

NINETY-NINTH SESSION

Judgment No. 2446

The Administrative Tribunal,

Considering the second complaint filed by Ms L.L. against the World Health Organization (WHO) on 1 July 2004 and corrected on 3 August, the Organization's reply of 4 November 2004, the complainant's rejoinder of 19 January 2005 and the WHO's surrejoinder of 23 March 2005;

Considering Article II, paragraph 5, 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. The complainant, a national of Botswana born in 1957, joined the WHO in July 1991 on a short-term appointment as a secretary at grade G.4 within the Division of Emergency Relief Operations. With effect from October 1991, her appointment was converted into a two-year fixed-term appointment, which was subsequently extended several times, on the last occasion until 31 October 2006. She has held grade G.5 since 1 March 2003.

In 1996 the complainant fell ill and in October of the same year she was diagnosed as suffering from tuberculosis. In a letter of 16 July 1997 she asked for her illness to be considered as service-incurred, due to a very stressful period of work and the fact that she had been in close contact with the participants of a course she had helped to organise in 1995 and 1996. She was informed in a memorandum of 17 December 1997 from the Secretary of the Advisory Committee on Compensation Claims (ACCC) that her case had been reviewed by the Committee and that, in accordance with the recommendation it had made, the Director-General had decided to reject her claim. On 11 March 1998 the complainant requested that her case be referred to a medical board. In a memorandum of 8 May 1998, she informed the Secretary of the Advisory Committee that she considered that the stress she had suffered at work was the main cause of her debilitation and, as a result, of her contracting tuberculosis.

The medical board which met in March 1999 replied to the questions which had been put to it. In the light of those replies, the Advisory Committee, on 7 May, recommended rejecting the complainant's claim. She was informed in a memorandum of 1 June from the Secretary of the Committee that the Director-General had endorsed that recommendation.

On 3 June 1999 the complainant's physician, Dr C., who had been a member of the medical board, wrote to the Secretary of the Advisory Committee that, while the likelihood that she had contracted her illness during a professional contact was, in his view, not sufficiently great for the illness to be considered as service-incurred, he considered that from a medical point of view there was "no doubt that any person who is seriously debilitated physically or psychologically is more exposed to infections, including tuberculosis". In his view the answer given had been "undoubtedly incomplete" since the board had not considered this last point, which was not covered by the question put to it, and he asked the Secretary of the Advisory Committee to "give consideration to [...] the working conditions" of the complainant during the period concerned.

On 18 June 1999 the latter asked the Director-General to return the file to the Advisory Committee for a full examination. On 2 July the Secretary of the Committee drew the complainant's attention to the fact that three questions had been put to the medical board. Then, following an exchange of correspondence, the Secretary informed her on 17 September 1999 that the Director-General considered that there would be no justification for referring the case back to the Advisory Committee, since the members of the board had seen her letter of 16 July 1997 and her memorandum of 8 May 1998, and since the questions asked had been sufficiently broad to encompass stress.

On 31 August 1999 the complainant had challenged the decision of 1 June before the Headquarters Board of Appeal. In its report dated 3 April 2000, the latter concluded that there was no indication that the members of the medical board had taken due account of the complainant's claim that her illness was the result of debilitation

caused by stress experienced at work. It therefore recommended that a new board be convened to consider that claim. On 5 July 2000 the Director-General informed the complainant that she had exceptionally decided to follow that recommendation.

The Secretary of the Advisory Committee sent the complainant two memoranda, dated 2 and 4 October 2001, informing her that the medical board, which had met on 3 May 2001, had decided that the information in its possession did not permit it to consider that her working conditions had contributed to her illness, but that it would be useful to conduct an investigation to determine whether those conditions were “unacceptable”. The board had also indicated that the matter should be referred back to it only if the “working conditions proved to be particularly serious and excessive”. The Secretary informed the complainant that, on the recommendation of the Advisory Committee, which had met on 27 June 2001, the Director-General had decided that an investigation into her working conditions during the period from mid-1995 to October 1996 should be conducted by an independent person from outside the Organization. In their report of October 2002 the external consultants who were eventually appointed stated that they had not observed any significant facts which provided evidence of particularly difficult working conditions. They had, however, observed “some especially abusive forms of conduct at the management level”, though this did not in their view constitute harassment.

In a memorandum of 29 March 2004 the Secretary of the Advisory Committee notified the complainant that this report had been referred to the members of the medical board for their views. She mentioned that one of the members did not wish the matter to be considered further by the board, and that the complainant’s own physician had stated that he considered that the role of the physician in this case had finished and that there was no point in convening a new board. The Secretary added that, in accordance with the unanimous recommendation of the Advisory Committee, which had met on 11 December 2003, the Director-General had decided to reject her claim. That is the impugned decision.

B. The complainant refers to the Tribunal’s case law, according to which the opinion of a medical board may be challenged, particularly if there is failure to ascertain an essential fact. She maintains that the first board did not examine the element of stress in her working conditions. In her view, this is illustrated by the fact that in 2000 both the Board of Appeal and the Director-General had recommended convening a new medical board. Furthermore, her own physician had noted, on 12 April 2002, that the matter would be submitted again to medical experts if the external consultants considered that her working conditions were “abnormal and particularly stressful”. According to her, this has been confirmed by the consultants’ report. She therefore feels that there are grounds for convening a new medical board. She considers, moreover, that it was arbitrary to restrict the consultants’ review of her situation to the period June 1995 to October 1996 even though she had consistently stated that she had encountered difficulties at work since 1993.

She then argues that conclusive evidence that an illness is service-incurred is not required if, on the evidence taken as a whole, it seems more likely than not that some or all of the staff member’s symptoms were caused by the exercise of her duties. Only a causal link needs to be shown.

Lastly, she refers to Judgment 620 in support of her argument that, even if her illness cannot be attributed with certainty to the performance of official duties, damages may still be allowed.

The complainant asks for the impugned decision to be quashed, for a medical board to be convened to decide on the relationship between her illness and the stress experienced in her workplace from 1993 to 1996, for moral damages and costs.

C. The Organization submits that its decision to reject the complainant’s claim is not flawed in any way. It argues that it complied strictly with the material rules and with the procedure for processing claims for compensation for service-incurred illness.

The defendant maintains that the complainant’s claims for the medical board to be reconvened and for moral damages have no basis. In its view the complainant has not provided evidence, as required by the WHO Manual, of a direct causal link between her illness and the performance of her official duties. This had in fact been noted by her own physician in a letter of 12 November 2003, in which he recalled that the medical board had “stated clearly that the likelihood of the illness [...] being considered as service-incurred [were] practically nil in all the circumstances considered”. Moreover, the Tribunal, which may not replace the medical board’s assessment of medical questions with its own, may only verify that the procedures are correctly applied and that the board’s

report is not flawed. Given that contrary to the complainant's assertions, the first medical board took full account of all the relevant facts, and considering that the second board met specifically to consider her claim that stress at the workplace had caused debilitation which in turn had led to her illness, the Organization considers that the allegation that this claim was not taken into consideration is puzzling.

With regard to the period from June 1995 to October 1996 for which the external consultants were to review the complainant's situation, the defendant explains that it was the complainant herself, in her letter of 16 July 1997, who had mentioned the tasks she had taken on during the two previous years.

D. In her rejoinder the complainant criticises the Administration for having constantly shrouded the medical board's proceedings in secrecy, refusing to allow her to examine the questions put to the doctors and to communicate the board's reports. She maintains that, in view of the time taken by the Administration to process her initial request submitted in 1997, moral damages are justified, and she presses her claims.

E. In its surrejoinder the Organization reiterates its arguments and asserts that the complainant had access to all relevant information pertaining to the questions put to the medical boards and to their conclusions.

CONSIDERATIONS

1. The complainant is a staff member of the WHO. Her complaint is against a decision of the Director-General, conveyed to her by the Secretary of the Advisory Committee on Compensation Claims (ACCC) on 29 March 2004, rejecting the claim that she had contracted an illness because of her work.
2. The complainant began working as a secretary at grade G.4 in July 1991, at first on a short-term contract and subsequently on fixed-term contracts. In October 1996, the complainant was diagnosed as having tuberculosis. On 16 July 1997 she requested that the tuberculosis be recognised as service-incurred. In support of her claim, she cited a very stressful working period and close contacts with participants at a one-month training course she had helped organise in 1995 and 1996. The ACCC reviewed her claim, even though it was submitted outside the time limit. The Committee recommended to the Director-General to reject the request and the latter rejected it on 17 December 1997.
3. On 11 March 1998 the complainant requested that her case be referred to a medical board pursuant to WHO Manual provision II.7, Annex E, paragraph 29(b). On 2 March 1999 a medical board met; it was composed of three doctors, including the complainant's physician, Dr C. The board's decision was unanimous. On the origin of the infection, it found that cases of tuberculosis were reported in the city where she lived (Geneva, Switzerland), and in the country where she came from (Botswana), where tuberculosis is endemic; she could therefore have contracted the disease during a visit to that country. It concluded that her involvement in the organisation of courses did not expose her more than her other professional activities.
4. On 7 May 1999 the ACCC met a second time. After considering the conclusions of the medical board, it concluded that the complainant's tuberculosis was not to be considered as service-incurred. The Director-General agreed and rejected her claim on 1 June 1999.
5. According to Dr C., the question of whether stress was the main cause of her debilitation and, as a result, of her contracting tuberculosis had not been considered or answered by the board. The complainant therefore requested that her case be sent back to the ACCC. However, the Director-General considered that the case had been thoroughly reviewed and refused the request.
6. The complainant filed an appeal with the Headquarters Board of Appeal against the 1 June 1999 decision and she argued essentially that the stress factor was not mentioned in the medical board's report. A complaint was also filed with the Tribunal but it was withdrawn.
7. In the Board of Appeal's report, although the appeal was filed outside the time limit, it was concluded that in the absence of an express indication that the question of stress had been examined, another medical board should be convened. The Director-General decided to accept the recommendation and convened another medical board.
8. The medical board concluded that the information available to them did not permit them to consider that the working conditions of the complainant played a role in her illness. However, in view of the specific request of the

complainant, they considered that an enquiry would be useful to determine whether her working conditions were unduly stressful. The medical board also specified that they did not consider it necessary to review the file after the investigation unless the “working conditions proved to be particularly serious and excessive”.

9. On 27 June 2001, in the third review by the ACCC, the latter recommended that an investigation should be done by an independent person. That recommendation was accepted by the Director-General.

10. That investigation took place between March 2001 and October 2002; a report was subsequently issued. The report, although it concluded that there was no evidence of harassment, was extremely critical of the WHO’s management as regards the complainant. The relevant part of the report’s summary reads:

“Following an analysis of [...] interviews and [of] the various documents produced during the procedure, this audit comes to the conclusion that there existed a major interpersonal conflict between certain members of the management and the [complainant].

It draws attention to various acts at the management level of sufficient seriousness which, if exercised over a long time and in a unilateral and repetitive fashion towards a staff member, would constitute “harassment”. In our opinion, such acts point to real deficiencies in the style of human resources management within the department [...].

This case has revealed behaviour that is aggressive, disrespectful, and even highly derogatory or despicable.

Moreover this report highlights inadequate conflict management by the departmental management [...]. It excludes, however, all conduct of harassment on the part of the [complainant’s] immediate management.”

11. Notwithstanding these criticisms, the following conclusions were reached in the report: “[w]e do not observe any significant facts which provide evidence of particularly difficult working conditions for [the complainant]”; “[o]ur conclusion is that the accusation of psychological harassment in the workplace cannot be upheld”; “[h]owever, we emphasise the serious nature of the management’s abusive attitudes”.

12. The medical board was given the opportunity to consider the report and give its opinion. It did not do so. Instead, as appears from a letter addressed by the complainant’s nominee on the board to another member, it seems to have informally concluded that their role as physicians had finished and that there was no point in convening another board.

13. The ACCC met on 11 December 2003 for a fourth review. It unanimously concluded that there was no evidence to support the complainant’s claim. The Director-General accepted that recommendation. That is the impugned decision.

14. It is not necessary to consider all of the complainant’s arguments or her prayers for relief other than her request that the medical board be reconvened. That request is clearly well-founded. Although it may appear that two of the members of the board had informally reached the view that they need not consider the consultants’ report, that opinion was not reached after proper consultation and consideration by the whole board. It also does not appear that the two members who considered the matter asked themselves the relevant question, namely whether the facts revealed by the report were indicative of sufficiently stressful working conditions to lead to the medical opinion that the complainant’s illness was service-incurred. The view expressed in the board’s previous report that the board did not need to review the results of the investigation unless the working conditions were “particularly serious and excessive” simply begged the question as to the seriousness of those conditions. The inconclusive and contradictory nature of the consultants’ report, which does not address the issue of stressful working conditions, required far more than a mere summary dismissal. The question as to whether or not the complainant was the victim of harassment is collateral to the issue of her stressful working conditions and is not determinative of the latter.

15. The matter must be referred back to the board to consider the consultants’ report and, based thereon, give the requisite medical opinion. If the present board is unable or unwilling to do so, the WHO must take appropriate steps to have a new board appointed. As there has not yet been a final decision on the complainant’s claim, an award of moral damages would be premature.

DECISION

For the above reasons,

1. The impugned decision is set aside and the matter shall be remitted to the WHO to act as required under 15 above.
2. The WHO shall pay the complainant's costs in the amount of 10,000 Swiss francs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet