

NINETY-THIRD SESSION

Judgment No. 2161

The Administrative Tribunal,

Considering the sixth complaint filed by Mrs M. P. against the International Telecommunication Union (ITU) on 5 April 2001, the ITU's reply of 27 September, the complainant's rejoinder of 15 November, and the Union's surrejoinder of 21 December 2001;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this case are to be found in Judgment 1976 on the complainant's first complaint and also in Judgment 2070 on her third complaint, which was delivered on 12 July 2001. At the request of the ITU the President of the Tribunal ordered a stay of proceedings of the complainant's sixth complaint pending the outcome of the third one.

The complainant sustained a foot injury on 20 August 1992, which has been recognised as service-incurred. She experienced ongoing health problems. As was mentioned under A in Judgment 2070, the ad hoc Compensation Board examined the complainant's case; it recognised that she was suffering from a 10 per cent impairment of the whole person, as a result of her 1992 foot injury. In its report to the Secretary-General, dated 10 October 2000, the Board recommended paying the complainant the sum of 15,714.80 United States dollars. The Secretary-General endorsed all its recommendations and so informed her in a letter of 26 October 2000.

In a letter of 8 November the complainant asked the Secretary-General to reconsider the matter, claiming that she was suffering from a "25% loss of function". She protested that, contrary to rules on the compensation procedure laid down in Appendix D to the United Nations Staff Rules, the ITU had appointed an ad hoc Compensation Board made up of non-medical staff to decide on her case. In the absence of a reply from the Secretary-General, she filed an appeal - No. 12 - with the Appeal Board on 28 December 2000.

The complainant's contract was terminated on 29 May 2001. She was granted an invalidity pension, payable as from 30 May 2001.

The Appeal Board has not heard the above-mentioned appeal, and the complainant has filed her sixth complaint challenging the implied rejection of her appeal.

B. The complainant asks the Tribunal to examine the ad hoc Compensation Board's recommendations of 10 October 2000. She takes issue with the fact that the Secretary-General fully endorsed those recommendations without convening a medical board. In her opinion, the procedure followed did not comply with rules laid down in Appendix D; the Secretary-General adopted the recommendations of an ad hoc Compensation Board made up of non-medical staff. She contests the competence of the Board to determine that she was suffering from a "10% partial permanent invalidity", pointing out that it ignored the opinion of two orthopaedic specialists who "certified a 25% loss of function".

She also contests the amount of compensation that she was paid and the way it was calculated. The Administration, she argues, paid no heed to Staff Rule 6.2.4 which concerns compensation for disability attributable to service. And although the Board met in the year 2000 it took as the basis of its calculation the amount of pensionable remuneration that applied in 1992, which was significantly lower than that applicable at the time it met, and no interest was added.

The complainant seeks compensation under Appendix D for a 25 per cent loss of function with compound interest at 10 per cent since 1992 equivalent to 90,000 dollars. She wants the ITU to remunerate her for "the 25% of hours" worked in excess of what was appropriate considering her medical condition; pay her a "full permanent invalidity pension" both for her foot condition and depressive syndrome; pay her financial compensation on several counts; reinstate sick leave deducted in connection with her foot injury; reimburse all pending medical bills and guarantee "medical coverage" if a second operation becomes necessary. She claims damages, any other relief which the Tribunal considers justified, and costs.

C. In its reply the Union objects to the receivability of the complaint. Its purpose and cause of action are the same as in the complainant's third case and it is still related to the same facts. By dismissing that complaint, the Tribunal clearly validated actions taken by the ITU with regard to its administrative treatment of her service-incurred accident as well as the decisions subsequently taken to compensate her. The Tribunal, it asserts, has now ruled on all aspects related to the compensation procedure set up by the ITU to deal with the complainant's case.

D. In her rejoinder the complainant argues that she was totally justified in lodging this complaint; the more so because in paragraph 28 of Judgment 2070 the Tribunal stated that if she "was dissatisfied with the award [recommended by the ad hoc Compensation Board] as not being adequate to compensate her" in respect of certain claims, she should have pursued the appropriate internal appeal procedures. Her sixth complaint has arisen precisely from the internal appeal she filed to express dissatisfaction with the award. Her third complaint challenged the implied rejection of claims she submitted on 24 February 2000, whereas the sixth one challenged a decision taken only on 26 October 2000 which she could not have anticipated in June 2000 when she filed her third complaint. In her opinion it is not true that the Tribunal has ruled on all aspects related to the compensation procedure, and her complaint cannot be dismissed for reasons of *res judicata*.

E. In its surrejoinder the Union maintains its view that her complaint is irreceivable. It assumes that the complainant's objective is to have the Tribunal reexamine the fundamental decisions on which it ruled in Judgment 2070. The Tribunal has already examined the ad hoc Compensation Board's recommendations; it ruled that her claim that she must be treated as having a "25 per cent impairment of the whole person", is unsustainable.

CONSIDERATIONS

1. In her sixth complaint the complainant impugns the decision of the Secretary-General of the ITU setting the amount of the lump sum awarded to her as compensation for the work-related accident sustained by her in 1992. She seeks the following relief:

(a) Financial compensation for a 25 per cent loss of function as per Appendix D of the United Nations Staff Rules, with compound interest at 10 per cent since 1992 equivalent to 90,000 United States dollars.

(b) Compel the ITU "to refund 25% of hours worked in excess of what her medical condition enabled her to from the date of the service-incurred injury to 31 December 1996 at the G.7 level and from 1 January 1997 onwards at the G.6 level" with compound interest at 10 per cent.

(c) A "full permanent invalidity pension" for her foot condition and her depressive syndrome and "compensation under Article 11.2(d) of Appendix D".

(d)-(j) Financial compensation under several heads relating to pain experienced, mobility problems and the change in her lifestyle brought about by her injury.

(k) Financial compensation for the ITU Administration's long delays in settling this matter.

(l) Financial compensation for the fact that she was not allowed to go for an annual medical cure between 1992 to 1997 and from 1999 to date.

(m) Reinstatement of sick leave deducted in connection with the service-incurred injury.

(n) Reimbursement of all pending medical bills.

- (o) Compel the ITU to guarantee medical coverage if a second operation becomes necessary for her foot.
- (p) An award of 200,000 dollars as additional compensation for moral injury and delays; and 100,000 dollars for "bad health".
- (q) 5,000 dollars for costs.
- (r) Other relief which the Tribunal feels is justified.

2. In her third complaint which was disposed of by Judgment 2070, the Tribunal listed under 7 of that judgment the relief sought by the complainant. It was as follows:

"(1) Compensation for service-incurred injury sustained in 1992 within thirty days as per the rules governing compensation contained in Appendix D;

(2) based on 25 per cent loss of function since 1992;

(3) with compound interest at 10 per cent since August 1992.

(4) A medical board convened for 'her major depressive syndrome' - incurred as a result of psychological harassment at work - to determine the degree of invalidity.

(5) A partial (or full) permanent invalidity pension for 'service-incurred injury and service-incurred illness'.

(6) At least 25 per cent of time worked to be treated as overtime from 20 August 1992 to 31 December 1996, at G.7 level, and from 1 January 1997 to date, at G.6 level, with compound interest at 10 per cent.

(7) A reduction in working hours of at least 25 per cent.

(8)-(15) Lump-sum payments in compensation mainly for pain experienced, lack of mobility and transportation difficulties encountered since 1992.

(16) A lump sum for not having been authorised to have a three-week annual cure from 1992 to 1997 and 1999 to 2000 and reimbursement of a hotel bill dating from 1998.

(17) A three-week annual cure from 2001 onwards.

(18) Reimbursement of all pending medical expenses for service-incurred injury and illness.

(19) Compensation for delay in settling this matter.

...

(25) Absences in connection with her injury since 1992 to be treated as 'special sick leave'.

...

(30) In the event that the Tribunal decides it is not competent in this case, to order the ad hoc Compensation Board to issue an opinion on:

(a) Dr H.'s report concerning her foot condition.

(b) Her major depressive syndrome.

(c) Reduction in working hours.

(d) Special sick leave entitlement.

(e) Hours 'worked in excess of degree of invalidity', as well as the fact that she is required to see a specialist in order to obtain a medical certificate.

(31) A lump sum for costs."

3. The Tribunal made it clear in Judgment 2070 that it considered most of these items to be beyond the scope of the claims before it. It commented, however, on the principal matters as follows:

"26. In its report on 10 October 2000 the Compensation Board found: (1) that the complainant was entitled to compensation; (2) that her impairment had not resulted in a total incapacity for work; and (3) that her working environment ought to be adapted to take account of her mobility problems. It unanimously concluded, based on Dr H.'s report, that the complainant had a loss of function of the left foot of 25 per cent which corresponded to a 10 per cent impairment of the whole person. Applying the method of calculation in force within the United Nations common system the Board concluded (by a majority) that the complainant should be awarded 15,714.80 United States dollars. Her representative did not agree with the amount as it did not correspond to the complainant's expectation as to the level of damages.

27. The Secretary-General informed the complainant by letter dated 26 October 2000 of the Board's conclusions. He commented that the process had been delayed because the Board was waiting for the results of an examination requested by the Medical Adviser. He told her that he fully endorsed the conclusions of the Compensation Board and that she would be paid a lump sum of 15,714.80 dollars.

28. To revert to the claims made in the letter of 24 February 2000, the complainant's claim that in calculating the lump-sum benefit for her service-incurred injury she must be treated as having 25 per cent impairment of the whole person, is unsustainable. The unanimous conclusion of the Compensation Board, based on her own doctor's report that she suffered 25 per cent loss of function of the left foot corresponding to a 10 per cent impairment of the whole person, was made according to the rules laid down in the 'Guides to the Evaluation of Permanent Impairment' drawn up by the American Medical Association, the use of which is part of the procedure in force within the United Nations common system.

The complainant's claim for 'a lump sum benefit' has been met by the decision of the Secretary-General made on 26 October 2000 endorsing the conclusions of the Compensation Board to award her 15,714.80 dollars. If the complainant was dissatisfied with the award as not being adequate to compensate her for claims (1), (2), (4), (5) and (6) ... she should have pursued the appropriate procedures for internal appeal as provided in the Staff Rules and Regulations.

29. She argues that since she had a 25 per cent impairment of the whole person it means she was forced to work 25 per cent more than she should have done; but her plea is without foundation. She did not have a 25 per cent impairment of the whole person. Even if her argument is applied to the 10 per cent impairment of the whole person as recognised by the Compensation Board, her capacity to perform her duties adequately had not been impaired."

4. Without taking up the Union's claim of irreceivability and without deciding whether or not there is *stricto sensu* a question of *res judicata*, the Tribunal is of the view that everything that the complainant urges upon it in the present complaint has already been considered in Judgment 2070 and resolved in a manner contrary to her contentions. No purpose can be served by taking up once again matters which have already been ruled upon. The only possible exception to the foregoing is the complainant's argument that the method of calculating the compensation on her remuneration for the year 1992, rather than on her more recent earnings, was contrary to Staff Rule 6.2.4. Since that rule only requires that the compensation granted be "reasonable", her plea cannot succeed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 22 July 2002.