Registry's translation, the French text alone being authoritative.

NINETIETH SESSION

***In re* Soltes (No. 3)** **Judgment No. 2015**

The Administrative Tribunal,

Considering the third complaint filed by Mr Dusan Soltes against the International Labour Organization (ILO) on 20 March 2000 and corrected on 6 April, the ILO's reply of 16 June, the complainant's rejoinder of 17 July, and the Organization's surrejoinder of 23 August 2000;

Considering Articles II, paragraph 2, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are set out under A in Judgment 1833 on the complainant's first and second complaints regarding the circumstances surrounding the termination of his contract.

Paragraph 23 (b) of Annex II (Compensation in event of illness, injury or death attributable to the performance of official duties) of the ILO Staff Regulations, states:

"No claim for compensation under this Annex shall be considered unless it is submitted within six months of the injury, the manifestation and diagnosis of illness, or death, provided that where the Director-General is satisfied that a claim has been made at a later date for valid reasons it may be accepted for consideration."

On 10 June 1997 and again on 10 October 1997 the complainant appealed against the termination of his contract. The rejection of these two internal complaints by a letter of 29 April 1998 led to Judgment 1833.

On 7 November 1997 the complainant submitted a claim to the ILO Compensation Committee for compensation for an illness. Finding that he had not clearly specified on the claim form the date of the onset of his illness nor the date it was diagnosed, the Compensation Secretariat wrote to the complainant on 27 January 1998 requesting further information as to the relevant date. Also, if the illness had been diagnosed more than six months prior to the submission, he was requested to explain why his claim should nevertheless be considered.

The complainant replied on 7 February 1998. He stated that on 26 August 1996 he had suffered from high blood pressure problems and had consulted a physician in Tripoli, Libya; he had then returned to Bratislava, Slovakia, for further treatment and diagnosis and in November 1996 he had received the results of his various medical examinations and tests; on 29 April 1997 a medical examination undertaken in the Joint Medical Service of the United Nations in Vienna at the ILO's request, by a doctor acting as a medical referee, confirmed the diagnosis and treatment the complainant had received in Slovakia. In the complainant's opinion it was not until 9 June 1997, the date on which he received the medical referee's report, that his illness was officially diagnosed by a United Nations-designated medical officer.

On 2 June 1999 the Compensation Secretary informed the complainant that the Compensation Committee had examined his claim. It had decided that "November 1996 could be considered as the starting point for the purposes of the statutory time limit for the submission of compensation claims, but 9 June 1997 ... could not" and it saw no valid reason to accept his claim. He was further informed that the Director-General had accepted the Committee's recommendation.

The complainant wrote to the Compensation Secretary on 28 July 1999 requesting a reversal of that decision. On 21 September 1999 the Director of the Personnel Department wrote to the complainant on the Director-General's behalf, confirming the decision not to accept his compensation claim. That is the impugned decision. The complainant received this letter on 15 January 2000.

B. The complainant argues that the Compensation Committee erred when it took November 1996 as the date on which his illness was diagnosed. The correct date is 9 June 1997, when he received notification of his diagnosis from a United Nations-designated medical officer. Therefore, the claim he submitted to the Compensation Committee on 7 November 1997 was within the six-month time limit.

In his complaint he asks the Tribunal to award him full pay up to 24 December 1996 and half pay from 25 December 1996 to 15 January 1997. He claims full pay from 16 January to 9 June 1997 on the grounds that the ILO kept him waiting for a medical examination by an independent medical referee. He further claims under Article 11.4.3 of the Staff Regulations compensation in lieu of notice of not less than six weeks at the rate prescribed in Article 3.1(d); compensation for six weeks' accrued annual leave; the refund of travel costs he incurred when he returned to Bratislava for medical treatment or a declaration that his journey to Bratislava should be treated as repatriation and his travel costs refunded; the refund of the costs of travel from Libya to Slovakia on 23 August 1996 for his wife and daughter; the balance of the education grant for his daughter for the school year 1996-97; the financial compensation he claimed from the Compensation Committee on 7 November 1997; moral damages; and any other compensation due to him under his original contract which has not yet been paid.

C. In its reply the Organization submits that the complaint is irreceivable. Although the complainant contends that he is impugning the decision concerning his compensation claim, nearly all his claims for relief were put before the Tribunal in his first and second complaints and were rejected in Judgment 1833. They are therefore *res judicata*. Moreover, his compensation claim is also irreceivable. It was not filed within the specified time limit and although the Director-General has the discretion to grant an extension, he refused to do so in the complainant's case. Such discretionary decisions are open to only limited review by the Tribunal. Furthermore, any diagnosis by a qualified physician starts the six-month time limit and there is no requirement that a diagnosis has to be made by a United Nations-designated physician.

D. In his rejoinder the complainant objects to the ILO's representation of the facts and presses his argument that his compensation claim was filed within the six-month time limit. He criticises the ILO medical officer's handling of the case.

E. In its surrejoinder the Organization contends that it has correctly applied the Staff Regulations. The Director-General was justified in denying him an extension of the time limit for filing the compensation claim. The Organization refutes the complainant's accusations concerning the ILO medical officer.

