
Case No.: UNDT/GVA/2010/103

Judgment No.: UNDT/2012/018

Date: 9 February 2012

Introduction

1. The Applicant filed an application on behalf of her deceased husband (“the staff member” or “the decedent”), former staff member of the United Nations

Applicant tried to secure help through her husband's radio, personal mobile phone and neighbours.

5. Broken radio calls were noticed by the Security Head of Operations at approximately 6 a.m. Another UNIFIL staff heard a female voice trying to call on the radio channel reserved to evacuation and attempted to call the recently released Emergency Security Number, but no one responded. Having heard new pleas, he contacted the Chief Security Officer, who called the Security Head of Operations at 7.06 a.m. After unsuccessfully trying to contact the Security Duty Officer, the Security Head of Operations then took over responsibility to follow the matter himself.

6. Contacted by the Applicant, a neighbour and colleague of the decedent who was the zone warden for the area (i.e., security focal point), called the Lebanese Red Cross around 6.20 a.m., requesting an ambulance to come.

7. An ambulance arrived at the residence at approximately 6.30 a.m., having apparently experienced some difficulties in finding the address. The decedent was given first aid and then transported with his wife to the Najem Hospital, one of the main hospitals in Tyr and the closest to the decedent's residence, about 100

9. The decedent's family expressed its wish that no autopsy be conducted. No such examination was carried out. The body was however embalmed for the purpose of airplane transportation to the United Kingdom, the staff member's home country.

10. On 31 January 2007, the Director of Administration, UNIFIL, officially informed Headquarters of the death of the staff member, describing the cause as a "heart attack".

11. UNIFIL personnel handled the arrangements for the decedent and his four escorts—his wife and three children, who came when they learnt about the events—to travel to the United Kingdom immediately afterwards. The Administration advised them at this stage that the cost of the tickets for three of them would probably be recovered from the decedent's last pay, which was done.

12. The British authorities did perform an autopsy upon arrival of the remains onto United Kingdom territory, in order to clarify the exact cause of death.

13. In March 2007, the widow and a daughter of the decedent returned to Lebanon. During this stay, they attended to the paperwork which was pending with the UNIFIL Administration.

14. The family made a request for compensation to the Advisory Board on Compensation Claims ("ABCC"), dated 27 May 2007. Under cover of a memorandum dated 29 May 2007, the Chief of Operations, Department of Peacekeeping Operations ("DPKO"), submitted the initial documentation on the claim to the ABCC.

15. In May 2007, the Organization proceeded to pay to his heirs the staff member's final emoluments, including death benefits, totaling USD106,167.2.

16. On 10 May 2007, the UNIFIL Commander convened a Board of Inquiry to investigate and report on the circumstances of the decedent's death. The Board of

17. The statements of staff interviewed point out—as the Applicant herself does—that UNFIL had advised its staff to contact local medical services in case of medical emergencies, given the contact information required for that purpose and encouraged staff members to share this information with the people living with them.

18. The ABCC considered the Applicant’s claim on 21 August 2008 and issued a recommendation, on 19 September 2008, that:

- (i) although the staff member died of natural causes which were not directly related to the performance of his official duties on behalf of the United Nations, based on the Report of the Board of Inquiry, which indicated that the staff member did not receive medical assistance on a timely basis due to lack of responsiveness

22. Following a motion for withdrawal submitted by the Applicant on 19 April

b. Staff regulation 1.2(c) provides that “the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them”. This includes access to proper emergency medical care in difficult or dangerous locations, such as Lebanon, as recognized by the former UN Administrative Tribunal;

c. The staff member did not receive medical assistance on a timely basis due to lack of responsiveness on the part of UNIFIL Security. The Board of Inquiry Report established a prima facie case of gross negligence contributing to his death, which is further underscored by the fact that the Respondent has undertaken efforts to improve the emergency procedures following the incident;

d. The decedent’s family has a right to a full and unequivocal explanation for his death, as well as to the timely and proper management of any final entitlements and claims of the estate. In its Judgment No. 1204, Durand (2004), which relates to a similar set of circumstances, the former UN Administrative Tribunal emphasised the Organization’s legal obligation to protect its staff and held it responsible for having withheld information on the circumstances of the concerned staff member’s death. In fixing the compensation, it stated that Appendix D does not apply to limit the compensation claimed on the basis of a violation of a staff member’s terms of employment or contract. It also granted compensation for further negligence and delay in processing the estate’s entitlements and awarded costs in view of the mishandling of the case;

e. The decedent’s family has only been given partial and conflicting information about its legal rights and entitlements. For years, the Respondent has failed to disclose information, delayed the settlement of valid estate’s claims, and created unnecessary stress and anxiety to the decedent’s relatives by his lack of transparency and responsiveness;

which are irrelevant since the decedent's case was not one of medical evacuation;

f. As to the alleged outstanding payments, the Applicant filed a claim for reimbursement of certain "related" costs on 26 July 2010 and the Administration provided a detailed response, allowing some and justifying the rejection of others. Payments under article 10.2 of Appendix D were processed. All entitlements outside the scheme of Appendix D have been paid;

g. Regarding the claim that the exact cause of the decedent's death was never reported to the family, both the attending doctor at the hospital

“the refusal of the [R]espondent to provide compensation to the estate of [the decedent] for negligence contributing to his wrongful death and for expenses incurred in administering the estate”.

36. It is thus sufficiently clear, despite some inconsistencies in the formulations cited above, that the Applicant, while acknowledging that the Organization recognised and paid certain entitlements under Appendix D, considers she has a right to further compensation following her husband’s death. In claiming so, she relies essentially on three grounds: (1) an alleged breach of the duty of care of the Organization vis-à-vis its staff; (2) the alleged mishandling of the family’s claims following the decedent’s demise; and (3) certain expenditures which she deems directly related to her husband’s death. Accordingly, what she contests is the implicit decision not to grant her

Where the compensation claimed by a staff member is compensation that relates to a violation of one of the terms of the staff member's employment or is contractual in nature, Appendix D does not apply to limit such compensation. (See Judgement No. 505, Daw Than Thin (1991), and Judgement No. 872, Hjelmqvist (1998).)

40. At this stage, each of above-mentioned grounds invoked by the Applicant in seeking further compensation in relation to her husband's passing will be analysed separately, to conclude with her claim for the award of costs.

Breach of the Organization's duty of care

41. Staff regulation 1.2(c) in force at the material time enshrined an obligation of duty of care incumbent on the United Nations vis-à-vis its staff, as follows:

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

42. Furthermore, the existence of such duty has been consistently upheld by different international administrative tribunals (see, among others, Edwards UNDT/2011/022; former UN Administrative Tribunal Judgments No. 872, Hjelmqvist (1998), No. 1125, Mwangi (2003), No. 1204, Durand (2004), and No. 1273 (2006); International Labour Organization Administrative Tribunal Judgment No. 402, In re Grasshoff (Nos. 1 and 2) (1980); Asian Development Bank Administrative Tribunal Decision No. 5, Bares (1995)).

43. The duty of care encompasses that of securing prompt and adequate treatment for those serving in hazardous duty stations in the event of medical emergencies (see former UN Administrative Tribunal Judgments No. 872, Hjelmqvist (1998), No. 1204, Durand (2004), and No. 1273 (2006)).

44. After careful scrutiny of the available evidence, the Tribunal is unable to find that a breach of the duty of care contributing to the staff member's death occurred in the present case.

45.

and temperature of the body and the fact that rigor mortis had already started, that he must have died two to three hours before.

49. In the absence of an autopsy report revealing the exact cause and time of the decease, due weight must be given to the converging professional opinions of

appropriate; on 10 May 2007, the Board of Inquiry w

2011-UNAT-136, where the Pension Board took slightly over a year to dispose of an appeal.

57. Like in Ardisson, the procedure in question in the instant case was a relatively complex one, involving the review by a body, the ABCC, holding limited sessions per year. In fact, the processing of the Applicant's claim did not

71. The Applicant holds that she had to file not one bu