Before: Judge Marilyn J. Kaman

Registry: New York

Registrar: Santiago Villalpando

MERON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Elizabeth Brown, UNHCR

Introduction

1. On 17 May 1992, the Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees ("UNHCR"), sustained injuries while on assignment in Cambodia, when the United Nations vehicle in which she was a passenger collided with a truck. In 1994, the Secretary-General endorsed the decision of the Advisory Board on Compensation Claims ("ABCC"), that the Applicant's injury should be considered as attributable to the performance of official duties on behalf of the UN and that therefore all medical expenses, including dental expenses, certified by the Medical Director as reasonable and directly related to the injury, may be reimbursed.

2. The instant case is the Applicant's appeal of the failure of the Respondent to correctly implement UN Administrative Tribunal Judgment No. 1197, *Meron* (2004) resulting in what the Applicant alleges to be the underpayment of her disability benefit and non-payment of all of her outstanding medical expenses from 1998 to the date of her application.

Procedural background

3. By application dated 20 December 2008, received by the UN Administrative Tribunal on 29 December 2008, the Applicant appealed the Secretary-General's decision, dated 3 September 2008, to adopt the conclusions and recommendations of the Geneva Joint Appeals Board ("JAB") in its report on Case No. 576, dated 13 June 2008.

4. On 25 June 2009, the Respondent filed his reply. The Applicant's observations on the Respondent's reply were submitted on 30 September 2009.

5. On 1 January 2010, the case was transferred to the UN Dispute Tribunal.

6. On 14 July 2010, in response to an Order of the Tribunal, the Respondent filed a jointly-signed submission which stated, *inter alia*, that oral testimony would not be useful in this case. The matter, therefore, is being decided on the papers.

Facts

7. The Parties, in the jointly-signed submission of July 2010, agree to the facts as contained in the JAB report as set out below. The facts have been edited as necessary but remain extensive to reflect the full context and complexity of the instant case.

8. On 17 May 1992, while the Applicant was on assignment to the United Nations Transitional Authority in Cambodia ("UNTAC"), a UN vehicle in which she was a passenger collided with a truck. Two medical reports, established respectively on 18 and 27 May 1992, noted that the Applicant had suffered a "head contusion/neck and back contusion" and a "traumatic inflammation of neck and back muscles". The Applicant submitted her accident claim forms to the UNHCR Administration on 5 September 1992. The ABCC, after having considered her claim under Appendix D to the Staff Rules at its 359th meeting on 25 May 1994, recommended to the Secretary-General that "the claimant's injury (whiplash) be considered as attributable to the performance of official duties on behalf of the United Nations and that therefore all medical expenses, including those dental expenses, certified by the Medical Director as reasonable and directly related to the injury may be reimbursed". This recommendation was endorsed by the Secretary-General on 27 May 1994.

UN Administrative Tribunal Judgment No. 918, Meron (1999)

9. In 1998, the Applicant filed an application with the UN Administrative Tribunal to order, *inter alia*: the production of her complete medical file; the convening of a Medical Board; expedition of her claims before the ABCC; and an

award of compensation. The UN Administrative Tribunal rendered Judgment No. 918, *Meron* (1999) on 23 July 1999, rejecting the application in its entirety.

UN Administrative Tribunal Judgments No. 1197, Meron (2004) and No. 1307, Meron (2006)

10. In February 2000, the Applicant filed an application with the UN Administrative Tribunal, requesting it, *inter alia*, to find that the ABCC had erred as a matter of law and equity in finding that she did not qualify for disability compensation under art. 11 of Appendix D to the Staff Rules; to award appropriate compensation for 50 per cent permanent loss of function; to award annual compensation for total disability in the amount equal to two thirds of her final pensionable remuneration for the duration of her disability; and to award additional and appropriate compensation for the violation of her rights and the stress caused by the unreasonable delays of the Respondent in processing her claims for reimbursement of medical expenses. In March 2002, the Applicant filed a separate application with the Administrative Tribunal requesting it, *inter alia*: to rescind the decisions of the Respondent refusing the reimbursement of her medical bills; to order that her disputed medical bills be reimbursed and that bills for future medical treatments be covered under Appendix D and reimbursed promptly; to order that a Medical Board be constituted immediately to decide on her present and future long-term care; and to award compensation for the actual, consequential and moral damages suffered by her as a result of the Respondent's actions or lack thereof.

11. In its Judgment No. 1997, *Meron* (2004), the UN Administrative Tribunal :

> 1. [Ordered] that the Applicant be awarded an annual pension equal to 50 per cent of two thirds of her final pensionable remuneration;
>
> 2. [Ordered] that a Medical Board be convened within three months from the date on which the Administration is notified of this Judgement to review the question of the outstanding invoices;

> 3. [Awarded] a sum of $10,000 as compensation for the anxiety caused by the unreasonable delays in the handling of the Applicant's case;
>
> 4. [Rejected] all other pleas.

12. On 15 April 2005, the Applicant submitted another application to the UN Administrative Tribunal requesting "the execution of judgment no. 1197".

13. In Judgment No. 1307, *Meron* (2006), the UN Administrative Tribunal ruled that the application was not receivable, as the Applicant had not exhausted the internal remedies.

Implementation of UN Administrative Tribunal Judgment No. 1197, Meron (2004)

14. On 22 December 2004, the Applicant was paid USD10,000 pursuant to Order 3 of UN Administrative Tribunal Judgment No. 1197.

15. On 12 May 2005, the ABCC considered at its 423rd meeting how Order 1 of Judgment No. 1197 to award the Applicant an annual pension equal to 50 per cent of two-thirds of her final pensionable remuneration should be implemented. It recommended that this Order be implemented by making a retroactive lump-sum payment from 1 September 1997 to 31 May 2005, and thereafter by an ongoing monthly installment effective from 1 June 2005. The Controller accepted the advice of the ABCC on 21 June 2005, but decided that the lump-sum payment should cover the period up to 31 July 2005, with an ongoing monthly benefit as of 1 August 2005.

