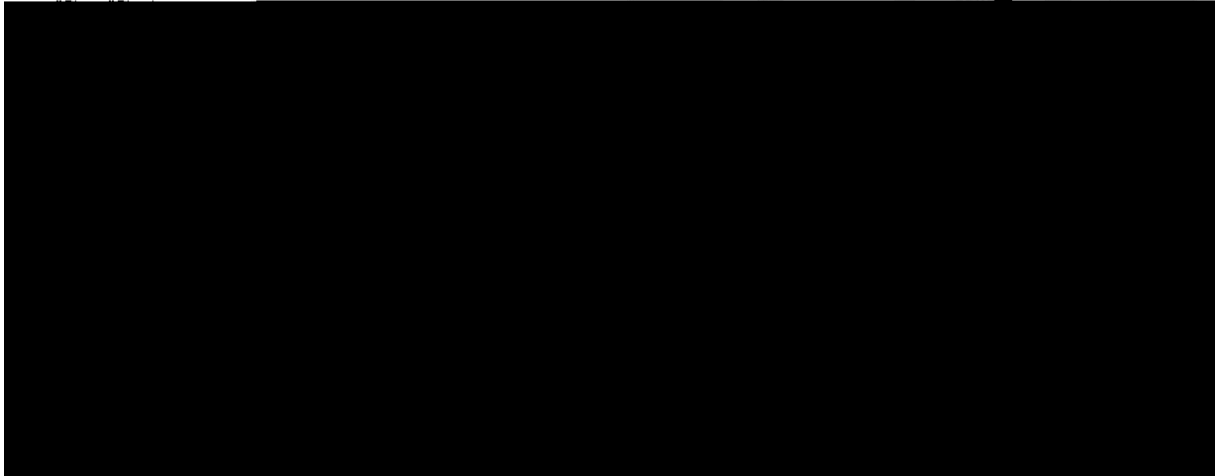




Judgment No. 2015-UNAT-538



Counsel for Ms. Bezziccheri: François Lorient

Counsel for Secretary-General: Zarqaa Chohan

7. On 17 June 2008, Ms. Bezziccheri's doctor in Rome noted that she demonstrated a spinal canal stenosis and advised against pursuing any surgery due to the extreme inflammation of her nerves. He recommended, *inter alia*, complete rest for 30 days.
8. On 17 July 2008, Ms. Bezziccheri's doctor in Rome conducted a further medical examination in which he noted that her symptoms had improved, but recommended a further period of absolute rest.
9. On 1 September 2008, upon further examination of Ms. Bezziccheri, her doctor in Rome considered her condition had improved and would not require surgical intervention, but due to her slow progress in healing, recommended at least four months of part-time rest.
10. On 16 September 2008, Ms. Bezziccheri consulted with a lawyer in Italy, who instructed her to immediately submit to the United Nations a claim for compensation and disability benefit. Ms. Bezziccheri subsequently requested advice from the Human Resources Management Section

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22. On 9 June 2011, Ms. Bezziccheri filed her application with the UNDT contesting the Secretary-General's decision to reject her compensation claim as time-barred. She submitted that the ABCC erred as it did not take into account her exceptional medical circumstances,

are expected to be aware of their obligations under the Staff Regulations and Rules and the relevant deadlines to file a claim, and that ignorance of procedures is not an excuse, as has been held by this Tribunal's jurisprudence. Ms. Bezziccheri's main excuse for her belated claim was that she was not advised how to file a claim. Despite the clear jurisprudence of the Appeals Tribunal, the UNDT erroneously found that Ms. Bezziccheri had provided a sufficient explanation to justify that there were exceptional circumstances.

26. The UNDT² erred in re-interpreting the deadline for the submission of the claim for the 2009 Avuverdic treatment. Article 12 of Appendix D unambiguously provides that the starting point for the deadline to make a claim is the date of the injury or the onset of the illness, and the UNDT did not have the competence to establish a new starting point for the deadline for making a claim, contrary to the clear language of Appendix D, and as per this Tribunal's jurisprudence in Mebtouche.³ Further, the UNDT's finding appears to be premised on a misunderstanding of how Appendix D works. The ABCC does not expect that staff members will claim all future expenses within four months of the injury or illness. Rather, the ABCC's practice is to certify whether a timely claim for an injury or illness is work-related in accordance with Appendix D, after which a staff member may be reimbursed for future expenses as they arise. The UNDT's approach, which posits that claims may be submitted for future medical expenses in connection with an injury or illness even when incurred years later, would frustrate the duty of the ABCC pursuant to Appendix D, which is principally to assess whether the injury or illness was service-incurred.

27. The UNDT also exceeded its competence in substituting its judgment for that of the ABCC in concluding that Ms. Bezziccheri had a permanent disability attributable to the performance of her official duties. The UNDT was not competent to determine whether Ms. Bezziccheri's injury was service-related, nor was it appropriate for the UNDT to assume that the injury was service-related. The determination as to whether an injury is service-incurred under Appendix D rests solely with the ABCC, with input from the Medical Services Division.

28. The Secretary-General requests that the Appeals Tribunal vacate the Judgment.

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32. The Administration violated its own management procedures insofar as the ABCC failed to seek from Ms. Bezziccheri, her physicians or her supervisors any information which could enlighten the circumstances explaining the delay between the first ailment signs and the final October 2009 diagnosis, or to consult the Medical Service's records, Van Breda, or any medical experts before deciding the claim was time-barred. The ABCC also failed to consider the responsibility of Ms. Bezziccheri's supervisors, who were also ignorant of the claim procedures and failed to advise her in a timely manner of her rights. The UNODC Executive Office should have provided an explanation to the ABCC concerning its own role in Ms. Bezziccheri's delay. The ABCC closed her claim without fully considering whether exceptional circumstances potentially existed, although her medical evaluations were complex and non-conclusive for many months, and the filing of any earlier claim would likely have been rejected by ABCC as premature.

33. Ms. Bezziccheri requests compensation in the amount of at least two years' net base salary for the moral suffering, anxiety and distress that resulted from the violations of her due process and contractual rights, and the Administration's subsequent abusive proceedings before the UNDT and the Appeals Tribunal which seriously aggravated Ms. Bezziccheri's condition. She also requests payment of her legal costs in the sum of USD 10,000 which she was forced to incur as her illness hampered her ability to represent herself.

Considerations

34. Article 2(1) of the Appeals Tribunal Statute provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b)

35. Article 12 of the Secretary-General's Bulletin ST/SGB/Staff Rules/Appendix D/Rev.1 titled "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 to the Staff Rules) provides:⁵

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have to ensure that they are aware of the Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations' internal justice system and that ignorance of the law is no excuse for missing deadlines.¹⁰

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Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar