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**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2018-UNAT-817



**Kisia**  
**(Respondent/Applicant)**

**v.**

**Secretary-General of the United Nations**

Counsel for Mr. Kisia:

Self-represented

Counsel for Secretary-General:

Amy Wood/Nathalie Defrasne

**JUDGE MARTHA HALFELD, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/044, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 22 June 2017, in the case of *Kisia v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 21 August 2017, and Mr. Kennedy B. Kisia filed his answer on 16 October 2017.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... (...) On 27 July 2013, the Applicant[, a former United Nations staff member at the S-2, step 6-level with the Department of Safety and Security (“DSS”) at the United Nations Headquarters in New York]<sup>[2]</sup> was involved in an accident at the main entrance by security post no. 103 at the United Nations Headquarters in New York where his car collided with a so-called “stinger” security arm barrier. By email of the same date, the Applicant reported the accident to a number of United Nations colleagues, including a Sergeant of the Special Investigation Unit [“SIU”]. An “Incident Report” of the same date was made by an “S/O” [presumably, a Security Officer] from “1<sup>st</sup> Platoon” to the Assistant Chief of [the Security and Safety Service, “SSS”].

... By email of 31 July 2013, the Applicant sought the advice of the Chief of SSS and provided his views on the 27 July 2013 accident.

... By email of 11 August 2013 to the SIU Sergeant, copied to the SSS Chief, the Applicant sought a status update on his “complaint”.

... By “Claim for Loss of or Damage to Personal Effects Attributable to the Performance of Official Duties” dated 3 September 2013, the Applicant requested USD 2,277.53 in compensation for the alleged damages to his car from the 27 July 2013 accident.

... By an investigation report dated 28 October 2013, a Senior Security Officer of SIU provided the SSS Chief with SIU’s findings regarding the 27 July 2013 accident.

... By interoffice memorandum dated 7 November 2013 to the [United Nations Claims Board (UNCB)] Secretary, the SSS Chief forwarded the investigation report for the UNCB Secretary’s review and possible action.

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<sup>1</sup> Impugned Judgment, para. 3, quoting the facts set out in the parallel case of *Kisia v. Secretary-General of the United Nations*, Judgment No. UNDT/2016/040.

<sup>[2]</sup> *Ibid.*, para. 1.

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... (...) The [Dispute] Tribunal, after reviewing the content of the contested decision, finds that instead of making her own final and reasoned decision on the Applicant's claim, the ASG/Controller appears to have only signed off on the recommendation made by UNCB to deny the claim on 23 April 2014, as admitted by the Respondent. The [Dispute] Tribunal observes that the signature with the date of 23 April 2014 does not indicate the name and/or the position of the decision-maker.

... Taking into account the above mentioned procedural irregularities of the contested decision, the [Dispute] Tribunal concludes that the mandatory procedure prescribed by ST/AI/149/Rev.4 was not followed and will not further analyze the grounds of appeal related to the merits of the present case.

[...]

... Therefore, in the light of the Appeals Tribunal's binding jurisprudence, according to which the [Dispute] Tribunal cannot place itself in the position of the decision-maker, which in the present case is the ASG/Controller, the [Dispute] Tribunal will grant the application and will rescind the contested decision of 23 April 2014 together with the UNCB's recommendation of 4 April 2014.

... The [Dispute] Tribunal notes that the Respondent submitted that:

... the Applicant has failed to take the reasonable step of claiming the cost of the repairs to his vehicle under his insurance, and has not met the conditions for presenting a claim for compensation established by [secs. 5 and 12 of ST/AI/149/Rev.4].

... The [Dispute] Tribunal underlines that, according to secs. 14 and 16 of ST/AI/149/Rev.4, the UNCB is competent in the first instance to evaluate the receivability of a compensation claim in accordance with its Rules of Procedure, sec. 17. Consequently, the Applicant's compensation claim for property damage for his car is to be remanded for a new examination by UNCB, including on receivability.

... Based on the UNCB's recommendation, the ASG/Controller is then to make the final decision on the Applicant's claim.

4.

... On 18 October 2016, the ASG/Controller stamped “approved” on the UNCB’s 15 September 2016 recommendation and countersigned it.

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accepted this, noting that, if the Secretary-General concurred, it would order the suspension of the proceedings before it in a subsequent written order.

... By Order No. 29 (NY/0217) dated 16 February 2017, the [Dispute] Tribunal ordered the Respondent to inform the [Dispute] Tribunal by 1 March 2017 whether, pursuant to art. 20 of its Rules of Procedure, he concurred to remand the case for the completion of the required procedure in accordance with para. 46 of *Kisia* UNDT/2016/040.

... By submission dated 1 March 2017, the Respondent stated that the ASG/Controller, the decision-maker in the case, requested further time to consider the matter and did not anticipate taking a decision until 8 March 2017.

... By email of the same date, the [Dispute] Tribunal instructed the Applicant to file his comments, if any, to the Respondent's 1 March 2017 submissions by 2 March 2017.

... On 2 March 2017, the Applicant objected to the Respondent's request for extension of time.

... By Order No. 41 (NY/2017), the [Dispute] Tribunal granted the requested time extension and instructed the Respondent to file his response as per Order No. 29 (NY/2017) by 9 March 2017.

... By submission dated 9 March 2017, Counsel for the Respondent explained that, on 6 March 2017, the ASG/Controller had issued a decision, which had been sent to the Applicant on 8 March 2017, and that, as a result, a decision, separate from the UNCB's recommendation, has therefore been issued and a remand of the case was not necessary. The ASG/Controller's decision was appended to the submission and, in this decision, she stated as follows to the Applicant:

... With regard to your claim which was remanded to the UNCB by [the Dispute Tribunal] and reconsidered by the UNCB at its 347<sup>th</sup> meeting, I have carefully reviewed the recommendation of the UNCB.

... After considering such recommendation, the facts of the case and the documentation provided, I have decided to deny your claim for compensation in the amount of USD 2,277.53.

... On 9 March 2017, the Applicant filed a motion for leave to comment on the Respondent's submission of the same date in which he submitted, amongst other things, that:

... [T]he Applicant respectfully requests that [...] the controller's decision [reference to annex omitted] be found as irregular and *sub judice*, and the Respondent's submission be dismissed and the dispute be properly remanded to the Respondent for the institution of proper procedure and,





made, namely that the ASG/Controller did not take a separate and reasoned decision on 18 October 2016” but instead “simply countersigned and approved the 15 September 2016 UNCB recommendation”.<sup>6</sup> The UNDT considered that the Controller did not take such a “separate and reasoned decision on [Mr. Kisia’s] claim for damages for almost 6 months” until 6 March 2017.<sup>7</sup> As a result, the UNDT awarded compensation to Mr. Kisia in the amount of USD 3,500 as a “reasonable and sufficient relief for (...) [such] procedural delays”.<sup>8</sup>

### **Submissions**

#### **The Secretary-General’s Appeal**

6. The Secretary-General submits that the UNDT erred on a question of law and fact and exceeded its competence in concluding that the process leading to the denial of Mr. Kisia’s claim was flawed by procedural error. Contrary to the UNDT’s holding, the procedural requirements set forth in ST/AI/149/Rev.4 were properly followed. The UNCB correctly recommended that Mr. Kisia’s claim be dismissed as not being receivable. The Controller’s decision to approve the 2016 UNCB recommendation was a reasoned decision based on the recommendation itself and attached documentation. The UNDT erred in requesting the Controller to provide additional

“vague statements regarding ‘depression and anxiety’” do not in and of themselves constitute evidence necessary to establish harm warranting compensation.

8. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment, except with respect to the finding that Mr. Kisia’s claim was not receivable, and set aside the award of compensation by the UNDT.

**Mr. Kisia’s Answer**

9. Mr. Kisia submits that the UNDT’s finding that the process leading to the denial of his claim was flawed by procedural error and delay was proper, reasonable, lawful and within the competence of the Dispute Tribunal. His right to “prompt administrative action” was violated by the Administration’s delay in processing his claim. The UNDT was in incorrect finding that his claim was not receivable on the basis that he had failed to submit a claim to his personal insurance. Such incorrect conclusion was “predicated upon [the] unestablished allegation that [he had been] negligent in causing his property damage and therefore, the entity responsible should have been his personal auto-insurance” which also violated the “no-fault doctrine” applicable in worker’s compensation cases.

10. Mr. Kisia further claims that the UNDT award of compensation for procedural delay was “proper, reasonable, lawful and fair”. The award of USD 3,500 was fair and consistent with previous UNDT decisions. Mr. Kisia also claims to have submitted sufficient evidence of the injuries he suffered from the accident, of the “anxiety and everyday stress of pursuing the claims and the disputes” and of his termination on medical grounds.

11. According to Mr. Kisia, “[t]he only error[] committed by [the] UNDT was its failure to find the [Secretary-General] in contempt and its finding that [Mr. Kisia’s] claim was not receivable, which should be vacated”. The Secretary-General’s appeal was “in essence (...) an attempt to [a]ppeal UNDT Judgment No. 2016/0

**Considerations**

13. As noted above, in its Judgment, the UNDT took two lines of argument, concerning the administrative decision:
- i. The decision was substantially correct, insofar as it related to the non-receivability of the claim for damages since Mr. Kisia had failed to take any action to claim the coverage under his personal insurance, as prescribed by Sections 12 and 14(b)(ii) of ST/AI/149/Rev.4; and
  - ii. the decision was procedurally incorrect, insofar as the decision-maker did not take a separate and reasoned decision; instead, she simply countersigned and approved the

18. To require additional reasoning in support of a decision, in cases such as the present one, other than the approval of a well-reasoned and reasonable recommendation, would not only burden the Administration with an excess of formality, but would also mean that not even the most thorough and well-founded recommendation could ever be considered sufficient.

19. In light of the foregoing, the 18 October 2016 de Tc.31jdap-7.38(rov)ng,the 1]TJ-23.78