16. By letter dated 22 July 2005, the Secretary of the ABCC informed the Applicant that her claim for compensation under Appendix D to the Staff Rules had been reconsidered by the ABCC in May 2005, and that the Secretary-General had taken a decision in her favour on 21 June 2005. The Applicant was informed that the payments to be made were: (a) one retroactive payment of USD224,136.84 covering the period from 1 August 1997 through 31 July 2005; and (b) a monthly payment of USD2,603.10, beginning on 1 August 2005.

17. By letter dated 21 November 2005, the Applicant's lawyer established a certificate attesting that during a phone conversation between her and a representative of the UN Office of Legal Affairs the latter had informed her that "the reason why the Organization had refused to pay Ms. Meron's annual pension equal to 50% of 2/3 of her final pensionable remuneration as ordered by the Tribunal in its Judgment No. 1197 was because the Office disagreed with the UN Administrative Tribunal's decision" and that, "as a result, a request for execution of judgment was filed".

18. On 17 March 2006, having met in order to resolve the issue of outstanding and future treatments of the Applicant, the Medical Board issued a report of the same date concluding that UNHCR should accept the medical bills submitted by the Applicant since 1998 as a whole, without restriction. At the same time, the Medical Board considered that in the future, the admissible treatments should be limited, and specified to what extent future bills should be covered (i.e., all bills post 17ºMarchº2006). This report was submitted to the Officer Responsible for Compensation Claims ("ORCC") on 30 May 2006.

19. The ORCC subsequently submitted the report of the Medical Board to the ABCC. The ABCC considered the Medical Board's report at its 429th meeting on 22ºJuneº2006, and agreed with its recommendations. It recommended to the Secretary-General that the United Nations Office at Geneva be authorised to effect payment of the claimant's past and future medical expenses in accordance with the recommendations of the Medical Board as contained it its report dated 17ºMarchº2006. The Secretary-General endorsed the recommendation of the ABCC on 29 June 2006.

20. By letter dated 21 August 2006, the Applicant's counsel wrote to the ORCC with respect to the report of the Medical Board, recalling that none of the Applicant's outstanding medical bills since 1998 to 18 March 2006 had been reimbursed and requesting that the recommendation of the Medical Board be respected and

implemented without delay. She attached a list of outstanding medical bills from 1998 to the date of the Medical Board's report, stressing that the original bills were with the Compensation Claims Unit ("CCU") and the United Nations Mutual Insurance Society against Sickness and Accident ("UNSMIS"), except for bills pertaining to "drainage lymphatique" treatments which had been paid by the Applicant.

21. The decision of the Secretary-General of 29 June 2006 was submitted to the ORCC on 13 October 2006. By letter dated 19 October 2006, the ORCC informed the Applicant "that the [ABCC] considered the report of the Medical Board dated 17 March 2006 on her claim for compensation at its 429th meeting held on 22 June 2006". He sent the Applicant the decision of the Secretary-General dated 29ºJuneº2006 and in order to implement the Secretary-General's decision requested her to provide "original invoices in [her] possession and the proof of payment for each of them".

22. By letter dated 15 January 2007, the Applicant's counsel wrote to the ORCC reiterating that the Applicant did not have original bills, which were with UNSMIS, except for drainage lymphatique which had been submitted to the ORCC. She stressed that the ORCC had not yet implemented the Secretary-General's decision and that the ORCC had not instructed the Applicant which bills she should submit to the ORCC under Appendix D and which to UNSMIS/Groupement de prévoyance et d'Assurance des Fonctionnaires Internationaux (Provident and Insurance Group of International Officials) ("GPAFI"). She noted that in the absence of clarification, the Applicant had submitted all bills for her ongoing treatment to UNSMIS/GPAFI.

23. On 16 January 2007, the ORCC sent a letter to the Applicant stressing that she had been overpaid with respect to 36 bills for sessions of osteopathy, as according to the Secretary-General's decision of 29 June 2006, she was only entitled to undergo one session per 15 days. He also informed the Applicant that in accordance with the recommendation by the Medical Board and the decision of the Secretary-General of

29 June 2006, the CCU was in the process of reimbursing the past outstanding bills since January 1998, which were not authorised for reimbursement at that time". He noted that: "this procedure [was] unusual and [took] time", but that "[they were] in contact with UNSMIS and INTRAS [a health insurance company] in order to obtain all the necessary documents showing the advances [they had] already made to [her]". He stressed that the Applicant would be kept informed of the payment process.

24. By letter dated 18 January 2007, the ORCC informed the Applicant's Counsel that he had informed the Applicant on 16 January 2007 that according to the instructions received from New York in October 2006, the bills she presented on 21 December 2006 were reimbursed, and that the past outstanding bills—dating back to January 1998—were in the process of being reimbursed. He noted that the list presented by the Counsel in August 2006 contained many different treatments and bills for a total amount of [Swiss Francs ("CHF")]75,600.00" and several original bills concerning the drainage lymphatique totaling CHF17,890.00 of which the office had no former knowledge. The ORCC stressed that each bill must be checked separately, and it must be verified what had already been paid to the Applicant by the CCU, UNSMIS and GPAFI. He stated that "this procedure is unusual and given the number of bills to check, and the number of years [they had] to go back, this takes a lot of time".

