of earning capacity.

33. Article 11.2(d) to Appendix D which requires proof of an adverse effect upon

