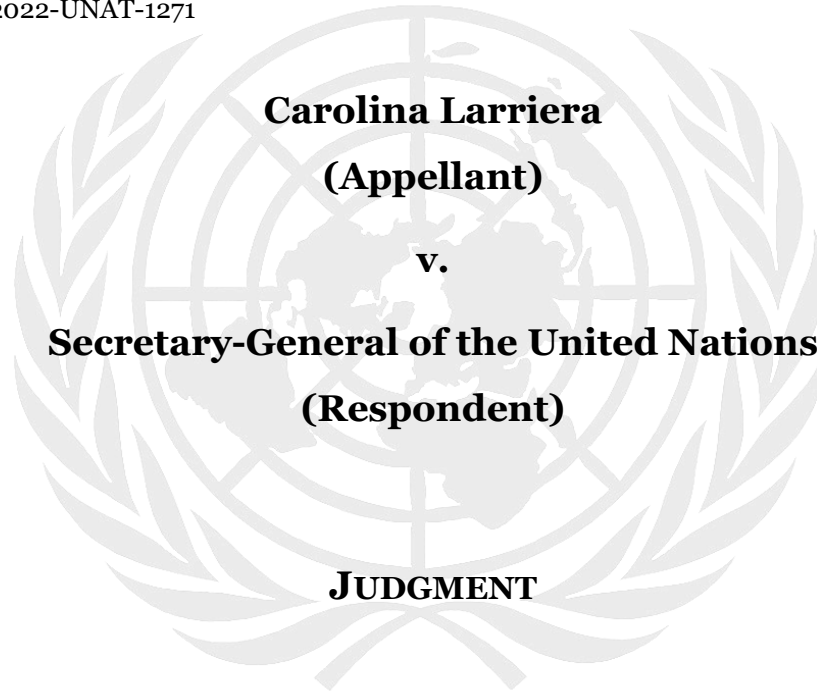




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1271



**Carolina Larriera
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Kanwaldeep Sandhu Judge John Raymond Murphy
Case No.:	2021-1631
Date of Decision:	28 October 2022
Date of Publication:	17 November 2022
Registrar:	Juliet Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Noam Wiener

JUDGE GRAEME COLGAN, PRESIDING.

1. Carolina Larriera, at relevant times herself a former staff member of the United Nations, appeals before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) against Judgment No. UNDT/2021/110 of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissing as not receivable her application for compensation as the surviving spouse of a former staff member who died in the course of official duties.¹ The case raises questions as to the meaning of the phrase “deceased staff member’s widow” under the relevant United Nations documents providing for the benefits available to the kin of United Nations personnel killed in the line of duty. Also at issue is the interrelationship of such claims with those under the United Nations Joint Staff Pension Fund (UNJSPF or the Pension Fund) and differences between the definitions of “surviving spouse” and “deceased staff member’s widow” under these two distinct, but nevertheless sometimes closely associated, instruments. Ms. Larriera’s claims were rejected by the UNDT because she was said to have not been a person entitled to bring those claims (“not receivable *ratione personae*”). For the reasons set out below, we allow the appeal and reverse the Judgment of the UNDT.

Facts and Procedure

2. On 19 August 2003, Mr. M was a staff member of the United Nations who was killed while on official duties. Mr. M was killed in the terrorist bombing of the United Nations’ headquarters in Baghdad, Iraq. Ms. Larriera, who was also then a United Nations staff member, was injured in the same attack. She later made a claim for pension entitlements and also to other compensation as a result of Mr. M’s death. She applied to the UNJSPF for a widow’s benefit for herself. That was declined and she pursued an appeal against the UNJSPF’s decision to the Appeals Tribunal which was decided on 27 March 2020.² Ms. Larriera was unsuccessful before the UNAT, and although that was a final decision in respect of the pension claims, it is this Tribunal’s reasoning in that UNJSPF case which is now significant to this case. Pending that UNAT Judgment, Ms. Larriera’s proceedings before the UNDT, based not on Mr. M’s Pension Fund’s but rather on a separate claim related to a deceased United Nations staff member, had been stayed. They were revived following the issuance of the UNAT’s Judgment. Unlike Ms. Larriera’s claims to the UNJSPF which related

¹ *Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1004.