25. By letter dated 2 March 2007, the Applicant's Counsel sent a request for review to the Secretary-General, requesting him to

> provide for the full implementation of judgment number 1197 by ordering: A. The recalculation of the Applicant's disability benefit on the basis of Swiss francs and the cost-of-living increases of Geneva, Switzerland; B. The payment of the interest thereon; C. The immediate payment of the Applicant's outstanding medical bills, as per the Secretary-General's decision of 29 June 2006, together with interest on late payments.

The Administrative Law Unit acknowledged receipt of the Applicant's request for review on 14 April 2007.

26. On 12 June 2007, the Applicant submitted her statement of appeal against the incomplete implementation and non-implementation of Judgment No. 1197, resulting in the underpayment of the Applicant's disability benefit and non-payment of the Applicant's outstanding medical expenses from 1998 to date.

27. By letter dated 16 August 2007 and referring to their various communications since October 2006, the ORCC underlined the complexity of the reimbursement of the past outstanding bills from 18 March 1998 to 17 March 2006. In order to be able to proceed with the payment, the ORCC requested the Applicant's assistance and sent her a table on the state of the outstanding bills to be filled out by her by 14 September 2007. He also requested "relevant documentary evidence" concerning the state of the outstanding bills.

28. By email of the same day, the Applicant responded to the ORCC stressing that "all outstanding bills from 1998 to the date of the medical board were partially reimbursed to [her] by both the UNSMIS and GPAFI". The Applicant noted that "she was told … that INTRAS is not in the possession of the benefits advices for the period of 1998 to 2001 as they only keep their benefits advices five years". She also stressed that "UNSMIS has provided [the ORCC] with all benefits advices from 1998 to the date of the Medical Board" and that the "Executive Secretary of the UNSMIS, told [her] that he knows the exact amount that is due to the UNSMIS which is the amount reimbursed to [her]." She recalled the UNSMIS reimburses only original bills with proof of payment" and that she was told that "[UNSMIS does] not keep bills and receipts once they are reimbursed". The Applicant maintained that over the past year, the ORCC had been insisting that she had all the documents the ORCC would need while she had told him repeatedly that all she had was what was given to him by both UNSMIS and GPAFI. She stressed that all she could do was to provide him with the detailed calculation which had already been sent to him. She further requested the ORCC to process the osteopathy bills which she sent to him in March for immediate payment, since she was refused treatment which had been authorised as one treatment per two weeks.

29. The next day, the Applicant sent an email to the ORCC stressing that it was not her work to implement the decision of the Secretary-General. She noted that an updated list would be sent to him next week and that he should take the updated list and contrast it with the benefits advices the ORCC from UNSMIS and GPAFI.

30. By email dated 20 August 2007, the Applicant informed the ORCC that, due to her health problems, she was not able to assist him with the tables he sent to her. She sent him, however, an updated list, including bills which had been reimbursed by the UNSMIS since January 2007, and requested him to "please reimburse immediately the osteopathy bill which he had been holding since March". She further reiterated that the ORCC should request the benefits advices and answers concerning amounts reimbursed to her directly from UNSMIS and GPAFI.

31. By letter dated 30 August 2007, the ORCC suggested to the Applicant that the issue of medical bills from March 1998 to 17 March 2006 be separated from the issue of reimbursement of any bill after 17 March 2006. He stressed that, with respect to the bills from March 1998 to 17 March 2006, he would like to finalise them, and that therefore he had requested her assistance in identifying and settling these bills. He stated that as she was not able to provide such assistance, his Office had undertaken these calculations, within the capacity of its very limited staff.

32. The ORCC sent the Applicant a completed table outlining all medical bills between 1998 and 17 March 2006, which was "completed based on [ORCC's] records, UNSMIS' reimbursement advices, those of GPAFI, and checked against the list of medical bills [she had] provided". He informed the Applicant that "once [he had] confirmation from [her] that the table is error-free, [he would] request reimbursement in the amount of 5,679.48 CHF" which "correspond[ed] to all medical expenses due, minus CHF17,890 for 'drainage lymphatique'" which [was] under review". He also reiterated his request to be provided with "relevant documentary evidence" of the Applicant's medical bills, which "[was] an important part of the determining of settling her bills".

33. By memorandum dated 31 August 2007, the Secretary of the ABCC sent the Chief, Human Resources Management Service ("HRMS"), United Nations Office at Geneva, her comments regarding the Applicant's appeal.

34. On 12 September 2007, the Applicant wrote an email to the ORCC stating that numerous of her written requests to him since April 2007 with respect to the medical bills from the date of the Medical Board to 31 December 2006 had been "ignored" and that he had instructed the UNSMIS to stop reimbursing bills for her continued care which had been authorised by the Secretary-General. She considered that "her continued medical care was threatened, and that numerous letters had to be written to the UNSMIS asking that they continue reimbursing the bills for her ongoing care until [the ORCC] process[ed] all outstanding bills in order not to deny [her] vital medical care to combat persistent pain". She put forward that "the UNSMIS decided to continue reimbursing her medical bills and processed [a specific doctor]'s bills of January and February on 30 July 2007 and that these bills and the osteopathy bill for December 2006, January and February 2007 were processed by [the ORCC] on 30 August 2007—a delay of 8 months". She stressed that her accountant had included in the calculation all bills for her continued care from 17 March 2006 to the present date and asked him to process them. The Applicant stressed that "they [were] not a separate issue but were included in the Secretary-General's Decision to reimburse all outstanding bills!" She requested the ORCC to "process all outstanding bills, including the bills for drainage lymphatique and bills from the date of the Medical Board to the present, except of [a specific doctor]'s two bills for January and February 2007 which [he] processed on 30 August 2007". She also noted that she did not accept partial implementation of the decision of the Secretary-General, and requested the reimbursement of the drainage lymphatique bills and of the bills for her ongoing care from March 2006 to present.

35. By letter dated 22 October 2007, the ORCC informed the Applicant that he had requested a reimbursement for medical bills from March 1998 to 17 March 2006 in order to settle all medical bills from March 1998 to 17 March 2006, including the

drainage lymphatique. He stressed that regarding the bills covering this period, "this part of her claims [was] now closed having been reimbursed based on the recommendations of the Medical Board of 17 March 2006" and that "therefore, no additional bills for the period of March 1998 to 17 March 2006 [would] be accepted". He further noted that he would soon get back to her with respect to the medical expenses for the period after 17 March 2006.

36. On 28 February 2008, a JAB panel was constituted to examine the present appeal. By email dated 29 February 2008, the Applicant objected to the composition of the Panel, and a new Panel was constituted on 10 March 2008. The Parties did not object to the composition of this new Panel.

37. By memorandum dated 14 March 2008, the Chief, HRMS, suggested to the Secretary of the Geneva JAB that the appeal be examined outside of Geneva, as the administrative decision contested by the Applicant emanated from the Secretary of the Geneva JAB in his capacity as ORCC.

38. By memorandum dated 1 April 2008, the Presiding Officer of the Geneva JAB informed the Chief, HRMS, that she had decided that the appeal be examined by the duly constituted Panel of the Geneva JAB.

39. By report dated 13 June 2008, the JAB made the following conclusions and recommendations:

> 99. The Panel concludes that the disability benefit under Article 11.2(d) of Appendix D was calculated in accordance with the applicable rules. Hence it recommends to the Secretary-General to reject the Appellant's pleas for payment of 25.863,40 USD, representing under payment of Appellant's disability pension.
>
> 100. The Panel further concludes that the CCU did not in bad faith delay the payment of the outstanding medical bills. However, in view of all the circumstances of the case, especially the delay in convening the Medical Board, the Panel recommends to the Secretary-General to pay the Appellant a lump-sum of 3,000 USD in compensation for the injury suffered by the Appellant by the fact that she had to advance the

> payments of her medical bills out of her own pocket in order to ensure her medical care.
>
> 101. The Panel recommends to the Secretary-General to reject the appeal on all other pleas.

40. The Applicant was notified of the recommendation of the JAB on 25 June 2008.

41. On 3 September 2008, the Applicant was informed that the Secretary-General accepted the recommendation of the JAB.

42. On 20 December 2008, the Applicant appealed the decision of the Secretary-General.

Applicant's submissions

43. The Applicant requests the Tribunal:

> a. to find and rule that the ABCC erred as a matter of law and equity in contravention of its own rules and regulations, by converting the Applicant's last pensionable remuneration from the local currency (CHF) into US dollars when calculating her award as contained in UN Administrative Tribunal Judgment No. 1197, *Meron* (2004), para. XVIII;
>
> b. to rescind the JAB recommendation refusing to recalculate the Applicant's disability compensation from 1 August 2007 to date and to order payment by the Respondent of USD25,863.40 (based on the Applicant's calculation of her disability pension in CHF, including Swiss cost of living increases) plus interest at ten per cent on each monthly payment due from 1 August 1997 to the date of payment;
>
> c. to award the Applicant appropriate and adequate compensation to be determined by the Tribunal for the actual, consequential and moral damages

suffered by the Applicant as a result of the Respondent's actions or lack thereof; and

d. to award the Applicant an equitable amount to offset her legal fees and expenses.

Respondent's submissions

44. The Respondent contends that:

a. the Applicant's rights have not been violated by the Administration's calculation of her disability pension in US dollars;

b. the Applicant's rights have not been violated by the Administration's decision not to pay her interest on her disability pension from the due date until payment;

c. the Applicant's request for compensation for damages is without merit; and

d. the Applicant's request for an award of costs is without merit.

45. The Respondent requests the Tribunal to reject each of the Applicant's pleas and the application in its entirety.

Issues

46. The issues for the purposes of the present case can be summarised as follows:

a. whether the Administration erred in calculating the Applicant's disability pension award in US dollars;

b. whether the Applicant is due interest on her monthly disability payments;

c. whether there are outstanding payments for medical or dental bills for which the Applicant should be reimbursed;

d. whether the Applicant has suffered any damages (actual, consequential or moral) as a result of the Respondent's actions or lack thereof and, if so, the amount of compensation warranted; and

e. whether the Applicant should be awarded costs.

Consideration

In which currency should the Applicant's disability pension award have been calculated?

47. The Applicant argues that her disability pension should have been calculated in local currency (CHF). Specifically, she explains that:

> The amount paid was derived by converting the Applicant's pensionable remuneration, which was always calculated and paid in local currency (Swiss Francs) into US Dollars as of 1 August 1997; and thereafter, applying the cost-of-living increases in New York. … Both the Applicant's pensionable remuneration and all deductions therefore were calculated in Swiss Francs, including her contributions to the [United Nations Joint Staff Fund ("UNJSPF")].

48. The Applicant points out that she was a local General Service category staff member whose Letter of Appointment, which fixes the legal conditions of her employment, clearly stated her pensionable remuneration (indicated as "Assessable Salary") in CHF, whereas for an employment contract of a professional category staff member it is always calculated in US dollars. Likewise, the Applicant's Statements of Earnings have always indicated her pensionable remuneration in CHF.

49. The Applicant explains further that:

> [she] was awarded a service-incurred disability pension under Appendix D to the Staff Rules, as distinguished from a disability pension under Rule 33 of the UNJSPF, which is a retirement pension

> brought forward to the date of disability. UNJSPF pensions can be calculated in either a local track (local currency) or in a Dollar track (US Dollars). Applicant's disability pension is based on her final pensionable remuneration, which is clearly stated on her Statement of Earning to be in local currency (Swiss Francs).

The Applicant argues that there is no legal basis for the ABCC to calculate all compensation payments in US dollars and that the ABCC's description of it being "a general practice" is not a proper legal basis for doing so.

50. In her observations of 30 September 2009, the Applicant argues that the calculation was unfair:

> In good faith, the Applicant relied on her Letter of Appointment and Statement of Earnings and could not have been expected to think that the pension fund rules would override them. Furthermore, having been hired in Geneva, where she has lived for nearly 20 years now, it is unfair not to apply the Geneva cost-of-living index rather than that of New York and to inform the Applicant after the fact, that her Letter of Appointment and Statement of Earnings were inexact. At her time of life, it would be an extreme hardship to have to relocate to New York in order to make ends meet.

51. The Applicant contends that because the Respondent calculated her disability pension in US dollars she was underpaid by USD25,863.40.

52. The Respondent submits that the UN Administrative Tribunal ordered that "the Applicant be awarded an annual pension equal to 50 per cent of two thirds of her final pensionable remuneration" (UN Administrative Tribunal Judgment No. 1197, *Meron* (2004), para. XVIII) and that, pursuant to arts. 11.2(d) and 11.2(c)(i) of Appendix D, the annual compensation for partial disability is based on the staff member's final pensionable remuneration and was correctly calculated in US dollars.

53. The Respondent bases its position that the Administration was correct to calculate the amount in US dollars on the following:

> On the question into which currency such final pensionable remuneration ought to be calculated, the relevant Regulations and Rules provide the following:
>
> "The pensionable remuneration of a staff member shall … be in accordance with articles 1(q) and 53 of the Regulations of the United Nations Joint Staff Pension Fund." (See Staff Rule 103.16(a))
>
> "'Pensionable remuneration' shall mean the remuneration, at its equivalent in dollars, defined in article 54." (See UNJSPF Regulations, article 1(q))
>
> "(a) In the case of participants in the General Service and related categories, pensionable remuneration shall be the equivalent in dollars of the sum of: …" (See UNJSPF Regulations, article 54).

Accordingly, the Respondent submits the calculation was in accordance with the relevant rules and regulations and that there is no basis for the Applicant's claim.

54. Having considered the applicable rules, the Tribunal finds that the Respondent acted according to the rules and regulations as set out above in calculating the amount in US dollars. Specifically, the Tribunal finds that the Respondent was obligated to implement the order of the Administrative Tribunal, and did so, by considering the meaning to be given to "pensionable remuneration" and correctly applying the definition provided in the UNJSPF Regulations, which provide that it was payable in US dollars. The Tribunal has also considered whether the rules and regulations have since been changed to support the Applicant's position or warranted a change in the currency of any future payments. The Tribunal finds that the rules and regulations have not changed in this regard. While it is unfortunate that the Applicant was not aware of this and while she may well have incurred loss when the amount was converted into US dollars, the staff regulations and rules are clear on this matter and she has by no means been singled out. The Tribunal finds that the Respondent correctly applied the relevant rules and regulations in this regard and therefore rejects the Applicant's claim.

Should the Applicant be awarded interest on her monthly disability pension payments?

55. The Applicant claims that the monthly payments of her disability pension should have borne interest from their due dates until the date of their payment.

56. The Applicant states that the UN Administrative Tribunal has recognised the equity in awarding interest on judgments of compensation claims (UN Administrative Tribunal Judgment No. 587, *Davidson* (1993), para. XVII), and cites the longstanding jurisprudence of the Administrative Tribunal on interest payments.

57. The Respondent submits that the Applicant is reopening a plea of her earlier application, which the Administrative Tribunal already considered in Judgment No. 1197 and that, according to the Tribunal's jurisprudence, this plea cannot be the subject of further appeal (UN Administrative Tribunal Judgment No. 1111, *Miller* (2003), para. IV). Thus the Respondent requests this plea to be considered *res judicata*.

58. Although not binding, the JAB's pronouncement on this issue was as follows:

> 96. With respect to the interest for monthly payments of her disability pension since 1998 to 2005 … the Panel considered whether it was precluded from examining this issue because it had already been addressed by the Tribunal in [the UN Administrative Tribunal] judgment no. 1197 (*res judicata*). Indeed, the Panel noted that the Appellant had raised the question of interests on her disability pension in her pleas for [the UN Administrative Tribunal] judgment no. 1197 (cf. UNAT judgment no. 1197 paragraphs 8(g) and (j)). It noted that the Tribunal ordered that the Appellant be granted 10,000 USD as compensation (cf. [UN Administrative Tribunal] judgment no. 1197 Order 3), while it ordered in Order 4 "that all other pleas be rejected" (cf. [UN Administrative Tribunal] judgment no. 1197 Order 4). Hence, the Panel considered that it could not pronounce itself on this point as it had already been adjudged by [the UN Administrative Tribunal]. Moreover, the Panel noted that the Appellant had not requested the payment of these interests in her request for review of 2 March 2007 and that the procedural requirement of Staff Rule 111.2(a) was thus not complied with on that particular issue.

59. Having reviewed UN Administrative Tribunal Judgment No. 1197, *Meron*, the Tribunal notes that it is unfortunate that the Administrative Tribunal did not pronounce itself in detail on the issue of interest. However, the Tribunal considers that the record shows that the UN Administrative Tribunal considered and rejected the plea on appeal (by simply stating that it "[r]ejects all other pleas") and it is for this reason that the Tribunal must consider the matter *res judicata*. The Tribunal recalls *Shanks* 2010-UNAT-026, in which the UN Appeals Tribunal stressed the importance of the authority of a final judgment:

> 4. As the Administrative Tribunal of the International Labour Organization observed in Judgment 1824, *In re Sethi* (No. 4), the authority of a final judgment – *res judicata* – cannot be so readily set aside. The party who loses can not re-litigate his or her case. There must be an end to litigation and the stability of the judicial process requires that final judgments by an appellate court be set aside only on limited grounds and for the gravest of reasons … .

Therefore, the Tribunal considers the matter of interest—as *res judicata*—not to be properly before it and will not consider it further.

Damages

General observations

60. At this juncture the Tribunal observes the grave historical context of the instant case, noting that the Applicant was rendered disabled while in service to the Organization in 1992 and that she is now in her seventies. The Tribunal considers the background to the case to be one of the most egregious cases it has inherited from the previous system of internal justice in terms of the treatment of the Applicant and the failure of the Administration to consider her situation efficiently and to afford her the respect and dignity, notwithstanding the compensation to which she was entitled. In 2004, when the UN Administrative Tribunal ordered USD10,000 for compensation for anxiety cause by "unreasonable delays in the handling of the Applicant's case", it also ordered that the Applicant be awarded an annual pension and "that a Medical

Board be convened within three months from the date on which the Administration is notified of this Judgement to review the question of the outstanding invoices". In the same Judgment, the Administrative Tribunal noted:

> XVIII. Lastly, there is the question of the delays with which this case was, if not settled, then at least considered. In the view of the Tribunal, it is unacceptable that the consequences of an accident which occurred in 1992 should not have been resolved 12 years later. The Tribunal notes, too, that the first Medical Board, which dealt with the question of the invoices, did not meet until five years after the accident, and that the Medical Board which dealt with compensation under article 11 of Appendix D did not meet until six years after the accident.

61. While the Tribunal will not adjudicate on matters which have already been decided in prior appeals, it considers the context to be relevant to the instant case in comprehending the cumulative affect on the Applicant, particularly in terms of emotional distress. It is notable that there has been, as evidenced by the prior judgments pertaining to the Applicant, a pattern of the Respondent failing to resolve her issues within a reasonable timeframe or effectively.

Reimbursement for outstanding medical and dental bills

62. The Applicant concedes that this issue has been "partially settled, along with interest of USD3,000.00 for the delayed Medical Board and reimbursement" but sets out the persisting issue of dental bills as follows:

> 26. By letter of 10 September 2008, the ORCC informed the Applicant that the UNHCR Dental Advisor refused to authorize a recent dental bill for relining of her upper denture, claiming that the bill referred to "usual maintenance of a denture" ... . The Applicant replied with an explanation and attached copy of her letter to him of 09 April, in which she stated her treating physician's request to be sent to a dental expert in order to prevent disputes… . The ORCC replied on 19 November quoting the Medical Board's recommendations, which are now being misinterpreted by the UNHCR Dental Advisor … . The Applicant replied on 19 November 2008 … . The ORCC replied to the Applicant on 1 December, stating that it was an

> "external Dental Advisor", seemingly covering the Medical Service's refusal in the name of a supposed "Dental Advisor" rather than referring the Applicant to a dental expert … . The ORCC further stated that the Applicant was reimbursed by the UNSMIS the total amount of the dental bill which is yet another false statement by the ORCC, as the UNSMIS reimburses only 50% of all medical and dental bills. The Applicant followed up with two explanatory e-mails … requesting to reconvene the Medical Board, which is her right under the Staff Rules, in order to resolve the dental issue that could have been resolved if the ORCC had complied with the request of the Applicant's physician in 2007 to refer her to a dental expert.
>
> 27. The Applicant explained that the impact of the car accident on 17 May 1992 loosened all her upper teeth, which had to be extracted. The bone in her upper gum weakened, and a scan revealed that there was hardly any bone left due to the overdoses of anti-inflammatory medication (Voltaren) given to her after the accident at the rate of 300 mg a day over 7 months (the maximum allowed dose is 50 mg for 10 days). The unstable upper denture causes the Applicant excruciating pain when she chews her food. There are numerous dental reports in the Applicant's file with the Medical Service which clearly state that due to the severe loss of bone and consequential instability of her upper gum, the Applicant's denture has to be relined at least twice a year and replace at least every two years … .

63. The provisions relating to Medical Boards (with the exception of those relating to sick leave) are currently provided for in Section K of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund of 1 June 2010. In her application, the Applicant suggests that as the previous medical boards have not dealt specifically with the dental problems, the reconvening of the Medical Board would be "wise".

64. The Respondent does not respond to the information about these specific dental claims, but instead submits that, "the Applicant has already been adequately compensated for the financial injury she incurred as a result of the delays in the present case … [and] the Respondent has accepted the JAB's recommendation that the Applicant, instead of being paid interest with respect to individual medical bills, be paid compensation in form of a lump sum of US$3,000."

65. The Tribunal understands that the process of submitting medical and dental expenses and having them reimbursed is, due to the nature of the Applicant's treatment, ongoing. The indication from the Applicant that the matter is "partially settled" does not provide sufficient detail for the Tribunal to be able to assess the non-reimbursement of individual bills. The specific dental reimbursements to which she refers appear to have arisen after the Secretary-General made a decision based on the recommendation of the JAB, and as such, it is assumed that they would not have been before the JAB. Nevertheless, these reimbursements have been brought to the attention of the Tribunal and the Respondent has not raised any issues of receivability. The Applicant has provided correspondence regarding what are, according to her, outstanding dental claims from 2008 and 2009 which includes responses from the Administration as they decided upon claims and/or referred them to dental experts as required. The Tribunal notes with concern that the Respondent does not address this matter in his response, i.e., whether the situation which the Applicant describes with regard to dental claims is a fair assessment and whether, therefore, a further medical board to assess the dental claims should be convened.

66. Therefore, the Tribunal considers that an inference has to be drawn from the lack of response from the Respondent to the Applicant's call for another Medical Board to be convened to consider dental payments that there may be outstanding payments. It may well be that no such outstanding matters remain, in which case a Board will not be necessary, however the Tribunal has not been so informed. In any event, the Tribunal considers that the provision of further information pertaining to these claims to the Tribunal would not resolve this issue in the most efficient manner, as it is apparent that each individual claim may require expert assessment as to whether it is to be reimbursed.

67. Without prejudice to subsequent appeals which the Applicant may file regarding individual dental and/or medical claims when she receives final decisions as to whether they will be reimbursed, it is for the reasons as set out above that the Tribunal will order, under art. 10.5 of its Statute relating to specific performance, the

convening of a Medical Board to consider any outstanding invoices (either medical or dental) within three months of the date of the instant Judgment *on the proviso that* they have been brought to the attention of the Respondent by the Applicant within one month of the date this Judgment becomes executable. The Medical Board will be limited to the consideration of invoices which have not previously been considered by a prior Medical Board.

Other damages

68. The Tribunal has reviewed the wording of the decision as to why the USD3,000 was awarded in order to assess the exact basis for the payment. The JAB's analysis as to why it recommended the award is as follows:

> 93. … the Panel expressed its view that while the usual procedure is to request original bills or reimbursement advices together with copies of the bills, together with a proof of payment, this procedure proved to be particularly cumbersome in the present case. Moreover, the Panel reiterated that the case had to be seen in the larger context, particularly [the UN Administrative Tribunal] judgment no. 1197 and the late implementation of its order 2, namely the convening of the Medical Board. Indeed, the Panel found that the fact that it took one year and a half to convene the Medical Board (instead of three months as foreseen by [the UN Administrative Tribunal]), coupled with the delay in processing the bills meant that the Appellant had to wait until October 2007 to see her bills reimbursed under Appendix D and this was untenable. The Panel was indeed sympathetic with the Appellant – a disabled person – who had to make advance payment of her medical bills, particularly with respect to the largest amount of 17,000 CHF for "drainage lymphatique", paid by the Appellant in 2001. In the light, in particular, of the above mentioned UNAT judgment no. 203 (2004), the Panel expressed its view that the Appellant should be compensated for the financial injury sustained by the mere fact that she had to pay the outstanding amounts out of her own pocket.
>
> …
>
> 97. Concerning the payment of interest for the late payment of the outstanding medical bills, the Panel referred to its conclusions in paragraph 93 above and considered that the injury suffered by the Appellant by the delay in payment of her medical bills and the

> convening of the Medical Board should be compensated. However, it considered that in view of the complexity of the case it would be difficult to address the matter by calculating interests on the numerous bills, which have all different dates over a long period of time (between 1998 to 2007). Hence, the Panel concluded that the injury suffered by the Appellant should be compensated by paying her a lump-sum of 3,000 USD.
>
> …
>
> 100. The Panel further **concludes** that the CCU did not in bad faith delay the payment of the outstanding medical bills. However, in view of all the circumstances of this case, especially the delay in convening the Medical Board, the Panel recommends to the Secretary-General to pay the Appellant a lump-sum of 3,000 USD in compensation for the injury suffered by the Appellant by the fact that she had to advance the payments of her medical bills out of her own pocket in order to ensure her medical care. [Emphasis in original.]

69. Turning to the wording of the letter informing the Applicant of the Secretary-General's decision, it provides:

> As to your claim for payment of interest related to the disability benefit under Appendix D and the payment of medical bills, the JAB noted that you claimed: (a) interest on the alleged underpayment of your disability pension from 1 August 1997 to the date of payment; (b) interest on each monthly payment due from 1 August 1997 to 1 August 2005, compounded since the date of notification of Judgement no. 1197 until the date of the payment of the interest; and (c) interest on the reimbursement of your outstanding medical bills from 1998 to date. The JAB concluded that any interest on the alleged underpayment was unfounded.
>
> … As to interest on the late payment of the outstanding medical bills, the JAB considered that the delay in payment of your medical bills and the convening of the medical board should, as mentioned above, be compensated. The JAB concluded that the injury suffered by you should be compensated by paying a lump-sum of US$3,000.
>
> …
>
> The JAB stated that in view of all the circumstances of the case, especially the delay in convening the medical board, it recommends to the Secretary-General that you be paid a lump-sum of USD3,000 in

> compensation for the injury suffered by you as a result of your having to advance the payments of your medical bills out of your own pocket to ensure your medical care. The JAB recommended the rejection of all other pleas.
>
> The Secretary-General has examined your case in the light of the JAB's report and all the circumstances of the case. The Secretary-General accepts the findings and conclusions of the JAB and, in particular, agrees with the conclusion of the JAB that the delay in payment of your medical bills and the delay in convening the medical board should be compensated. The Secretary-General has therefore decided to accept the recommendation of the JAB that you be paid US$3,000 as compensation for the delay.

70. The Respondent submits that "the Applicant has already been adequately compensated for the financial injury she incurred as a result of the delays in the present case" when she was paid the USD3,000. However, the above excerpts, particularly para. 100 of the JAB's report, indicate that the USD3,000 was compensation for the Applicant having had to advance payments, delays in convening the Medical Board and delays in payments for outstanding invoices, and that this sum *included interest on payments for outstanding invoices*. Although the Secretary-General's letter does not state this explicitly, it refers to interest being "unfounded" on the "alleged underpayment", which is understood to relate to underpayment of monthly disability pension payments. The JAB did not break down the award and it appears that it decided the best way to deal with the number of payments and the complexities of calculating interest was to award a lump-sum. Even if the Secretary-General did not intend interest to be payable on outstanding medical and dental bills, the Tribunal does not consider this to be a fair outcome, and will make the requisite orders to reflect this interest in line with the jurisprudence of the Dispute Tribunal.

71. On the issue of delay, the Respondent recalls that, under the UN Administrative Tribunal's jurisprudence, "moral damages" were only awarded when the delays were considered "extraordinary, or inordinate, or some such qualification" (see UN Administrative Tribunal Judgment No. 1323, *Benzari* (2007), para. IX); see also No. 561, *Edussuriya* (1992), para. IV), "long and unconscionable" (see UN

Administrative Tribunal Judgment No. 353, *El-Bokayny* (1998), para. X), or "excessive" (see UN Administrative Tribunal Judgment No. 1275, *Al Souki* (2005), para. XIV). The Respondent further submits:

> Whilst the [Administrative] Tribunal has sanctioned cases of inordinate delay, which may be attributed to negligence in some particular instances, the Tribunal has not awarded compensation in cases where the delays were not imputable to any person or persons in particular, and were not specifically directed at the Applicant, but were the consequence of an over-burdened, under-resourced system. (See UNAT Judgements No. 1323, Benzari (2007), paragraph IX; No. 1344, Belov (2007), paragraph VI; No. 1370, Megzari (2007), paragraph VII).

72. The Respondent states that the Applicant has not substantiated her claims for moral damages.

73. The Respondent submits that there was no undue delay in implementing UN Administrative Tribunal Judgment No. 1197, *Meron* (2004), as the Medical Board's establishment was only delayed by one month (disputed as 15 months by the Applicant) and that the time the Medical Board, an independent body, thereafter took to review invoices dating back to 1998 and to issue its recommendations cannot be attributed to the Administration. The Respondent also submits that:

> [N]one of the delays that occurred in this case were directed against Applicant. To the contrary, once it had obtained the directives from the Medical Board, the Administration has, given the time-consuming verification process of bills which were administrated by different entities within and outside the UN, expended great efforts in bringing this long-outstanding matter to a satisfactory resolution. It follows from the foregoing that the Applicant has no basis to claim compensation for moral damages.

74. The Tribunal finds the Respondent's arguments to be unconvincing in this regard and while the Applicant cannot change or add to her original pleas, the Tribunal accepts that she may modify her requests for relief, as further issues arise whilst the proceedings have crawled forward.

75. The Tribunal considers it imperative that the Organization be held accountable for the fair implementation of the staff rules and regulations and to ensure its staff are afforded due process. The Tribunal will not stand idly by and allow an individual's rights to be sidelined amidst complaints of lack of resources or an overburdened system. What might be a reasonable excuse for failure to address an issue in a short-term situation at a certain point becomes unacceptable in long-standing unresolved disputes. The Respondent must bear the ultimate responsibility for the machinery set in place and in this case it happened to include a Medical Board. The exact time at which delays warrant compensation is decided on a case-by-case basis. As for the implication that the Applicant must be the intended target of delays to be compensated for them, this is clearly a *non sequitur*, particularly in a case which has dragged on for such a protracted period. Whether there is an intention to harm an individual may be relevant to a case and affect the amount of compensation awarded, but a lack of intention to target this individual does not preclude the award of compensation where he or she is directly affected by delays.

76. The Tribunal is convinced that in the instant case, taking into account the entire circumstances of the case, the context and the predicament of the Applicant, the delays warrant a more substantial award than USD3,000, as they caused significant emotional harm to her.

77. It is for the reasons as set out above that the Tribunal awards USD25,000 for excessive and inordinate delays in the implementation of Administrative Tribunal Judgment No. 1197, *Meron* (2004) relating to the reimbursement of medical and dental expenses, which includes delay in rendering final decisions due to delays surrounding the convening of the Medical Board and its review.

78. It is important to note that this award is made without prejudice to any future appeals which may be made with regard to invoices which were not considered by the previous Medical Board and or/taken into consideration by the JAB in its report on

Case No. 576 of 13 June 2008, and for which further compensation may be warranted.

Should the Applicant be awarded costs?

79. Turning to the issue of costs, art. 10.6 of the Statute of the Dispute Tribunal provides that, "[w]here the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party".

80. The Tribunal does not find that the Respondent has manifestly abused the proceedings before it. The Dispute Tribunal stresses that whether there has been abuse from the date at which the Applicant sustained injuries (1992) until now is not before it, but rather the final period in which the decision under appeal was made. During this period, no abuse has occurred.

Orders

81. Within three months of the date of this Judgment becomes executable, the Respondent shall convene a Medical Board to consider any invoices (medical or dental) which the Applicant considers to be outstanding from 17 March 2006 onwards *on the proviso that* they have been submitted by the Applicant within one month of the date of this Judgment becomes executable. The Medical Board will be limited to the consideration of invoices which have not been considered by a prior Medical Board and/or were not taken into consideration by the Joint Appeals Board in its report on Case No. 576 of 13 June 2008.

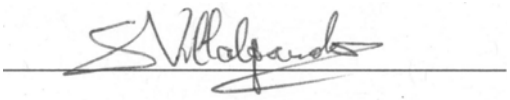
82. Monthly interest on all invoices, medical or dental, which the Medical Board considers to be outstanding and payable shall be due from the date the payment was submitted to the Organization for reimbursement by the Applicant at the US Prime Rate applicable at that date until the date of reimbursement.

83. The Respondent shall make payment of USD25,000 compensation to the Applicant for excessive and inordinate delays and the emotional harm sustained by her. This sum is to be paid within 60 days of the date this Judgment becomes executable during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

Judge Marilyn J. Kaman

Dated this 7th day of January 2011

Entered in the Register on this 7th day of January 2011



Santiago Villalpando, Registrar, UNDT, New York