

Case No.:

UNITED NATIONS DISPUTE TRIBUNAL

## **Background**

1. At the time of  
Technology Assistant a
2. On 22 February  
Advisory Board on Comp

9. On 9 May 2007, the Applicant was involved in a motor vehicle accident where he suffered injury [7756806183738482010279212 Tf1 0 0 1 178.82 675.58 Tm0 g0 G]

10. On 8 July 2007, he submitted a claim for compensation under Appendix D to the Staff Rules to the ABCC.

- e. Compensation for the continuing and unending pain and anguish that he perpetually endures;
- f. Retroactive payment of all his out of pocket expenses;
- g. Compensation for UNMIL's negligence =







the latter.

27. On the question of whether the UNDT has the competence to hear and pass judgment in a claim for gross negligence, *Wamalala* provides as follows:

Under the UNDT Statute, the Dispute Tribunal is not competent to hear and pass judgment on a claim for gross negligence against the Secretary-General that has not been the subject of an administrative decision and thereafter, management evaluation. Under Article 8(1)(c) of the UNDT Statute, an application shall be receivable if “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required” [...] Mr. *Wamalala* did not submit his claim of gross negligence to the Secretary-General for consideration and decision and subsequently for management evaluation.<sup>11</sup>

28. The Applicant has not adduced any documentary evidence to show that the Secretary-General considered and made an administrative decision in relation to his claim for gross negligence. The only evidence that he has produced is to the effect that he asked the ABCC to consider compensating him for gross negligence over and above the award for compensation for injuries sustained in the course of duty.

29. The ABCC responded that the claim for gross negligence was misplaced and that it could not be considered under Appendix D of the Staff Rules.

30. UNAT jurisprudence confirms the reasoning given by ABCC in the following terms:

Appendix D, [...] is a workers’ compensation system. A workers’ compensation system is a no fault insurance or scheme whereby employers must cover occupational injury or illness. Employees do not have to prove employers negligence in order to obtain benefits” [...] Accordingly, a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D.<sup>12</sup>

31. Two years later, UNAT restated this position in *James* by reiterating that:

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<sup>11</sup> 2013-UNAT-300, paras. 30-31.

<sup>12</sup> *Ibid.*, paras. 25 and 27.



[...] the Appeals Tribunal has previously established that a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D.<sup>13</sup>

32. In the most recent case on the point, UNAT again reaffirmed the above position in *Dahan* by holding that:

The Appeals Tribunal notes that Ms. Dahan filed her case under Appendix D to the Staff Rules. Appendix D contains the rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations. Appendix D, which is a workers' compensation system, is a no fault insurance or scheme whereby employers must cover occupational injury or illness. Employees do not have to prove employers' negligence in order to obtain benefits [...] The Appeals Tribunal has previously established that a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D.<sup>14</sup>

33.

legal consequences on his contractual rights.

36. In this Judgment, based on careful analysis of the jurisprudence, the notification that the ABCC gave to the Applicant was more of an advisory nature, that is, that he had brought his claim for gross negligence in the wrong forum and under the wrong Staff Rules.

37. The notification does not qualify as an administrative decision because, firstly, ABCC has no mandate to make any decision in relation to claims for gross negligence, secondly, the notification was not made within a regular or acceptable or designated legal framework, and thirdly, the notification bears no direct legal consequences on the rights of the Applicant.

38. The above three elements are prerequisites in determining whether an administrative act or omission falls within the meaning of “administrative decision” for purposes of receivability as stipulated in *Lloret Alcaniz et al*:

Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will