² UNAT Case No. 2019-1318.

to the Pension Fund's documentation, those in the current proceedings turn on the interpretation and application of Appendix D of the United Nations Staff Rules (Staff Rules or Rules).

3. The following summary of the UNAT's 2020 Judgment is no substitute for a reading of the Judgment but rather highlights the features of it pertinent to this appeal. The UNAT's Judgment turned on whether it had been established that Ms. Larriera was Mr. M's spouse. Mr. M, a Brazilian national, was a member of the Pension Fund at the date of his death. The UNAT recorded that Mr. M had married Ms. M, a French national, in 1973 and that they had two children born in 1978 and 1980. At no material time was the Pension Fund notified that anyone else was Mr. M's spouse.

4. The UNAT found also that Ms. Larriera, an Italian national, was a member of the UNJSPF from 1998 until 2008. She was originally recorded by the Fund as having been married to someone other than Mr. M but was later recorded by the Pension Fund as having been divorced. The Pension Fund had no report of Ms. Larriera having been married to, or otherwise in a relationship in the nature of a marriage with, Mr. M.

5. In May 2003, Mr. M initiated divorce proceedings against his then spouse (Ms. M) in a French court. An order was made for their separation and authorizing them to apply for divorce, but their marriage was not then dissolved. The French court's order was that if no application for divorce was filed within the period of six months, the provisional measure for separation would lapse. Less than halfway into that six-month period, Mr. M died. This had the effect in law of ending his marriage to Ms. M. His intention to divorce Ms. M was thwarted only by his tragic and untimely death. In 2005, the French court confirmed that its provisional orders had lapsed, and in 2012 confirmed that there had been no ending of that marriage by a judicial decree of divorce. Mr. M's widow, Ms. M, was paid a widow's benefit by the Pension Fund.

6. Ms. Larriera's claim to a widow's benefit from the Pension Fund was based on her production to it, in 2018, of a Judgment (dated 7 December 2016, and executable on 22 March 2017), of the Ninth Family Court of the Capital District, Rio de Janeiro, Brazil, to the effect that she and Mr. M had been in a "stable union" under Brazilian law from March 2001, that is for more than two years before his death.

7. The case before the UNAT turned on the interpretation of the Pension Fund's Regulations (Article 34) as to the circumstances in which a "widow's benefit" would be payable to "the surviving female spouse of a participant who...died in service, if she was married to him at the date of his

death in service or, if he was separated prior to his death, she was married to him at the date of separation and remained married to him until his death”. The UNAT concluded that both Mr. M and Ms. Larriera failed to report their spousal relationship to the Pension Fund before his death as they were required to if the Pension Fund’s records of their statuses were to be altered. This requirement arose from Pension Fund’s Administrative Rules B.2 and B.3.

8. The UNAT Judgment emphasised that it was decided pursuant to the relevant provisions of the Pension Fund’s Regulations and Administrative Rules, and not to the Staff Regulations and Rules. In response to a submission by Ms. Larriera that her case then was subject to a Secretary-General’s Bulletin (ST/SGB/2004/4) which referred to the Staff Regulations and Rules, the UNAT distinguished the Pension Fund’s governing documents which it doubted the Secretary-General could direct or influence. It is unnecessary to say more here about the UNAT Judgment.

9. This appeal before us now relating to entitlements and obligations under the Staff Regulations and Rules must be determined by reference to them, albeit informed by the UNAT’s interpretation and application of the Pension Fund’s provisions.

10. In the case now under appeal and based on the foregoing analysis of the UNAT’s Judgment in relation to the UNJSPF, the UNDT determined that Ms. Larriera’s claim was not receivable because she was not within one of the classes allowed by the UNDT’s Statute to make a claim to it. These three classes are set out in Article 3(1) of the UNDT Statute and can be summarised as being a staff member; a former staff member; or “any person making claims in the name of an incapacitated or deceased staff member of the United Nations Funds and programmes”.

11. The UNDT concluded that Ms. Larriera did not come within the first category of claimant because, when she made her claim, she was not then a staff member. She did not fall within the second category because, although a former staff member, her claim “had no relation to her contractual status”.³ Relying on the UNAT’s Judgment in *Shkurtaj*,⁴ the UNDT concluded that the facts giving rise to her complaint were not connected to her employment. Third and finally, not being the deceased’s widow, the UNDT concluded that Ms. Larriera had no standing to bring her claims in reliance on Appendix D of the Staff Rules. In these circumstances, the UNDT did not

³ Impugned Judgment, para. 33.

⁴ *Shkurtaj v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-148.

address other preliminary challenges by the Secretary-General to the receivability and validity of the claims.

12. Ms. Larriera filed her appeal on 19 November 2021, and the Secretary-General filed his answer on 21 January 2022.

Submissions

Ms. Larriera's Appeal

13. Ms. Larriera says that the UNDT erred by holding that she had no standing to apply on behalf of Mr. M as his widow based on UNAT's findings in her Pension Fund case. The UNAT's conclusions in Judgment No. 2020-UNAT-1004 are limited to the determination of her status under the Regulations of the Pension Fund. The UNAT explicitly states in that Judgment that the scope of its ruling is limited to UNJSPF benefits. The UNAT acknowledged that the Staff Regulations and Rules (like those that apply for Appendix D cases) are different and were not applicable in that earlier case, and it thereby explicitly said that its ruling did not extend to the question whether Ms. M was recognised as Mr. M's survivor under the Staff Regulations and Rules. The ruling acknowledges that under the Staff Regulations and Rules, Ms. M is Mr. M's survivor for the purpose of determining United Nations entitlements (Appendix D). The UNJSPF (in its submission to the Standing Committee), the Standing Committee itself (in its answer) and the UNAT (in its ruling) all accept the validity of the "stable union" ruling by the Brazilian court. Ms. Larriera has standing because she is, in law, Mr. M's surviving spouse, as verified and confirmed by the Organization.

14. According to Secretary-General's bulletin on "Family status for purposes of United Nations entitlements" (ST/SGB/2004/4), only the national law of a staff member should determine their marital status, and consequently in this case only Brazilian law should determine Mr. M's marital status. The Secretary-General is required to determine the marital status of Mr. M according to Brazilian law. In the course of determining Mr. M's marital status, the Administration contacted the representative of the Government of Brazil to the United Nations to inquire about the legal significance of the "stable union," which a Brazilian court determined had existed between Ms. Larriera and Mr. M. Pursuant to this inquiry, the Permanent Mission of Brazil informed the Administration that a stable union is, in Brazilian law, "equal to marriage for all legal purposes".

The Administration cannot dismiss information that it requested and that was officially provided to it by a member state.

15. Judgment No. 1041, Case No. 1061, *Conde Estua*, 30 November 2001, issued by the former United Nations Administrative Tribunal, held that it is the spouse living with the person at the time of death, and who suffered the income loss, who is considered to be the surviving spouse. In this case, Ms. Larriera shared a life together alongside Mr. M in Iraq in 2003. The Order of Separation of Mr. M with his first spouse ordered them to live separately.

16. Article 10.2(ii) of Appendix D provides that in case a deceased staff member leaves more than one widow, the annual compensation should be divided among the widows, so that she should receive half of the compensation awarded in accordance with Appendix D.

17. Additionally, on 26 March 2021, preceding the UNDT Judgment, the UNAT decision was challenged, and currently continues under challenge. Ms. Larriera has made an application for revision of judgement to “complete the extended line of reasoning adduced by the UNAT”. This includes the official registration of the “stable union” in the Civil Registries of the Federative Republic of Brazil and of the French Republic. The transcription of Mr. M’s status is now part of the official civil records of marriage of the French Government. Ms. Larriera has (on 12 February 2021) filed a motion to adduce additional evidence in support of her application for revision of the UNAT’s Judgment. Thus, the UNDT supported its Judgment by a Judgment that is now undergoing a challenge by Ms. Larriera.

18. Ms. M requests UNAT to accept the appeal, and to instruct the UNDT to proceed and address the rest of the issues that arose in the application, given that the UNDT’s interpretation of the UNAT Judgment is incorrect.

The Secretary-General’s Answer

19. Ms. Larriera relies on an expired Secretary-General’s bulletin, “Family status for purposes of United Nations entitlements” (ST/SGB/2004/4) according to which the national law of a staff member determines their marital status, and consequently, in this case Brazilian law should determine Mr. M’s marital status. ST/SGB/2004/4 was, however, replaced by ST/SGB/2004/13 (“Personal status for purposes of United Nations entitlements”) on 1 October 2004. Since then, ST/SGB/2004/13 was revised and the current ST/SGB/2004/13/Rev.1, in force at the time of the contested decision, provides that the personal status of staff members for the purpose of

entitlements will be determined by reference to the law of the competent authority under which the personal status has been established. Thus, Ms. Larriera's argument that the UNDT should have relied on ST/SGB/2004/4 to find that only Brazilian law should have determined the personal status of Mr. M, is erroneous. At any rate, UNAT had also ruled that even if ST/SGB/2004/4 was still in force, the determination of Mr. M's personal status would be based on French law because that is where Mr. M chose to marry Ms. M. Consequently, the UNDT was correct to determine Mr. M's status based on French law, as did the UNAT in its Judgment.

20. The UNDT correctly relied on the UNAT Judgment to determine that Ms. Larriera is not Mr. M's widow. UNAT explicitly stated that Ms. Larriera had no basis on which she could argue that the deceased Mr. M's marital status should be changed after his death. While Ms. Larriera is correct that the UNAT Judgment determined whether she was eligible for benefits under the Pension Fund regulations, the facts and the legal principles that underlie the UNAT Judgment apply to her current case, rendering the UNDT's reliance on the UNAT Judgment legally sound under principles of collateral estoppel. Consequently, Ms. Larriera cannot invoke the law of Brazil, being that of Mr. M's nationality, as the determinative law in the instant case to assess the validity of Mr. M's marriage to Ms. M. While the UNAT Judgment refers to "UNJSPF purposes," its holding applies with the same force to the Organization's determination of Mr. M's marital status under Appendix D. Namely, Mr. M chose to marry Ms. M under French law. That marriage was not dissolved under French law by a French court nor by the Brazilian court, nor could it be in the latter case. Consequently, the UNDT was entitled to rely on the UNAT Judgment to hold that Ms. Larriera was not Mr. M's widow and the appeal should be dismissed.

21. The Secretary-General is not required to determine the marital status of Mr. M according to Brazilian law. Ms. Larriera's contention is erroneous that because the Organization received information about Brazilian law from the Government of Brazil, it was obligated to act according to Brazilian law. To make an informed determination as to Ms. Larriera's claim for compensation under Appendix D and in accordance with the United Nations legal framework, the Organisation gathered the relevant information on which the determination was to be made. To this end, the Organization contacted the Government of Brazil and requested information on the legal significance of a "stable union" under Brazilian law. Having considered the collected information, the Organization determined that Ms. Larriera could not be considered the surviving spouse of Mr. M for the purposes of compensation under Appendix D in accordance with the United Nations Staff Regulations and Rules. This determination was made following a choice of law analysis that

determined that French law, rather than Brazilian law, is the law that should be applied to determine Mr. M's marital status. The UNDT held correctly, in accordance with the Judgment of the Appeals Tribunal, that Ms. Larriera is not Mr. M's surviving spouse under the United Nations legal framework and has no standing to bring a claim before the UNDT.

22. Contrary to Ms. Larriera's contention, the former United Nations Administrative Tribunal judgment in the *Conde Estua* case does not support her case. She argues that *Conde Estua* stands for the proposition that the spouse, who has had their income severed because of the death of the staff member, and whose life is altered as a consequence of the loss of income, should be recognised as the dependent spouse for purposes of compensation in accordance with Appendix D. However, *Conde Estua* is not relevant to the instant case. *Conde Estua* concerned a dispute between a deceased staff member's second and third wives over the right to benefits that accrued as a result of the staff member's demise. In *Conde Estua*, the deceased staff member had divorced his second wife before marrying his third wife and the deceased staff member had amended the requisite United Nations documents by removing the name of his second spouse as his beneficiary, and by designating his third spouse as his beneficiary. In the instant case, the marriage between Mr. M and Ms. M had not been dissolved and Mr. M had not removed the designation of Ms. M as his spouse beneficiary and designated Ms. Larriera in her place.

23. Furthermore, UNAT should dismiss Ms. Larriera's contention that because Article 10.2(ii) of Appendix D provides that in case a deceased staff member leaves more than one widow, the annual compensation should be divided among the widows, she should receive half of the compensation awarded in accordance with Appendix D. First, this is a novel argument which Ms. Larriera had not brought before the UNDT, and which may not be raised for the first time on appeal. Second, Mr. M was not concurrently married to two wives and, consequently, Appendix D compensation should not be shared among two surviving widows. Article 10.2(ii) of Appendix D addresses situations in which, according to the law applicable for the determination of marital status, a staff member is married to more than one spouse. However, neither French nor Brazilian law recognises polygamy. Under both legal systems, Mr. M could have had only one legal spouse at any one point in time. Thus, Ms. Larriera's claim that she should receive partial compensation as one of two legal surviving spouses is invalid.

24. Finally, an application for revision of judgment does not show an error in the Judgment. Ms. Larriera's submission that she had filed a request for revision of the UNAT Judgment and that, therefore, the UNDT should not have depended on the UNAT Judgment to support its decision, is

in error. Ms. Larriera's filing seeking revision of the UNAT Judgment does not render the Judgment any less valid or show an error by the UNDT. The UNAT Judgment is final and binding. Furthermore, the UNDT relied on the reasoning set out in the UNAT Judgment and its conclusion that the determination of Mr. M's personal status is determined by the fact that Mr. M was still married to Ms. M under French law. Not awaiting the determination of the Appellant's request for revision of the UNAT Judgment does not constitute an error in the UNDT's reasoning.

25. The Secretary-General asks that the appeal be dismissed.

Considerations

26. We start with a timeline of events relevant to these proceedings and the legal effects of instruments to illustrate the sequence and interrelationships of these.

- Appendix D: ST/SGB/Staff Rules/1/Rev.7/Amend.3 of 1 January 1993 comes into force amending ST/SGB/Staff Rules Appendix D/Rev.1/Amend.1 of 8 January 1976
- 19 August 2003 – Mr. M dies
- 1 February 2004 – ST/SGB/2004/4 comes into force
- 1 October 2004 - ST/SGB/2004/13 comes into force and abolishes prospectively ST/SGB/2004/4
- 26 June 2014 - ST/SGB/2004/13/Rev.1 comes into force but with retroactive application from 1 October 2004 and supercedes and abolishes ST/SGB/2004/13
- 1 January 2018 - ST/SGB/2018/1 (Staff Regulations and Rules) (version of Appendix D in force at the time of this Judgment) comes into force abolishing ST/SGB/2017/1 and ST/SGB/2017/1/Corr.1

27. The decision of the UNDT turned on the application of Article 3(1) of the Statute of the Dispute Tribunal which sets out three categories of persons who can bring proceedings in that forum. Excluding the first two categories (current and former staff members), the UNDT's Judgment addressed whether Ms. Larriera fell within the third category: "[a]ny person making claims in the name of [a] deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes". Ms. Larriera cannot contend that she can claim as a former staff member because the subject matter of her claim does not relate to that status or to her role as such. Despite the

apparently narrow wording of the third category of lawful claimant, its intention is clearly to at least allow claims made by, for example, the executor or other administrator of the estate, of a deceased staff member.⁵

28. It is necessary to examine the issues in this appeal on two bases. The first is Ms. Larriera's entitlement to claim under Appendix D. The second, assuming she is so entitled, is to examine her entitlement under the UNDT's Statute to appeal against the Secretary-General's refusal to grant her claim under Appendix D.

29. The entitlement to a death benefit under Appendix D of the Staff Rules crystallises (or becomes subject to the then relevant legal principles) as at the date of death of the staff member, or perhaps more precisely and correctly, immediately before the staff member's death. We do not accept the Secretary-General's proposition that this status question crystallises at the date of the decision of the claim which is some time, indeed perhaps some considerable time, after the death. The law applicable to such entitlement is that in force at that date of death, unless any subsequent changes to that entitlement have retroactive effect covering the date of death. In this case, subsequent changes to the law relating to entitlements took effect from the dates of their promulgation and did not have retroactive effect.⁶ We therefore apply the version of Appendix D in force at the time of Mr. M's death.

30. The law recording the entitlement to a benefit upon the death of Mr. M was ST/SGB/2004/4. Its coming into force postdated Mr. M's death but it recorded and acknowledged the position prior to 1 February 2004 when it came into force. The Bulletin set out the position as follows:⁷

Family status for purposes of United Nations entitlements

1. The Secretary-General has decided that family status for the purposes of entitlements under the United Nations Staff Regulations and Rules should be made *in all cases on the basis of the long-established principle that matters of personal status are determined by reference to the law of nationality of the staff member concerned*. When a staff member has more than one nationality, the Organization will recognize under

⁵ Interpreted literally, claims made in the name of a deceased staff member would severely limit the classes of persons, for example immediate family members, from making such claims.

⁶ ST/SGB/2018/1, Appendix D, Article 6.1: Transitional Measures: ...(b) For claims filed for incidents that occurred prior to the entry into force of the present revised rules, the previously applicable rules will be applied.

⁷ Emphasis added for the purpose of highlighting the provisions relevant to this case.

applicable rules the nationality of the State with which the staff member is most closely associated for purposes of the Staff Regulations and Rules.

2. This decision will continue to ensure respect for the social, religious and cultural diversity of the Member States and of their nationals.

3. As a result, a marriage recognized as valid under the law of the country of nationality of a staff member will qualify that staff member to receive the entitlements provided for eligible family members.

4. *A legally recognized domestic partnership contracted by a staff member under the law of the country of his or her nationality will also qualify that staff member to receive the entitlements provided for eligible family members. The Organization will request the Permanent Mission to the United Nations of the country of nationality of the staff member to confirm the existence and validity of the domestic partnership contracted by the staff member under the law of that country.*

31. It follows that the law of Brazil, Mr. M's national state, was to be the law determining his marital or domestic partnership status as at the date of his death for Appendix D purposes. That status, as determined subsequently by a Brazilian court of competent jurisdiction, was that Mr. M and Ms. Larriera were, as at the date of his death (and despite his still extant French marriage to Ms. M) in a domestic partnership of equal standing to a marriage.

32. Under Article 10.2 of Appendix D, Ms. Larriera met the definition of a "widow" for the purposes of receiving the relevant benefit payable upon Mr. M's death in service. She was, by the application of ST/SGB/2004/4 and Brazilian law, Mr. M's "spouse". The Brazilian court declaration considered the status of the previous (French) marriage and declared, under Brazilian law, that the Appellant and Mr. M to have had a marital status equal to that of a marriage. For these United Nations regulated purposes alone, Brazilian law determined the marital status of Ms. Larriera and Mr. M and not either the law of France or of any other jurisdiction. The United Nations Tribunals are not entitled to go behind and second guess the lawfulness of national jurisdictions' tribunals on such issues. We must apply United Nations law to those judgments. It follows that, all other considerations being applicable, Ms. Larriera was entitled to a United Nations Staff Rules death benefit arising from her and Mr. M's marital status.

33. While that analysis of the Appellant's status as a widow under Appendix D to the Staff Rules enables Ms. Larriera to be a claimant for a benefit from the Secretary-General, the second and distinct issue remains, that which also precluded her from bringing an appeal against that refusal before the UNDT. For her claim to have been receivable by the Dispute Tribunal,

Ms. Larriera had to establish that she qualified under one of the three statutory gatekeeping categories of applicant. It is indisputable that she did not qualify under either of the first two categories, as a current staff member or as a former staff member. Although in a real sense she was a former staff member, her claim did not relate to that status – it depended on the status of the late Mr. M at the date of his death. So, Ms. Larriera had to establish that she was a person entitled to bring a claim “in the name of” Mr. M. The UNDT held she could not so qualify.

34. What does the phrase “in the name of a deceased or incapacitated staff member” mean and who qualifies as such? Interpreted literally and narrowly as it may be on its plain words, this would encompass a very limited range of persons, perhaps confined to executors or administrators bringing a claim by an estate of a deceased or significantly incapacitated⁸ staff member. On such an interpretation, excluded would be potentially such persons as the deceased staff member’s widow or widower, dependent children, dependent parents – all people close to and in many cases dependent on the staff member who might be expected to benefit in the event of a staff member becoming incapacitated or dying in the course of duty. It would, however, be surprising if the General Assembly responsible for adopting this statutory wording had intended to exclude such people from appeals against refusals to pay benefits under Appendix D.

35. We have had regard to current Article 1.1 of Appendix D which sets out the objectives of the Appendix and thereby is significant in its interpretation. It provides:

Purpose and scope

The present rules provide for compensation for death, injury or illness attributable to the performance of official duties on behalf of the United Nations, as set out below. Compensation shall be provided solely to staff members and their dependants, in accordance with the terms and conditions contained in the present rules.

