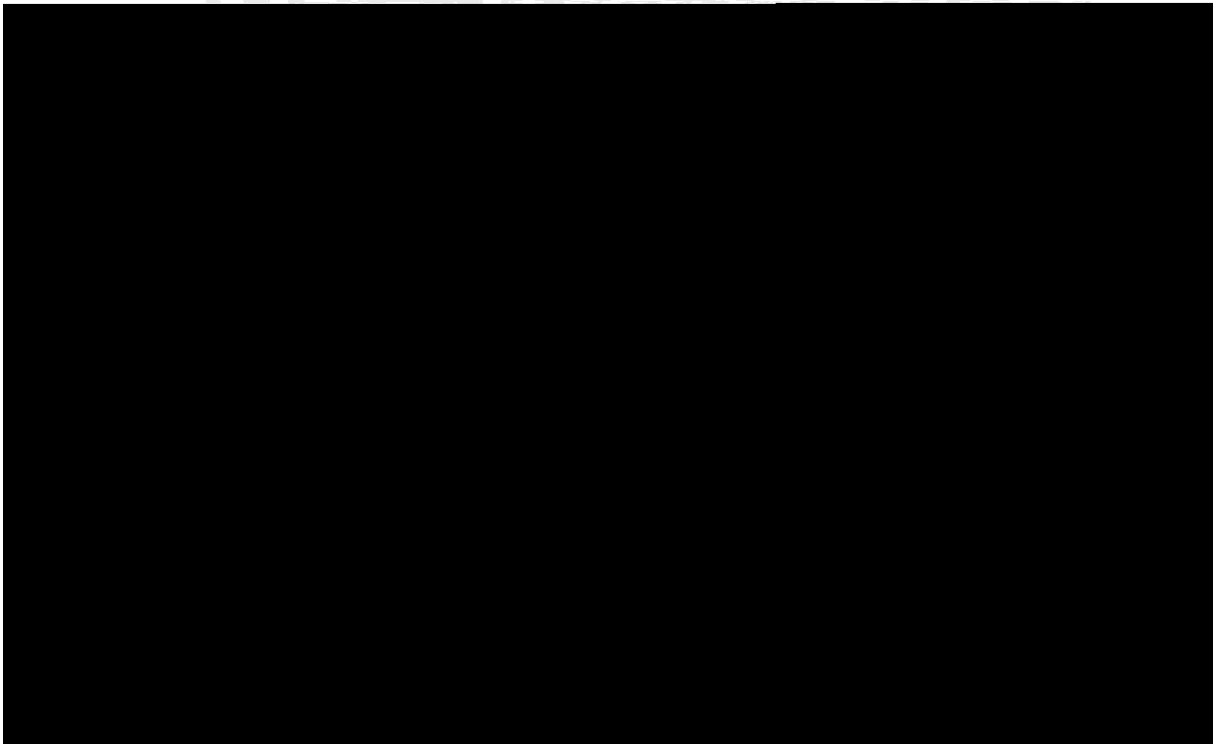


Judgment No. 2018-UNAT-861



... On 27 October 2010, Dr. NMU, at the ICTR clinic, prescribed six sessions of physiotherapy which provided the Applicant with temporary relief.

... In December 2010, Dr. MEH arranged for the Applicant to travel to Nairobi for a scan. The necessary arrangements did not appear to have been made thereby necessitating an unusually long wait for a physician to become available. The Applicant found this experience very painful and states that she lost faith in the ICTR clinic and requested a referral to a specialist. On 18 December 2010, the Applicant saw Dr. M[,] an orthopaedic surgeon at the Kilimanjaro Christian Medical Centre in Moshi. Dr. M concluded that the Applicant had a severe back injury and prescribed a high-backed chair to provide the necessary support to enable the Applicant to carry out her duties. Building Management Services, whose responsibility it was to provide a new chair, had not done so by April 2011. At this point the Applicant decided to take appropriate steps outside of the facilities provided by ICTR and travelled to her home country, France, seeking medical attention for her back condition.

... A medical certificate prepared by Dr. S at the Paris Montmartre Clinic, dated 13 April 2011, indicated that:

For some years [the Applicant] has been presenting with postural static back pain without neurological signs, and paraesthesia in the ulnar region of the upper limbs. The neurological examination is normal. The MRI scan performed in Nairobi shows multilevel disc protrusions.

These are problems of a musculo-skeletal nature requiring functional treatment and, above all, an ergonomically sound workstation.

... This was reported to the administration and finally, in December 2011, she was provided with a new chair to be used in her office. However, an appropriate chair was still not provided for her work in the courtroom. She continued to suffer back pain.

... In or about September/October 2011 through to early 2012 the Applicant had treatment including surgery for cancer. The resultant chemotherapy spread over several months and during this period the applicant was diagnosed with depression which she considers was due to her continuing health problems, the lack of support by the ICTR Administration and her concerns about her future career prospects.

... On 14 February 2013, the Applicant was examined again at the Kilimanjaro Christian Medical Centre and on 27 February 2013 she had a complete MRI scan at the Aga Khan University Hospital in Nairobi where Dr. KW confirmed the detailed diagnosis provided at the Kilimanjaro Christian Medical Centre. The Applicant considers that it was at this point

she was aware of or should have been aware of an injury/illness and filed her claim within four months), but did not submit a claim for compensation under Appendix D to the Staff Rules until 28 March 2013;

Recommends to 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.

4. On 11 January 2018, the UNDT issued Judgment No. UNDT/2018/002. The UNDT found that Ms. Dahan's claim for compensation dated 27 March 2013 was untimely, since it was not submitted within the four-month time period provided for by Article 12 of Appendix D. The UNDT, however, concluded that the ABCC failed to properly exercise its discretion when considering whether, in accordance with Article 12 of Appendix D, exceptional circumstances warranted the acceptance of Ms. Dahan's untimely claim. In particular, the UNDT found that the ABCC failed to consider the detailed account of health problems experienced by Ms. Dahan and disregarded evidence and information that Ms. Dahan was undergoing treatment for cancer and depression which, according to her, impeded her ability to direct her attention to the claim for service-incurred injury.

5. The UNDT found that the ABCC also erred in refusing to waive the time limit on the ground of insufficient explanation for the delay rather than the applicable test of whether there were exceptional circumstances. The ABCC thereby erroneously limited the test of "exceptional circumstances" to applying solely to the reasons for delay and failed to properly exercise the discretion vested in it. The UNDT also noted that in responding to Ms. Dahan's enquiries about progress, she was told by the ABCC that the matter was under consideration, but there is no indication as to what, if anything, was the nature of such consideration which extended over a period of three years.

6. The UNDT rescinded the decision of the ABCC to deny Ms. Dahan's request for consideration of her claim for compensation under Appendix D to the Staff Rules and with A169 Tc.2 14tso e22T

Submissions

Ms. Dahan's Appeal

7. The UNDT erred when it failed to address Ms. Dahan's request for moral damages. While a UNDT judgment need not address all arguments put forth by either party, it must address a specific request for relief. The UNDT therefore violated Ms. Dahan's right to a reasoned judgment. This also impacts her right to fully appeal the Judgment, since without a clear and reasoned judgment, she cannot fully contest the failure to award damages.

8. The UNDT further erred by failing to order in-lieu compensation. As the UNDT itself noted, for remand, it must have the concurrence of the Secretary-General, without which Ms. Dahan will be left in a limbo with a rescinded decision, but none to take its place. Similarly,

jurisprudence. Ms. Dahan assessed for moral damages

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Ms. Dahan requests that the Appeals Tribunal [32twaa(for her s)5.2(i)-2.8(

respect, Ms. Dahan notes that the lost opportunity of a successful claim before the ABCC would be the value of any claimed expenses under Section 3.1 of Appendix D to the Staff Rules, as well as the lump sum for loss of function in her back pursuant to Section 3.6(a). Ms. Dahan requests the right to reserve further submissions on this figure, should the Appeals Tribunal wish to consider this relief, or request a hearing. In the alternative, she asks the Appeals Tribunal to award compensation in lieu of remand in the amount of two years' net base salary.

The Secretary-General's Answer

11. The UNDT issued a properly reasoned judgment. Before the UNDT, Ms. Dahan made no attempt to tie any of her claims that she suffered harm to the contested decision. The only bases that Ms. Dahan articulated for her claim for moral damages related to allegations that had no relevance to the contested decision, such as the lack of professionalism and support from the attending doctors of the ICTR and the incessant delays by the Administration to address her demands for a proper chair which resulted in both a partial disability and a permanent loss of function in her back and ultimately depression. However, the depression could not have arisen as a result of the rejection of her Appendix D claim or because of the time period that elapsed before the rejection was issued, since Ms. Dahan was diagnosed with depression in 2012, before she filed her Appendix D claim.

12. Although the UNDT took note of the three-year period before the ABCC issued its decision, the UNDT did not find that Ms. Dahan's rights were violated specifically as a result of that timing. Rather, the UNDT only remarked that the ABCC had not indicated what it had been considering, or asked for additional information, during that time. There was thus no basis to award Ms. Dahan any damages because of eitherawd .fahan any CC's bec.4(.fd2(C)5.J-)uot at45.680R-2n(t)

of the application under consideration. Ms. Dahan has failed to demonstrate any error on the

19. First, as to the alleged ill treatment by the ICTR Administration, Ms. Dahan claimed before the UNDT that the “lack of professionalism from the attending doctors of ICTR and the incessant delays by the Administration to address [Ms. Dahan’s] demands for a proper chair resulted in both a partial disability and a permanent loss of function in [her] back, attributable to

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment

27. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Halfeld

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar