

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

K. (No. 2)

v.

WHO

137th Session

Judgment No. 4763

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms Z. K. against the World Health Organization (WHO) on 30 July 2020, WHO's reply of 12 November 2020, the complainant's rejoinder of 30 November 2020 and WHO's surrejoinder of 1 March 2021;

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

Having examined the written submissions;

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

The complainant challenges the decision to reject her claim that her illnesses be recognized as service-incurred.

Facts relevant to this case may be found in Judgment 3919, delivered in public on 24 January 2018, on the complainant's first complaint. Suffice it to recall that the complainant joined WHO in February 2003. From September 2010 until December 2011, she worked as Procurement Assistant at grade G-6 under a fixed-term appointment. On 15 September 2011, she was informed of the abolition of her post and the termination of her fixed-term appointment on 31 December 2011. She was subsequently offered two successive temporary appointments, the first running from 6 March 2012 to 16 September 2012 and the second from 17 September 2012 to 16 June 2013. As she was absent on sick leave when her last temporary appointment came to an end, her

separation was deferred and her appointment was extended. Finally, it was terminated on 31 August 2013, at which point the complainant separated from WHO.

On 1 February 2011, she moved to office L-256 at WHO Headquarters (Geneva), which she occupied until the end of November 2011. In March 2011, she started suffering from severe allergies and periodontal problems. On 20 February 2013, she submitted a claim under the “Rules governing compensation to staff members in the event of death, injury or illness attributable to the performance of official duties” (WHO e-Manual, III.20, Annex 7.E), seeking compensation for the service-incurred illness “giant allergic urticaria, degradation of periodontal state (since March 2011)” which, according to her, had been caused by her working environment in office L-256. She provided all the medical reports from her treating physician and dentist.

On 20 February 2014, the Advisory Committee on Compensation Claims (ACCC) reviewed the complainant’s claim and concluded that it had been submitted after the applicable six-month time limit and was thus time-barred, and that the complainant had not provided valid reasons for the delay. The ACCC also noted that the documentation was not sufficient to establish a causal link between the complainant’s office situation and her allergies and periodontal problems. It asked the Director-General to consider whether the reasons provided by the complainant for the late submission of her claim were valid, in which case the claim would be sent back to the ACCC for consideration on its merits; failing that, it recommended that the claim be rejected as time-barred. The ACCC’s recommendation was submitted to the Director-General on 12 March 2014. On 13 March 2014, the former Director-General decided to reject the complainant’s compensation claim as time-barred and the complainant was relevantly informed by a letter of 14 March 2014.

On 13 May 2014, the complainant filed a Notice of Intention to appeal the Director-General’s decision, and on 9 June 2014, she filed her formal statement of appeal. In its report of 18 June 2015, the Headquarters Board of Appeal (HBA) recommended that the Director-General dismiss the appeal, but that the complainant be awarded

5,000 Swiss francs in moral damages for the delay in handling her compensation claim and for the failure to conduct an exit medical examination. By a letter of 11 August 2015, the former Director-General notified the complainant of her decision to accept the HBA's recommendations. That is the impugned decision in the first complaint.

In its Judgment 3919, the Tribunal found that, in arriving at the conclusion that there were no valid reasons for the claim to be accepted for consideration, the former Director-General did not take into consideration that the progressive nature of the complainant's illness and all of her relevant surrounding personal circumstances presented valid reasons for making the claim for compensation on the date that she did. Accordingly, it decided to set aside the Director-General's decisions of 11 August 2015 and 13 March 2014, to remit the complainant's claim for compensation to WHO for the ACCC's consideration of whether the complainant's two identified illnesses could be attributed to the performance of official duties, and to award her moral damages in the amount of 7,500 Swiss francs, as well as 5,000 Swiss francs in costs.

Between February and August 2018, the parties engaged in discussions towards an informal resolution of the case, but no agreement was reached. On 13 September 2018, the Administration referred the case to the ACCC, which, in its report of September 2019, concluded that the illnesses suffered by the complainant could not be considered to be directly related to the performance of official duties and therefore recommended that the illnesses not be recognized as service-incurred. The Director-General accepted the ACCC's recommendation in a decision dated 1 October 2019. The complainant appealed this decision with the Global Board of Appeal (GBA) on 4 November 2019, requesting that it be set aside, that her claim be reviewed by a medical board composed of three qualified medical practitioners, according to WHO e-Manual, III.20, Annex 7.E, that she be granted compensation for the material and moral injury allegedly suffered, including reimbursement of her medical bills, that she be reinstated within WHO's Staff Health Insurance, that she be awarded costs and that she be paid interest at the rate of 5 per cent per annum on all amounts due.

In its report of 14 April 2020, the GBA concluded that, considering that there was in fact a conflict of opinion in respect of medical aspects, and taking into account the case law limiting the Tribunal's power of review in medical matters, the appropriate action to settle the matter definitively was to set up a medical board in accordance with paragraph 29 of WHO e-Manual, III.20, Annex 7.E for a final assessment. It recommended convening such board and awarding a sum of 1,000 Swiss francs in costs to the complainant, subject to the provision of invoices and proof of payment. By letter of 12 June 2020, the new Director-General decided to accept the GBA's conclusions and recommendations. That is the impugned decision in the present complaint. Even though the complainant agrees with the decision to refer her case to a medical board, she contests the conclusions of the GBA and objects to the Administration's assertions that "her case has been reviewed in detail and that all of the relevant facts of her case had been taken into account".

The complainant asks the Tribunal to accept the complaint "as an exception on legal and on compassionate grounds" and to address it on its merits, to recognize that WHO undisputedly breached its duty of care, that the Administration incompletely executed Judgment 3919 and that she suffered personal and institutional harassment resulting in an unlawful termination of her fixed-term appointment and causing her unnecessary pain over an extensive period of time, and to ensure the "right to an effective remedy for acts violating the fundamental rights". She requests the setting aside of the impugned decision, of the previous decision of 1 October 2019 and of the ACCC's report, her reinstatement as of 31 December 2011 to a position corresponding to her competencies, grade and qualifications, as well as the restoration of her affiliation to the WHO's Staff Health Insurance, and to order that WHO provide further assistance in her career development. She further seeks reimbursement of all of her incurred medical and dental bills and surgery, an award of exemplary and moral damages (including for delays in dealing with her claims), material damages in an amount equivalent to what she would have earned if her contract had not been terminated, together with interest and taking into account the loss of pension benefits and future earnings, and financial compensation for

the Administration's delayed responses and denial of access to decisive information. She also asks the Tribunal to "[c]onsider further financial compensation for the lack of assistance and duty of care, for professional and medical negligence by the Administration, for the initial denial of the claim, for causing harm and pain, and for professional, personal, financial and moral prejudice suffered by [her]". Finally, the complainant claims costs in respect of the internal appeal and the complaint submitted to the Tribunal in an amount of 15,000 Swiss francs, the payment of interest at 5 per cent per annum on all amounts due, and such other relief as the Tribunal determines to be just, necessary and equitable.

WHO notes that the complainant seeks to expand her claims far beyond the scope of the impugned decision and requests that the scope of the Tribunal's review be restricted to its findings in Judgment 3919. It contends that some of the complainant's claims are time-barred, some are superfluous and premature or based on an incomplete set of facts, others are barred by *res judicata* as they were already addressed and settled in Judgment 3919 and some others were either withdrawn by the complainant or determined by the former Director-General. WHO requests the Tribunal to dismiss the complaint as premature, irreceivable and without merit. Should it decide to examine the complaint in whole or in part, the Organization considers that the scope of the review should be limited to the administrative aspects arising since 24 January 2018.

CONSIDERATIONS

1. The complainant has applied for oral proceedings under Article 12, paragraph 1, of the Tribunal's Rules by ticking this option in the complaint form. The Tribunal observes that the parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. Thus, the request for oral proceedings is rejected.

2. The following discussion proceeds against the background already set out in the facts described above. Firstly, it is desirable to establish the scope of the present complaint. The complainant challenges both the decision of 12 June 2020 and the initial decision of 1 October 2019. She does not contest the 12 June 2020 decision in its entirety, namely, she accepts that decision to the extent that her case is referred to a medical board, but she objects to the Organization's assertions that "her case has been reviewed in detail and that all of the relevant facts of her case had been taken into account". She further objects to the Global Board of Appeal (GBA)'s assertion that "[it] did not identify an error or an oversight of essential facts in the [Advisory Committee on Compensation Claims (ACCC)]'s review, nor does the [complainant] specify any" and that "the ACCC process was followed and that the evidence was assessed appropriately". The complainant submits that the ACCC's recommendation to the Director-General lacks any substantive basis and detailed factual justification and that it should therefore be set aside as flawed. The Tribunal notes that the initial decision of 1 October 2019, which rejected the complainant's claim for compensation, was overtaken in its entirety by the 12 June 2020 decision, in which the Director-General has accepted to convene a medical board. The Tribunal further notes that, in the GBA's recommendation, there is no relevant assessment that the ACCC's recommendation was without flaws. The GBA's recommendation only relevantly states that "the key contention in this case [was] whether the illnesses suffered by the [complainant were] service-incurred or not. It therefore recommend[ed] convening a medical board to make that final determination". Moreover, in the decision impugned in the present complaint there is no statement as quoted by the complainant that "her case has been reviewed in detail".

In light of the foregoing, the Tribunal concludes that:

- (i) the complainant cannot challenge the 1 October 2019 initial decision since it has been completely overtaken in her favour by the 12 June 2020 decision;

- (ii) the complainant cannot challenge the ACCC's recommendation, which was endorsed by the 1 October 2019 decision, as that recommendation has no legal effect;
- (iii) since the complainant does not impugn the 12 June 2020 decision to the extent that it agrees to convene a medical board, it can be inferred that she has accepted that her case be examined by a medical board. Indeed, in her internal appeal of 4 November 2019 she also specifically requested the convening of a medical board. As a result, she cannot, at this stage, contend on the merits that her illnesses are service-incurred as the internal process of assessment of her medical condition has not yet been finalized; and
- (iv) accordingly, all of the complainant's pleas concerning the 1 October 2019 decision are moot (since the decision has been superseded) and any pleas concerning the question of whether her medical condition was service-incurred relating to the 12 June decision are premature, since, in the end, the Director-General did not decide on this matter but decided to refer it to a medical board.

The 12 June 2020 decision, even though taken after an internal appeal process, refers the case to a medical board and is only a step in the process, not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal (see, generally, Judgment 4636, considerations 4 and 5). Therefore, the complaint is irreceivable.

- 3. As the complaint fails, the complainant is not entitled to costs.
- 4. In light of the foregoing, the complaint will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 31 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER