



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1117

Margaret Mary Fogarty
(Appellant)

v.

Secretary-General
of the International Maritime Organization
(Respondent)

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case Nos.:	2020-1457
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Jordan Howells
Counsel for Respondent:	Dorota Lost-Sieminska

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal from Ms. Margaret Mary Fogarty against the ‘decision’ of the Staff Appeals Board (SAB) to uphold the determination of the IMO’s Advisory Board on Compensation Claims (ABCC) that Ms. Fogarty’s disability termination was not service incurred pursuant to Staff Rule 106.3 and Appendix D. For the reasons set forth herein, this Tribunal remands the matter to the SAB for a determination pertaining to jurisdiction.

Facts and Procedure

2. Ms. Fogarty is a 61-year-old former staff member of the International Maritime Organization (IMO or Organization) employed by it between November 1999 and 7 September 2020, as a Senior Telephonist, at the G-5 Mu39 (e)3-8.4 (n)JTJ -.2 (o)12.9 (b)0.8(d)14. (9)6.8s

5. On 18 February 2016, Ms. Fogarty had a panic attack at work and was put on sick leave. She remained on leave for about a year until 11 January 2017 when she returned to work.

The SAB unanimously decided that the decision taken by the ABCC on 26 of June 2019 is in line with the appropriate rules and regulations in force at the time and that it should stand. The SAB specifically agrees with the statement in paragraph 7 of the summary of deliberations of the ABCC... 'in the absence of any findings indicating that there was exposure to a harmful event, the requirement for an "incident" is not met as described under Appendix D. It was the Medical Adviser's opinion that based on the information submitted, Mrs. Fogarty's illness could not be determined to be directly related to her service for the organization. He also indicated that informal medical advice as provided by the Senior Medical Officer of the United Nations ABCC, in which the same conclusion was reached.' The SAB fully agrees with the decision reached by the ABCC as stated in paragraph 8 of the above referenced summary of deliberations, i.e.: 'Following a thorough review of the evidence and merits of the case, the Board unanimously recommended that the case submitted should not be considered as service incurred'.

11. The SAB dismissed Ms. Fogarty's appeal and her request to reconvene the ABCC subject to additional procedural directives concerning information, its composition, record keeping and communication.

12. In June 2020, the IMO medical adviser submitted a case for disability to the IMO Staff Pension Committee (SPC). In September 2020 the UNJSPF approved the SPC's recommendation to grant Ms. Fogarty a disability pension.

13. On 16 November 2020, Ms. Fogarty filed the instant appeal. The Secretary-General of the IMO filed his answer on 19 January 2021.

Submissions

Ms. Fogarty's Appeal

14. Ms. Fogarty submits that the SAB report fails to satisfy the requirement of a decision as it does not provide a written record, a written decision, setting forth reasons, facts and law by a neutral first instance body.

15. Moreover, she contends that the SAB erred in not finding her illness was service incurred. The preponderance of the evidence supports that she was suffering from work-related stress and this illness was a consequence of exposure to numerous harmful events, together with systemic, structural and cultural failures at the IMO, which taken individually and together satisfy the meaning of "incident" within the Appendix D. The SAB agreed with

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to the case, which will be binding on both the staff member and the Organisation. Both the staff member and the Organisation may have the opportunity to further appeal the decision of the SAB to the UNAT, if appropriate.

24. The memorandum then went on to address the composition of the SAB to allow for the appointment of experts with judicial and administrative law experience.

25. These efforts by the Secretary-General of the IMO are commendable and may be a sufficient means of prospectively bringing the internal processes into line with the requirements of the Article 2(1) of the Appeals Tribunal's Statute. Unfortunately, they do not adequately resolve the problem of appeals resolved by the SAB subsequent to the decisions of this Tribunal but prior to the Secretary-General of the IMO's memorandum amending Staff Rule 111.1, such as the appeal of Ms. Fogarty.

26. Counsel for Ms. Fogarty has made the argument as follows in the appeal brief:

... Subject to the Tribunal's decision on Jurisdiction, this appeal concerns either the Decision of the Secretary-General to accept the recommendation of the Staff Appeals Board ('SAB') – no contrary decision having been sent by the Secretary-General within four weeks of the Report of the SAB2 – or if the recommendation of the SAB is construed as a decision, the Decision of the SAB to dismiss the Appellant's appeal The lack of clarity as to whether a lawful decision has been taken and by whom is indicative of the procedural irregularity that appertains in this case and others from the IMO which have come before the Tribunal, as dealt with in the section on Jurisdiction, below.....

... JURISDICTION

... This matter arises from the failures of the IMO's SAB processes and falls within the context of the line of recent cases of Sheffer... and Dispert & Hoe... with analogous points taken in those cases to the factual and procedural circumstances applicable in this instant case. There are three types of SAB cases at the IMO: 1) those which were considered by the SAB before the decision in Sheffer...of 25th October 2019; 2) those which concern disputes which straddle the decision in Sheffer... but were formally decided after that decision, but before the Secretary-General purported to suspend Staff Rules 111.1(gg) and (ii) of the Staff Regulations and Staff Rules by his Internal Memorandum (the 'Memorandum') of 30th July 2020.... and 3) those which occur(ed) entirely after the issuance of that memo. This case falls into the second category.

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33. These provisions suggest that the power to amend the Staff Rules does indeed vest in the Secretary-General of the IMO while the power to amend the Staff Regulations is beyond his remit. Staff Rule 111 is a Rule not a Regulation. However, in his memorandum of 30 July 2020, by which he purported to partially suspend the operation of parts of Staff Rule 111, the Secretary-General of the IMO intimated that there was a process that needed to be followed before amendment and this involved the consideration of recommendations by the Senior Management Committee. That is why he introduced “some interim measures”. The source of his power to do that is equally not clear. Moreover, Staff Rule 111.1(d) could be interpreted to mean that changes to the appeals procedure may require consultation with the SAB. There may also be other constraints upon the Secretary-General of the IMO’s power of amendment in other legislative instruments that are not immediately evident or known to this Tribunal.

34. In addition, there is the problem of the retroactive operation of the Secretary-General of the IMO’s administrative decision to suspend the operation of parts of Staff Rule 111. There is a strong presumption that administrative or regulatory decisions do not obtain retroactively. They obtain prospectively. And the language of the Secretary-General of the IMO’s memorandum of 30 July 2020 is prospective in nature. There is no indication that the administrative or regulatory decision of 30 July 2020 suspending the operation of Staff Rule 111 was (r)-7 14.5 (s) Td[(J) 0.242 Twa7 (0)-2.6 ((e)-12.-0.09.3 (M)

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37. The appeal is remanded to the SAB to determine the jurisdictional question discussed in this Judgment.