

G.
v.
IOM

138th Session

Judgment No. 4838

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. M. G. in his capacity as legal guardian of Mr D. T. O., the only son and successor-in-title of the late Mr P. S. G., against the International Organization for Migration (IOM) on 29 June 2021, IOM's reply of 25 February 2022, the complainant's rejoinder of 31 March 2022 and IOM's surrejoinder of 4 July 2022;

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 dismiss his claims for material and moral damages in connection with the death of his brother, a former staff member of IOM.

The complainant's brother, Mr P. S. G. ("the staff member"), joined IOM in 2011. At the material time, he was working at the IOM Mission in Burundi under a six-month special short-term contract as a database officer at grade P-2. His duty station was Bujumbura.

On the evening of Friday 1 February 2019, the staff member and a group of IOM colleagues travelled to the neighbouring province of Gitega for a social event unrelated to work. When they returned to the duty station the following day, the staff member and two of his

colleagues felt unwell, but he was the only one of the group who did not report for work on the morning of Monday 4 February 2019. That day, he informed his first-level supervisor that he was feeling unwell and would not come to work. He sent her a similar message on the following Wednesday. On the Thursday morning, he again wrote to his first-level supervisor and sought permission to take an additional two days of sick leave. She replied that he would need to obtain a medical certificate for these additional days of leave and she asked him to consult a doctor that day. When the staff member's second-level supervisor contacted him on the Thursday afternoon, the staff member told him that he was feeling better and would go to the office the following day. However, on Friday 8 February, the staff member informed his first-level supervisor that, although he had obtained some medication, he was still feeling weak and would not come to work that day. His supervisor again reminded him that he would need to provide a medical certificate.

On the morning of Sunday 10 February 2019, private security guards at the staff member's residence called IOM's Staff Security Unit to report that the staff member was very unwell and needed urgent attention. IOM security staff rushed to his residence, but by the time they arrived he was dead. An autopsy subsequently established that the cause of death was severe gastroenteritis, due to possible bacterial infection.

At the time of the staff member's death, his son, D., was aged 13. The complainant was appointed as D.'s legal guardian by the authorities of the staff member's country of origin (the Republic of South Sudan). In the months following the staff member's death, the complainant and two of his sisters (N. and L.) had various exchanges with IOM concerning practical matters such as the arrangements for the autopsy and for repatriation of the staff member's body to South Sudan, and also seeking clarification about the circumstances of his death, as there appeared to be some inconsistencies in the information they had received.

In June 2020, N. submitted a complaint to IOM's Ethics and Conduct Office alleging negligence on the part of the Chief of Mission in Burundi, which had "led to the wholly preventable death of [her] brother", and breach of IOM's duty of care. This complaint was reviewed by the Office of the Inspector General (OIG) and was rejected as unfounded in an email of 7 October 2020.

On 3 November 2020, IOM wrote to the complainant and his sister L. to inform them that the staff member's terminal emoluments, totalling approximately 17,300 United States dollars, would be paid to them, as the staff member had designated them as his beneficiaries. IOM asked them to supply their bank details and to sign a "Discharge Statement" to enable this payment to be processed. One of the clauses of the Discharge Statement provided that, upon receipt of that sum, they would release IOM from "any further financial or other liability in relation to the employment of [the staff member]".

On 14 May 2021, the complainant, L. and N. (though the latter was not a beneficiary) informed IOM that they would not sign the Discharge Statement unless the clause releasing the Organization from liability was deleted. They also claimed, for the first time, a total of 2,100,000 United States dollars in material and moral damages on behalf of the staff member's son, D.. On 19 May 2021, a Senior Human Resources Manager replied that the Discharge Statement would not be modified. She also pointed out that they had already been informed, on 7 October 2020, that their allegations against the Chief of Mission were deemed unfounded and that the case was therefore closed. That decision was maintained and their request for financial compensation was denied.

In his complaint filed on 29 June 2021, the complainant impugns the decision of 19 May 2021. He claims 1,000,000 United States dollars in material damages for the loss of the support that D. would have received had the staff member pursued his career with IOM; 1,000,000 dollars in moral damages for the "neglectful role of IOM in the death of [the staff member]"; and a further 100,000 dollars in moral damages for IOM's refusal to provide sufficient information concerning "the care and diligence" that it showed towards the staff member. He also seeks public admissions by IOM of, on the one hand, its culpability

“with respect to gross dereliction of duty of care and diligence” and, on the other hand, the “grave inadequacy of its written policies and its understanding of its legal responsibilities pertaining to its duty of care and diligence” towards its expatriate employees, and how these inadequacies constituted “a gross dereliction of its duties” to the staff member. Lastly, he seeks a public commitment by IOM to “take significant steps to improve its operations and its culture of care and diligence” for its expatriate employees, “irrespective of their race or nationality”.

IOM asks the Tribunal to dismiss the complaint as manifestly irreceivable for failure to exhaust the internal means of redress, or, alternatively, as wholly devoid of merit.

CONSIDERATIONS

1. The following discussion proceeds against the background already set out in the facts described above.

2. The complainant requests oral proceedings and asks that two IOM officials be heard as witnesses, the Chief of Mission and the Migration Health Officer. The parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. The request for oral proceedings is, therefore, rejected.

3. The Organization raises a threshold issue alleging that the complaint is irreceivable, as the complainant did not exhaust the internal means of redress before filing it.

The complainant objects that he was never informed by the Organization that the internal appeal procedure was available to him, since Instruction IN/217 Rev.3 (“Request for Review and Appeal to the Joint Administrative Review Board (JARB)”) – which is appended to the Organization’s reply before the Tribunal – was never communicated to him.

The Organization denies being responsible for the irreceivability of the complaint, submitting that the complainant never informed the Organization of his intention to challenge the 19 May 2021 decision and never requested information regarding the means of redress.

4. The Tribunal will not address the receivability issue raised by IOM as the complaint is unfounded on the merits.

5. The complainant alleges no infringement of specific staff rules or terms of employment. He alleges a violation of the Organization's duty of care towards the deceased staff member. However, the evidence in the file does not support such a conclusion. Firstly, there is no evidence that the illness of the staff member and his subsequent death were in any way related to the exercise of his functions. Secondly, during the week starting on Monday, 4 February 2019, the day when the staff member informed his supervisors for the first time that he was sick, his first and second-level supervisors were in daily contact with him and asked him to go to the doctor or hospital. Moreover, in the course of that week, not only had the staff member led his supervisors to understand that he had received medication, but he also led them to believe that his health was improving. Thus, in those circumstances, the Organization could not be expected to believe that there was any need to worry about his health condition. The Organization had provided him with access to doctors and had advised him to consult a medical professional. Moreover, the Organization granted the staff member's son, and also offered to the staff member's brother and sister, all the benefits and emoluments provided for in case of the death of a staff member.

6. 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 17 May 2024, Mr Patrick Frydman, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER