



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1427

Case No. 1493

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Mr. Goh Joon Seng; Sir Bob Hepple;

Whereas at the request of a former staff member of the United Nations, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 31 March 2005, and twice thereafter until 31 July;

Whereas, on 27 July 2005, the Applicant filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 20 November 2005;

Whereas, on 11 November 2005, the Applicant again filed an application that did not fulfill all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 22 June 2006, the Applicant, after making the necessary corrections, filed an Application requesting the Tribunal, inter alia:

“3. ... [T]o order:

- a. that the [decision dated 22 June 2004 regarding the Applicant’s claim for compensation under Appendix D to the Staff Rules and Regulations of the United Nations] of the Advisory Board on Compensation Claims [(ABCC)] be set aside due to a lack of diligence on the part of the Board and its members;
- b. compensation for permanent disability under the aforesaid Appendix D ...

- c. that punitive and consequential damages [in the amount] of two years of gross salary be paid to the Applicant by way of compensation for the gross negligence of the Organization in failing to medically evacuate her to a place of proper diagnosis and treatment in what was clearly an emergency situation;
- d. that the Applicant's loss of eight years of career benefits and future income should be compensated ... in the amount of an additional two years gross salary ...
- e. that the Applicant should be awarded damages in the amount of an additional year of gross salary for her pain and suffering caused by the said administrative harassment;
- f. and further, [that] the Applicant's daughter ... be awarded compensation ... due to the negative impacts and suffering caused by watching her mother's plight."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 January 2007, and once thereafter until 2 March;

Whereas the Respondent filed his Answer on 27 February 2007;

Whereas the Applicant filed Written Observations on 4 April 2007;

Whereas, on 30 June 2008, the Applicant filed an additional communication, amending her pleas as follows:

"1. With regard to its competence and to procedure, the Applicant respectfully requests the Administrative Tribunal *to find*:

...

- c. that this case be linked with case No. 1493.

2. On the merits, the Applicant respectfully requests the Tribunal *to find*:

*that the Applicant's contract was terminated by virtue of her being unfit for continued service for health reasons.*

3. Whereafter the Applicant most respectfully requests the Administrative Tribunal *to order*:

*that the Applicant should be paid the salary compensation as applied under Article 11.1 (b) (ii) and Article 11.1 (c) contained in Appendix D to the Staff Rules."*

Whereas, on 6 October 2008, the Respondent filed comments on the Applicant's 30 June submission;

Whereas, on 20 October 2008, the Applicant submitted two additional communications;

Whereas the facts of the case are as follows:

The Applicant joined the service of the Organization on 2 November 1994, on a fixed-term appointment. On 14 October 1996, the Applicant assumed her functions at the International Criminal Tribunal for Rwanda (hereinafter, "ICTR"), in Kigali, and, in May 1997, transferred to ICTR in Arusha, Tanzania.

In December 1998, the Applicant contracted tick typhus, and on 29 December, was evacuated to Nairobi, Kenya, in order to obtain medical treatment. Although the Applicant continued to suffer from tick typhus-related health problems, she returned to the duty station in Arusha and resumed her duties. On 19 April, the Applicant was placed on sick leave with full pay. On 30 April 2002, the Applicant was evacuated to South Africa to obtain medical treatment from a specialist. On 9 September 2002, when the Applicant exhausted her sick-leave entitlements, she was placed on sick leave with half pay, with the other half being charged against her annual leave entitlements.

On 7 May 2003, the Applicant was informed that the United Nations Staff Pension Committee determined that she was incapacitated for further service and consequently entitled to a disability benefit under Article 33 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF). On 16 May, the Applicant's annual leave entitlements were exhausted. She remained on sick leave with half pay until her separation from service on 23 June.

On 22 June 2004, the ABCC, at its 419<sup>th</sup> meeting, recommended to the Secretary-General that the Applicant's claim for compensation pursuant to Article 11 of Appendix D be rejected. According to the ABCC, as the Applicant could not have contracted tick typhus in Arusha as tick typhus can only be found outside Arusha, the Applicant's illness could not be recognized as attributable to the performance of her official duties.

The Secretary-General approved the ABCC's recommendation on 26 July 2004.

On 10 October 2005, the Applicant wrote to the Secretary-General, requesting, inter alia, administrative review of the Respondent's decision, not to grant her compensation under Appendix D.

On 16 January 2006, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 28 November, the JAB advised the Applicant that her appeal was not receivable, since the contested decision "[fell] under Appendix D, rather than Chapter XI of the Staff Rules." Therefore, the JAB suggested to the Applicant that, in the event she were to pursue her claim, she should "focus future action within the framework of Appendix D".

On 19 June 2006, the Applicant lodged an appeal with the JAB against the Respondent's administrative decisions not to pay her certain entitlements which she claims remained outstanding upon her separation from service with the Organization on 23 June 2003. A decision by the JAB in this case is pending.

On 22 June 2006, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The present Application is receivable.

2. The ABCC lacked diligence in her case and consequently, she lost eight years of career benefits and future income.

3. The recommendation of the ABCC dated 26 July 2004 regarding her claim for compensation under Appendix D is “unsafe”.

4. The Organization failed in its duty to ensure adequate emergency medical evacuation plans and procedures at a field duty station.

5. The Organization’s failure to medically evacuate her on two occasions were acts of gross negligence and the proximate cause of her irreparable physical and psychological damage.

Whereas the Respondent’s principal contentions are:

1. The Applicant’s appeal against the Respondent’s decision not to award compensation pursuant to Appendix D is not receivable.

2. The Applicant’s additional pleas are not receivable.

The Tribunal, having deliberated from 4 to 26 November 2008, now pronounces the following Judgement:

I. The Applicant comes before the Tribunal with two distinct categories of requests for review. First, the Applicant seeks review of the decision by the ABCC concluding that the tick typhus she contracted while she was on mission in Arusha, Tanzania, was not attributable to the performance of her official duties. As a result, the Applicant was denied compensation under Appendix D. In this regard, the Applicant asks the Tribunal to find that the decision of the ABCC was erroneous; to order that the decision be set aside; and, to award compensation to her under Appendix D. Second, the Applicant seeks review of certain administrative decisions, currently pending before the JAB, including her claims that the Organization (1) failed in its duty to protect its staff from the rigours of service in a hardship post by not having in place proper medical attention covering locally known diseases, (2) failed to provide timely administrative support for emergency medical evacuation when the need arose, and, (3) failed to pay her certain entitlements to which she was entitled when she separated from service, including (a) daily subsistence allowance payments for the Applicant and her daughter, (b) travel expenses for the Applicant and her daughter; (c) reimbursement of medical expenses for the Applicant and her daughter; (d) school fees for the Applicant’s daughter and unaccompanied shipment expenses; (e) compensation for alleged delays incurred as a result of the Respondent’s alleged failure to resolve her medical claims in a timely manner, and, (f) compensation for alleged suffering caused to the Applicant and her daughter. The Tribunal will examine both categories of requests, respectively.

II. The Applicant, who entered the service of the United Nations on 2 November 1994, was transferred to ICTR in Arusha, Tanzania, in May 1997. In December 1998, the Applicant was bitten by a

tick, and consequently contracted tick typhus. From that point on, including up to the time when she separated from service on 23 June 2003, having been determined to be incapacitated for service by the UNJSPF Committee, the Applicant continued to be plagued with severe health problems. During that time, she had to be evacuated on two occasions to Nairobi, Kenya, and to South Africa for treatment. Her then young daughter was left rather on her own as she watched her mother suffer the ravages of tick typhus. Finally, after being unable to resume her duties, the Applicant was placed on sick leave with full pay from 19 April until 9 September 2002. From 10 September 2002 until 23 June 2003, she was placed on sick leave with half pay, with the other half being charged against her annual leave entitlements.

On 7 May 2003, the Applicant was informed of the Pension Committee's determination that she was incapacitated for further service and consequently entitled to a disability benefit under Article 33 of the Regulations of the UNJSPF.

On 23 June 2003, the Applicant was separated from service.

III. On 16 April 1999, the Applicant made a claim for compensation to the ABCC, pursuant to article 11 of Appendix D, entitled "*Injury or Illness*". At its 419<sup>th</sup> meeting on 22 June 2004, the ABCC considered the Applicant's case and recommended to the Secretary-General that her claim be rejected on the basis that her tick typhus was not service-incurred. Specifically, the ABCC found that:

"As the [Applicant] could not have been bitten by the tick typhus in Arusha (as the tick typhus can only be found outside the city) and, as she had visited Mount Meru at the time her illness was diagnosed and that this is a location that ICTR staff visit while on private time and which is where she most likely was bitten by the tick typhus, the [Applicant]'s illness (complications from typhus) cannot be considered as attributable to the performance of her official duties on behalf of the United Nations and that, therefore, the claim for compensation under Appendix D to the Staff Rules be denied."

The Secretary-General approved the ABCC's recommendation on 26 July 2004, and the Applicant was informed accordingly on 9 August.

IV. Article 17 of Appendix D sets forth the procedure by which a staff member can seek review of a decision by the Secretary-General accepting or rejecting the ABCC's recommendation. Specifically, article 17 of Appendix D provides:

"(a) Reconsideration of the determination by the Secretary-General of the existence of an injury or illness attributable to the performance of official duties, or of the type and degree of disability may be requested within thirty days of notice of the decision; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a request made at a later date.

The request for reconsideration shall be accompanied by the name of the medical practitioner chosen by the staff member to represent him on the medical board provided for under paragraph (b);

(b) A medical board shall be convened to consider and to request to the Advisory Board on Compensation claims on the medical aspects of the appeal. The medical board shall consist of: (i) a qualified medical practitioner selected by the claimant; (ii) the Medical Director of the United Nations or a medical practitioner selected by him; (iii) a third qualified medical practitioner who shall be selected by the first two, and who shall not be a medical officer of the United Nations;

(c) The Advisory Board on Compensation Claims shall transmit its recommendation together with the report of the medical board to the Secretary-General who shall make the final determination; ...]"

V. Instead of requesting that a medical board be convened to review the Secretary-General's determination, however, in accordance with article 17, the Applicant sought administrative review of the Secretary-General's decision by letter dated 10 October 2005. Having received no answer, she submitted a Statement of Appeal, dated 16 January 2006, to the JAB. The JAB, however, on 28 November 2006 properly rejected the Applicant's appeal, noting that "the appeal is not receivable by the JAB for lack of competence in the matter", as the contested decision "[fell] under Appendix D, rather than Chapter XI of the Staff Rules". The JAB informed the Applicant that in the event she chose to pursue her claim, she would be well advised to "focus future action within the framework of Appendix D of the Staff Rules and the Statute of [the] Tribunal". The Applicant now comes before the Tribunal asking the Tribunal to set aside the decision of the ABCC that her tick typhus was not service-incurred.

VI. At the outset, the Tribunal must first consider whether the Applicant's claim regarding the ABCC is receivable, *ratione materiae*. Unfortunately for the Applicant, the Tribunal finds that it is not. Article 17 of Appendix D sets forth with considerable specificity the procedure to be followed by a staff member seeking to obtain a review of the Secretary-General's determination that his or her illness or injury is attributable to the performance of services on behalf of the Organization, such that the staff member would be entitled to compensation under Appendix D. That process requires that the Applicant request that a medical board be convened to review the decision of the Secretary-General within thirty days of notice of the Secretary-General's decision. In exceptional circumstances, the Secretary-General "may accept for consideration a claim made at a later date".

VII. In the instant case, the Applicant has failed to request reconsideration of the Secretary-General's decision in accordance with article 17, even though she was directed by the JAB to pursuing her claims under Appendix D. As the matter was never properly before the JAB and as the Applicant has never sought the appropriate review of the matter, the claim is not properly before the Tribunal. That being said, however, the Tribunal is sympathetic to the Applicant's plight and is rather surprised by the ABCC's categorical dismissal of her claim. The Tribunal takes judicial notice of the fact that tick-borne diseases are often transmitted from one person to another through contact with clothing or animals, even domestic animals. It is unclear to the Tribunal how the ABCC could conclude that tick typhus could not be contracted in the city of Arusha, but only in the country, in light of the evidence to the contrary in the

record submitted by government officials. At this time in the process, however, the Applicant has limited options to address her claim. Although she is well beyond the thirty-day time period in which she should have brought her request for reconsideration, the Secretary-General may still accept for consideration her request for review, if she can demonstrate exceptional circumstances. If she demonstrates exceptional circumstances, the matter is considered and the Secretary-General maintains his position, denying her service-incurred status, she would then be free to bring her claim to the Tribunal. However, for the reasons set forth above, under the present circumstances, the matter is not receivable by the Tribunal, *rationae materiae*, and must be rejected.

VIII. Next the Tribunal turns to that category of the issues raised by the Applicant, which are currently pending before the JAB. In this regard, the Tribunal recalls staff rule 111.2 and article 7 of the Statute of the Tribunal. Staff rule 111.2 provides that when a staff member wishes to appeal an administrative decision, he or she must first seek administrative review of the decision by the Secretary-General. Thereafter, the matter may be brought to an appeals body, such as the JAB. In the normal course, the JAB then makes its recommendations and the Secretary-General either accepts or rejects the recommendations.

Article 7 of the Statute of the Tribunal provides:

“(i) An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the Staff Regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal.

(ii) In the event of the joint body’s recommendations being favourable to the application submitted to it, and insofar as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has:

- (a) Rejected the recommendations;
- (b) Failed to take any action within thirty days following the communication of the opinion;
- (c) Failed to carry out the recommendations within thirty days following the communication of the opinion.

(iii) In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and insofar as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous.”

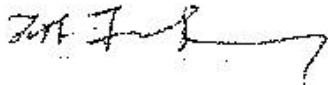
IX. In the instant case, the issues raised by the Applicant are still pending before the JAB, and, therefore, in accordance with article 7, the matter is not receivable, *ratione materiae*, by the Tribunal. Once the JAB has issued its recommendations, and the Secretary-General has decided whether to accept or reject those recommendations, the Applicant will be free to bring her claims to the Tribunal. Presently, her Application to the Tribunal is premature, and, therefore, must be rejected.

X. In view of the foregoing, the Tribunal rejects the Application in its entirety.

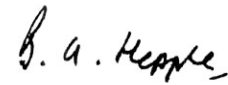
*(Signatures)*



Jacqueline R. **Scott**  
Vice-President



**Goh Joon Seng**  
Member



Bob **Hepple**  
Member

New York, 26 November 2008



Maritza **Struyvenberg**  
Executive Secretary