CONSIDERATIONS

1. A national of Slovakia, the complainant joined the staff of the ILO in July 1996 under a one-year contract on a project funded by the Libyan Government. Posted to Tripoli, he was treated for high blood pressure from the month of August. On 24 September 1996 he returned to Bratislava. He subsequently obtained sick leave from 24 September to 23 November 1996, but objected that it was too short. He never returned to Tripoli. Following discussions with the Organization which are recounted in Judgment 1833 (*in re* Soltes Nos. 1 and 2), the Director of Personnel informed him on 20 May 1997 that the ILO was ending his contract and that he would receive one month's pay in lieu of notice, plus a termination indemnity. On 10 June and 10 October 1997, the complainant appealed under Article 13.2 of the Staff Regulations, challenging the conditions under which his contract had been terminated, making various financial claims and seeking compensation under Annex II of the Staff Regulations respecting compensation in the event of illness attributable to the performance of official duties. By a letter of 29 April 1998, the Director of the Personnel Department informed the complainant on the Director-General's behalf that most of his claims had been rejected; however, his compensation claim, lodged in November 1997 under Article 8.3 of the Staff Regulations, was being dealt with under a different procedure. On 2 June 1999, the Compensation Secretary informed him that the Director-General had rejected his compensation claim on the basis of the recommendation of the Compensation Committee. The latter's conclusion was that, having been submitted

more than six months after the diagnosis of the illness, the claim was outside the time-limit laid down in Article 23(b) of Annex II of the Staff Regulations. That decision was confirmed by a letter of 21 September 1999, which reached the complainant only on 15 January 2000.

2. In a complaint filed on 20 March 2000, the complainant asks for the decision of 21 September 1999 to be set aside and also puts forward numerous claims to elements of pay and indemnities which he says are due to him.

3. In its reply the ILO argues that the complaint is irreceivable on several counts. First, the decision contained in the letter of 29 April 1998 rejecting the complainant's internal complaints under Article 13.2 of the Staff Regulations has become final and can no longer be contested in a complaint filed on 20 March 2000. Furthermore, the compensation claim made under Article 8.3 of the Staff Regulations was filed over six months after the diagnosis of the illness suffered by the complainant. The Compensation Committee was therefore right to reject his claim as time-barred.

4. These objections to the receivability of the complaint must succeed.

5. First, the complainant's claims to elements of pay and indemnities to which he considers that he is entitled from the date of his sick leave until 30 June 1997, merely repeat the claims made to the ILO on 10 June and 10 October 1997. The ILO replied to them in a registered letter of 29 April 1998 which the complainant does not deny receiving; it was also attached to the Organization's reply in *in re* Soltes Nos. 1 and 2. The time limit of ninety days set in Article VII(2) of the Tribunal's Statute had therefore already expired by 20 March 2000, when the present complaint was filed.

6. Secondly, Article 8.3 of the ILO Staff Regulations provides that:

"In the event of illness or injury attributable to the performance of official duties an official shall be entitled to compensation as prescribed in Annex II ..."

Article 23(b) of Annex II states that:

"No claim for compensation under this Annex shall be considered unless it is submitted within six months of the injury, the manifestation and diagnosis of illness, or death, provided that where the Director-General is satisfied that a claim has been made at a later date for valid reasons it may be accepted for consideration."

7. When applying these provisions, the first question which arises is the date on which the illness became apparent and was diagnosed. According to the complainant, it was not until 9 June 1997 that he was informed of a diagnosis made by a United Nations-designated medical officer, so that is the date to be taken as starting the six-month period set in Annex II. According to the ILO, which points out that a diagnosis was made in August 1996 in Tripoli, it was in November 1996 at the latest that, as affirmed by the complainant himself, the results of medical examinations carried out in Bratislava established the diagnosis.

8. The Tribunal finds nothing in the dossier or the complainant's arguments to contradict the ILO's position. The diagnosis of high blood pressure was indisputably established by the examinations undertaken in November 1996 in Bratislava. The report of 5 May 1997 by a medical officer of the Joint Medical Service of the United Nations in Vienna entrusted with examining the complainant, specifying the duration of sick leave that he should be accorded, and indicating the date on which he could return to his duties in Tripoli, merely confirmed this diagnosis. Contrary to the complainant's assertions, it was not necessary to wait for an examination by a United Nations-designated physician to confirm a diagnosis already made in November 1996. The Compensation Committee rightly considered that the claim submitted on 7 November 1997 was outside the six-month period laid down in Article 23(b) of Annex II.

9. Admittedly, the Director-General had the authority to waive the time limit for the complainant if he was satisfied that the claim had been submitted at a later date for valid reasons. On the recommendation of the Compensation Committee, he did not consider it appropriate to do so, thereby exercising his power of discretion under conditions which show no error of law or of fact, nor any obvious misappraisal of facts. There is no evidence to support the complainant's criticisms regarding the role of the ILO medical officer in the handling of the case.

10. The conclusion is that all the claims must fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2000, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

(Signed)

Michel Gentot

Seydou Ba

Hildegard Rondón de Sansó

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 February 2001.