

S. (No. 6)

v.

IAEA

122nd Session

Judgment No. 3650

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Ms H. S. against the International Atomic Energy Agency (IAEA) on 24 September 2013 and corrected on 21 November 2013, the IAEA's reply of 5 March 2014, the complainant's rejoinder of 23 May, the IAEA's surrejoinder of 4 September, the IAEA's additional submissions of 15 December 2014 and the complainant's final comments of 28 January 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings;

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

The complainant contests the refusal to pay her interest on reimbursement of medical costs.

The complainant, a staff member of the IAEA, submitted claims for medical expenses on 9 January 2012 and 28 March 2012, pursuant to Appendix D (rules governing compensation in the event of death, injury or illness attributable to the performance of official duties) to the Staff Regulations and Staff Rules.

On 28 June 2012 she was informed that the Director General had decided that "the medical expenses to establish a treatment plan for the first half [of] 2012 be reimbursed". On 19 July she asked the Director

General to review his apparent decision to reject her claim and to reimburse her medical expenses in full “with interest of 8 % from [the] date of initial submission”. In early August she was informed that her medical expenses would be reimbursed (except for claims in relation to one form of treatment and a particular therapy), and payment was made late August. On 20 September she wrote again to the Director General asking to be paid 8 per cent interest on her medical expenses from the date of payment, in cash at the time of treatment, until reimbursement by the Agency late August 2012. She argued that interest was payable on the medical expenses because they were in relation to service-incurred injuries and compensation under Appendix D intends complete restitution of costs.

On 19 October 2012 she was informed that the Director General had decided not to reimburse the interest claimed on the ground that a similar claim for interest she had made in 2009 was rejected. In November 2012 she requested the Director General to review his decision.

By a letter of 4 January 2013 the Director General rejected her request for review stating that Appendix D did not provide for the payment of interest on reimbursement of medical expenses, nor was it the IAEA’s practice. On 22 January she filed an internal appeal with the Joint Appeals Board (JAB). In its report of 10 June, the JAB concluded that there was no basis upon which she could have expected to be paid interest on the reimbursed medical expenses, and that the procedure in place to process claims for reimbursement of medical expenses was correctly implemented without any undue delay on the part of the IAEA. It therefore recommended dismissing the appeal.

By a letter of 2 July 2013, which is the impugned decision, the Director General informed the complainant that he had decided to accept the JAB’s conclusions, and to reject her appeal.

The complainant asks the Tribunal to set aside the impugned decision, and to award her material damages and interest. In addition, she claims moral damages and costs.

The IAEA asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant suffered work-related injuries while employed by the IAEA. Under Article 16 of Appendix D of the Staff Regulations and Staff Rules the complainant was entitled to payment of medical expenses resulting from those injuries. The Article provided:

“An official shall be entitled to payment of medical expenses resulting from illness or injury within the scope of these rules which are determined by the Agency to be reasonable on the basis of evidence submitted.”

2. In the period October 2011 to February 2012 medical expenses were incurred in the treatment of the complainant. Mostly, though not in every instance, 80 per cent of the amount expended was paid by an insurance company and the residue was paid by the complainant. On 9 January 2012, the complainant sought payment under Article 16 for amounts that she had paid concerning treatment between early October and late December 2011, and on 28 March 2012, sought payment for amounts that she had paid concerning treatment between late December 2011 and late February 2012.

3. By memorandum dated 28 June 2012 the complainant was informed that some of the amounts claimed would be paid. On 19 July 2012 the complainant sought review of what she characterised as the implied decision to reject the balance of her claims. She also sought the payment of interest of 8 per cent from the date of her initial submission of the claims to the date of payment. In early August 2012 the complainant was informed that all amounts claimed (except for claims in relation to one form of treatment and a particular therapy) would be paid and this, in fact, occurred on 29 August 2012. However interest was not paid.

4. Without detailing all the events concerning the complainant's claim for interest, they culminated in a report of the JAB recommending that the Director General adhere to his decision communicated to the complainant on 4 January 2013 that no interest would be payable on the amounts reimbursed by the IAEA. The Director General accepted this

recommendation and this was communicated to the complainant by letter dated 2 July 2013. This is the impugned decision.

5. At the forefront of the complainant's argument is the proposition that she is legally entitled to the payment of interest from the date the claim for reimbursement was first submitted to the date of reimbursement, although the relief sought in the complaint is interest from the time the complainant actually paid for the medical treatment. It is really only a secondary argument, it appears, that interest is payable in circumstances only when there has been delay or unreasonable delay in meeting the claim. However as the IAEA points out in its submissions, there is no express provision in the Staff Regulations and Staff Rules for the payment of interest on sums claimed under Article 16. Any right to the payment of interest must be a right arising by implication.

6. Plainly enough, having regard to its terms, the right to payment of medical expenses arising under Article 16 is conditioned by the consideration of any claim for payment by the organisation of whether the medical expenses incurred were reasonably incurred, which would include the consideration of any evidence furnished supporting a conclusion that they were reasonably incurred. Thus the right to payment of medical expenses cannot be said to be a right to an immediate payment of the claimed amount. Accordingly there is no room for the implication of a right to interest either from the time the medical expense was actually paid by the staff member or from the time the staff member lodged a claim for reimbursement.

7. When a claim is made for payment under Article 16, the IAEA is under a duty to consider and process the claim within a reasonable period. This is particularly so because the payment claimed is for the reimbursement of an amount paid by a staff member where the ultimate liability to pay the amount rests on the organisation because the payment is in respect of an illness or injury which is work-related. However, and as the complainant herself points out in her rejoinder, there would be considerable if not insuperable problems in identifying the point of time from which interest, in circumstances of unreasonable delay, would be

payable. The better view is that any recompense for the breach of a duty to consider and process a claim within a reasonable period would not be founded on an implied right to interest but rather, arguably, should be regarded as damages for the breach of the duty. However, those damages may well prove to be an amount equal to the interest payable on the amounts involved. But the repeated claims she made to the organisation and pursued in her internal appeal were claims for interest, based on a legal right to interest, irrespective of whether there was unreasonable delay.

8. One specific argument advanced by the complainant was based on Judgment 2282 in which the Tribunal ordered that the IAEA pay the disputed terminal allowances plus interest from the date on which each claim for terminal allowance had been filed by the complainant. In this matter, the complainant noted that under the Staff Regulations and Staff Rules there was no entitlement to interest in relation to the payment of terminal allowances. However the Tribunal notes that that case involved the awarding of pre-judgment interest from the date the cause of action accrued. This is a power not infrequently exercised by courts. However Judgment 2282 does not support a proposition that a right to payment of an amount under the Staff Regulations and Staff Rules carries with it a right to payment of interest from the time the amount was claimed to the time it was paid.

9. For the preceding reasons, the complainant's arguments should be rejected and her complaint dismissed.

One procedural issue should be noted. The IAEA seeks the joinder of this complaint with a number of other complaints recently filed by the complainant. This is opposed by the complainant. While there is a broad relationship between the facts and issues raised in the other complaints and those raised in these proceedings, the specific facts relevant to these proceedings are extremely narrow in compass given that the legal issue raised is, itself, narrow in compass. At base, the relevant facts are that claims were made for reimbursement under Article 16 and it took some time for the claims to be met and payment made. The legal issue is whether the complainant is entitled to interest on the amounts paid. This is not a case where joinder is warranted.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 4 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