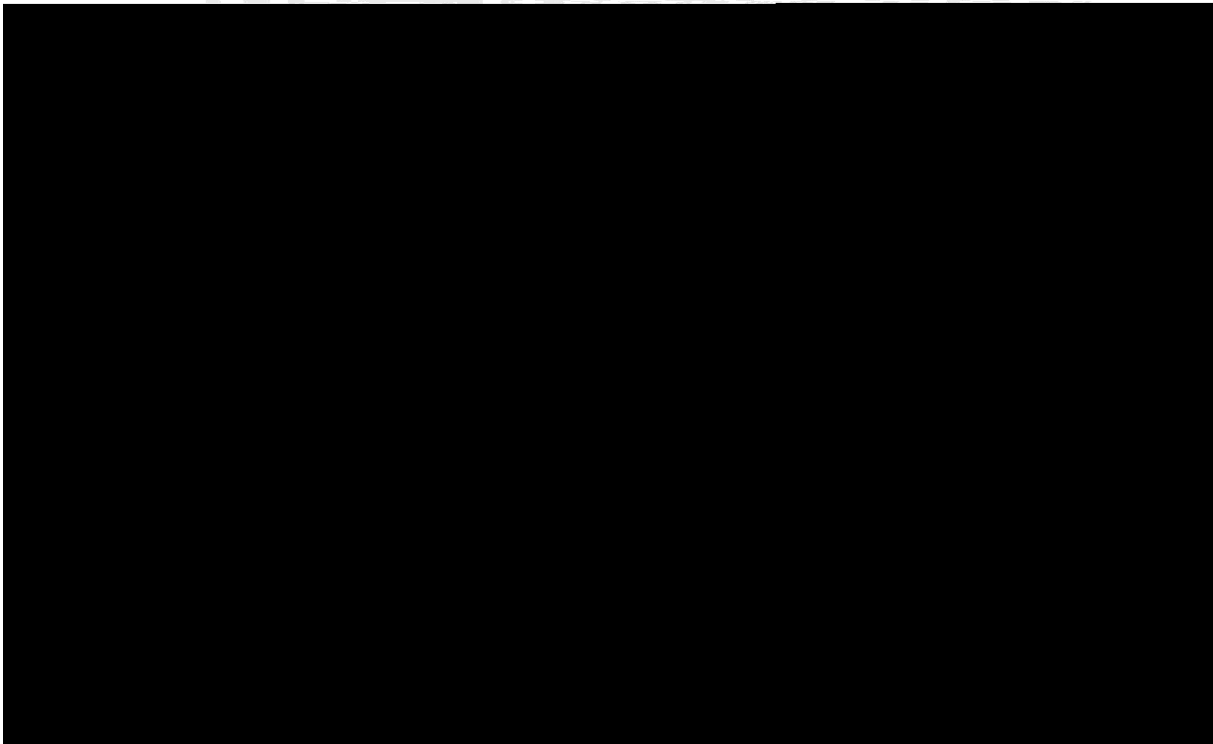




Judgment No. 2019-UNAT-945



Counsel for Mr. Peker: Mohamed Abdou, OSLA

Counsel for Secretary-General: Amy Wood

JUDGE SABINE KNIERIM , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/110, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 19 November 2018, in the case of Paker v. Secretary-General of the United Nations . Mr. Bulent Paker filed the appeal on 17 January 2019, and the Secretary-General filed his answer on 18 March 2019.

Facts and Procedure

2. Mr. Paker incurred medical expenses while serving as a locally-recruited Refugee Status Determination Officer with the United Nations High Commissioner for Refugees (UNHCR) in Ankara, Turkey under a fixed-term appointment. In preparation for annual leave travel to Greece, he obtained an attestation from the Administration, which was addressed to the Greek Authorities, stating that he intended to travel to

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Administration had accurately applied the MIP Rules, which clearly set forth the threshold for reimbursement, the concept of “reasonable and customary” expenses, and the methodology to assess expenses. The Director, DHRM and the Controller and Director, DFAM were bound to apply these rules without room for discretion. In turn, the UNDT found that Mr. Peker had failed to demonstrate any discernible error in the interpretation or application of the MIP Rules.

9. In addition, the UNDT held that the Administration was correct to not apply the stop-loss provision of Section 6.25 of the MIP Rules because applying the provision would have removed the limitation of the coverage to those reasonable and customary expenses incurred at the duty station and instead would have expanded the coverage worldwide. Worldwide coverage was entirely contrary to the explicit terms of the MIP Rules.

10. The UNDT also rejected Mr. Peker’s argument that apart from the MIP Rules, UNHCR had an obligation to reimburse him for the total amount of medical expenses incurred in Switzerland on account of the attestation he had received from the Human Resources Officer at UNHCR’s Ankara office. The attestation, which had been issued to the Greek Embassy, stated “[w]e also would like to certify that Mr. Peker is fully covered by [the] United Nations Medical Insurance Plan (MIP) against all possible medical expenses that may occur during travel to and in any country”. The UNDT held that the governing law was the MIP Rules and that an attestation by a Human Resources Officer to facilitate a visa for private travel had no legal authority to derogate from the MIP rules. The attestation had been provided at Mr. Peker’s request to reassure a country that he was covered by a health insurance plan for purposes of obtaining a visa. It did not contain any express promise or representation towards Mr. Peker about the extent of his coverage. The UNDT found that, given the context, it could have been construed as an undertaking from UNHCR towards the Greek authorities with specific dates, but, not for Mr. Peker’s travel to Switzerland. The expenses were not incurred in Greece and UNHCR settled all of Mr. Peker’s medical expenses in Switzerland on his behalf. The attestation did not relieve Mr. Peker of his obligation to apprise himself of the MIP Rules, which had been readily available on the UNHCR Intranet, and which had indicated very clearly that local staff members were generally covered for the medical expenses incurred at their duty station. Information about the limitations to coverage for medical expenses incurred out of the duty station, while on private business, was readily available to Mr. Peker. Based on the foregoing, the UNDT held that the attestation was not a binding promise obliging UNHCR to pay for Mr. Peker’s medical expenses that fell outside of the scope and limits of the MIP.

Submissions

Mr. Peker's Appeal

11. Mr. Peker requests the Appeals Tribunal to vacate the UNDT's Judgment and rescind the contested decision. In the alternative, he requests the case be remanded to the UNDT for a de novo determination following disclosure of all relevant materials.

12. Mr. Peker argues that the UNDT erred in procedure and law in denying his motion of 22 October 2018, wherein he requested disclosure of an English translation of Annex 1 to the Respondent's reply, and all documents relevant to the calculation of "reasonable and customary expenses". The UNDT's Order of 26 October 2018 rejected his requests for disclosure on the basis that the documents were not relevant to the disposal of the case since Mr. Peker had not challenged in his application the amount that had been established as reasonable for the reimbursement under the MIP. The UNDT refu

accommodation for one night and the hospital informed us that the normal period of stay for this kind of operations is usually one night but we are not sure about the specifications regarding Bulent's case". The administering office admitted to uncertainties concerning the amount of reasonable expenses and, therefore, the UNDT should have sought clarification on this.

14. The UNDT further erred in fact when it found that Mr. Peker only raised a concern about the way the amount of reasonable and customary expenses was established at the hearing. He had actually raised concerns well before the hearing as proven by his request for disclosure. Mr. Peker did not raise the issue in his application because he had no access to any information regarding the calculation of the expenses and it only became relevant upon receipt of the Secretary-General's reply, which had illuminated inconsistencies in the calculation. While the MIP Management Committee memorandum indicated that multiple hospitals had been consulted, the only document emanating from the administering office revealed that only one hospital had been contacted. These inconsistencies warranted further disclosure to properly establish the facts. The UNDT likewise erred in law and procedure in requiring Mr. Peker to make specific factual submissions prior to receiving such disclosures.

15. In addition, the UNDT failed to give weight to the obvious flaws in the decision-making process including the administering office's admissions that there were uncertainties with the calculation of the expenses. This revealed that the decision to recover USD 14,707.15 from Mr. Peker had not been subjected to adequate scrutiny. MIP Rule 5.5 required field offices to give special attention to claims exceeding an amount equivalent to twice the MIP reference salary, as in Mr. Peker's case, and the Administration should give particular emphasis to the monitoring of such claims. The Administration failed in its duties and the UNDT failed to take into account these considerations. It was unreasonable for the UNDT to determine that a pattern of cost could be determined by one single quote.

16. Lastly, the UNDT erred in law in finding that the Administration had not made a written

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20. The Secretary-General argues that the evidence on record demonstrated that to determine “reasonable and customary” cost of care in accordance with the MIP Rules, the

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Judgment

24. The case is remanded to the UNDT.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Halfeld

(Signed)

Judge Thomas-Felix

Entered in the Register on this 22nd day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar