
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/058

Judgment No.: UNDT/2019/167

Date: 22 November 2019

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AWWAD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Ibrahim Faye

Counsel for the Respondent:
Elizabeth Gall, AAS/ALD/OHR

Background

1. The Applicant commenced employment with the Organization on 28 May 2006 as a Security Officer in the Security and Safety Section in the former United Nations Mission in Sudan (UNMIS) on a fixed-term appointment.
2. On 26 March 2009, the Applicant injured both of his legs having slipped in a drain water hole. He lodged a claim for compensation under Appendix D, the subject of this application.
3. The Applicant also alleges that while working in Khartoum he was exposed to a dusty environment causing lung inflammation. Later, after a temporary assignment to Bentiu, South Sudan, the Applicant reported that he was exposed to mold and other unsanitary conditions in his container lodging causing lung infection for which he sought medical treatment and subsequent application for compensation

did not make a prior written request for an extension of the time limit by the Dispute Tribunal. As the application was not filed within the 90-day time limit, the Dispute Tribunal does not have competence to hear the application.

20. The Applicant's main argument is that the application should be receivable because the ABCC decided to dispose the matter of the pulmonary illness first rather than the leg injury case which took place before the pulmonary disease whereas both claims were submitted at the same time.

21. The Respondent's main argument is that the Respondent's decision has been taken with respect to the injuries to his legs and that the Respondent's decision is an acceptable defense of non-receivability for the following reasons.

The decision to classify the order in which the two claims submitted at the same time, would be reviewed, is part of that discretionary power of the Respondent and by extension of its advisory bodies such as ABCC and MSD. It is that irrationality, capriciousness and selectiveness in which the Respondent decides on how it chose to delay the review of the evidently more straightforward claim of the leg injury while finding the need to prioritize the more challenging matter of the pulmonary disease claim that makes this Application receivable.

22. The Respondent's main argument is that the Respondent's decision to treat decisions on claims under Appendix D on the basis of a medical determination from MSD as a decision taken pursuant to advice of a technical expert is a decision taken pursuant to advice of a technical expert and that therefore,

the Respondent cannot claim that [he] did not meet the 90-

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