36. To clarify the meaning of the phrase “in the name of a staff member” under Article 3(1)(c) of the UNDT Statute, we have turned to the version of the Statute in the French language. The English and French languages are the equal official languages of the UNDT and versions of statutory documents in each should resemble each other as much as possible. Neither prevails over the other. In the case of an ambiguity or equivocality in one, the other can assist in ensuring

⁸ By “significantly incapacitated” we mean someone who is incapable of managing his or her own affairs and in respect of those, someone has been appointed to act.

that there is a congruent interpretation and application of both. The position otherwise would be at least very undesirable, if not intolerable.

37. When the relevant French provision is considered and translated to English, there is revealed an apparently stark difference between the two versions. We set out below, first, the French language provision; second the English language translation of this; and third the English language provision:⁹

(i) Par les ayants droit de fonctionnaires de l'Organisation des Nations Unies, notamment du Secrétariat de l'Organisation et des fonds et programmes des Nations Unies dotés d'une administration distincte, souffrant d'incapacité ou décédés.

(ii) *By the dependents of United Nations staff members, including those of the United Nations Secretariat and of separately administered United Nations funds and programmes, who are incapacitated or deceased.*

(iii) *Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.*

38. When seen in this way (as highlighted by us in italics) and read narrowly the English language provision may be interpreted as being of much narrower application than the French language provision. The French language provision accords more with the objectives of the version of Appendix D, paragraph 1.1 and with the broader statutory scheme for the internal justice institutions that there is a right to appeal administrative decisions of the Secretary-General. The French words “les ayants droit” is what we would describe as an umbrella phrase, encompassing broadly rather than narrowly, those who are within the dependency ambit of the deceased or incapacitated staff member and thus according with the intention of the drafters and the adopters of the Statute. The French language phrase includes elements of expectation of adherence to the moral duties and co-relative rights in a relationship of dependency upon an income-earner.

39. So, in our conclusion, the French language version of Article 3(1)(c) of the UNDT Statute informs the proper interpretation and application of the English language provision. Therefore, the apparently restricted phrase “in the name of” a staff member means, in effect, the dependant of a staff member. In that sense, the phrase “in the name of” does not mean, literally, by use of the legal name of the deceased or incapacitated staff member, but means being a dependent of the named staff member. Each case will turn on its own facts to determine whether a claimant in the

⁹ Emphases added.

UNDT is a dependent of an incapacitated or deceased staff member and not all potential claimants will qualify in an assessment of their degree of dependency. In this case as we have interpreted Ms. Larriera's entitlement to a benefit under Appendix D, she must qualify also as a lawful claimant before the UNDT. Ms. Larriera is, by the application of Brazilian law as the law of the nation state of Mr. M and as set out earlier in this Judgment, in effect a widow and a dependent of, a deceased staff member and thereby was entitled to have her appeal against the Secretary-General's administrative decision received and adjudged by the UNDT.

40. Assuming that all other regulatory prerequisites were and are in order, Ms. Larriera would have been entitled to make a claim to such payments under Article 10.2 of Appendix D. Ms. Larriera's appeal against the Secretary-General's refusal to consider her claim to an Appendix D benefit was also receivable by the UNDT.

41. We draw attention to the following provisions of Appendix D in relation to the application that was apparently made by Ms. M in respect of Mr. M's death:

Article 12. Time limit for entering claims

Claims for compensation under these rules shall be submitted within four months of the death of the staff member or the injury or onset of the illness; provided, however, that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date.

42. We record, also, the Secretary-General's concession in submissions to the UNDT that although Ms. Larriera did not herself make a claim in respect of Mr. M's death within the time prescribed for doing so, the ABCC may "in exceptional circumstances", consider a late claim.¹⁰

43. Finally, and because the UNDT did not do so, we do not opine on the other preliminary challenges raised by the Secretary-General before the UNDT. The effect of this Judgment setting aside the UNDT's Judgment, will be that these issues will now have to be addressed in that forum. Ms. Larriera has, in respect of the issues the subject of this appeal and subject to the decision of other receivability questions, a receivable claim that may now be considered by the UNDT. The Judgment of the UNDT is accordingly set aside.

¹⁰ See para 20 of the UNDT Judgment.

Judgment

44. The appeal is granted, and Judgment No. UNDT/2021/110 is reversed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Murphy

Judgment published and entered into the Register on this 17th day of November 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar