

TWENTY-FOURTH ORDINARY SESSION

***In re* ANTONACI**

Judgment No. 157

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Labour Organisation (ILO) drawn up by Mr. Mario Antonaci on 29 November 1968, brought into conformity with the Rules of Court on 27 January 1969, the Organisation's reply of 12 March 1970, the complainant's rejoinder of 7 July 1970 and the Organisation's further reply of 26 August 1970;

Considering Article II, paragraph 2, of the Statute of the Tribunal, Article 8.3 of the ILO Staff Regulations and Rules 9.1 and 5.5 of the Rules Governing Conditions of Service of Short-Term Officials of the ILO;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering that the material facts of the case are as follows:

A. Mr. Antonaci, who was born in 1925 and is of Italian nationality, was appointed by the International Labour Office (ILO) on 7 February 1967 on a four-month contract, beginning on 2 June 1967, as an expert in port labour assigned to the Dominican Republic. He underwent a medical examination on appointment - but not an X-ray of the spine - whose results were considered satisfactory by the Medical Adviser of the ILO. It was then noted that the complainant had suffered in 1951 from a rheumatic illness. He received several days' briefing in Geneva for his mission, which was to study the labour situation in the ports of the Dominican Republic, suggest ways of increasing the productivity of dockworkers, securing them stable employment and improving their working conditions, and help in drafting legislation on the subject. He arrived in Santo Domingo on 14 June 1967. At the request of the Government of the Dominican Republic his contract was extended for five months to 29 February 1968. On 14 December 1967 the ILO asked him to arrange to spend several days in Geneva before the expiry of his contract. By letter of 6 January 1968 he consented to do so. On 15 February, however, he announced his intention to leave Santo Domingo on 23 February and arrive in Geneva on 9 March. The ILO agreed to extend his appointment to 9 March and on 25 February 1968 he travelled by air to Mexico City, from where he was to continue to Geneva.

B. On 28 February 1968 the ILO Office in Mexico City informed headquarters in Geneva that a physician had advised Mr. Antonaci to stay in Mexico City until 1 March. He had been seized with acute pains in the left leg during the flight from Santo Domingo and the Medical Centre of Mexico City and diagnosed a discal hernia with compression of the sciatic nerve. He continued his journey to Geneva, however, and was examined on 5 March by the ILO Medical Service, which had him admitted to the Cantonal Hospital of Geneva. The hospital found that the discopathy had simply disappeared. Mr. Antonaci remained in hospital until 8 March 1968, but continued to receive medical care thereafter.

C. On 20 March 1968 the complainant wrote to the ILO asking it to bear his medical expenses until his full recovery. In the letter he attributed his illness to the arduous conditions in which he had allegedly had to carry out his mission and prepare for his departure from Santo Domingo. In particular he complained of having had to work for long hours and make frequent journeys by jeep on rough roads. He maintained that his residual disorders (weakness of the left leg, varicose veins, cervical arthrosis, hearing troubles, hypotonia, impairment of sight and other organic disorders) were directly connected with his employment by the ILO. He stated that the pains in his leg and spine had begun in Santo Domingo, and that he had been obliged to take sodium salicylate pills and had found the pain unbearable during the flight to Mexico City. On 22 March he wrote to the Medical Adviser of the ILO asking for an examination of his work capacity so as to ascertain whether he was capable of resuming his work in the Italian civil service and claiming that as long as his incapacity continued the ILO should continue to pay his salary and medical expenses.

D. On 26 March the complainant was informed that his appointment would terminate on 1 April 1968, when he would be entitled to monetary compensation for the twenty-five days' annual leave which he had not taken. On 28 March he repeated his request of 22 March and on the same day submitted a request for compensation in accordance with section 8.3 of the Staff Regulations, which reads as follows: "In the event of illness or injury attributable to the performance of official duties an official shall be entitled to compensation as prescribed in Annex II."

In this request he stated that his illness had begun on 25 February 1968, the date of his return Journey to Mexico City. He alleged that his symptoms were a discopathy and loss of feeling in the left foot and in part of the left leg which prevented him from walking normally and he attributed his condition to the fact that he had been obliged to work for twenty-six consecutive hours completing his reports and packing all his books before departure, since the ILO had refused an extension of his stay. In May 1968 the Compensation Committee of the ILO examined his request on the basis of Rule 5.5 of the Rules Governing Conditions of Service of Short-Term Officials then in force, which provided that "in the event of illness or injury arising out of and in the course of his employment, a short-term official shall be entitled to reasonable compensation". It rejected his request on the ground that his illness was not attributable to the performance of official duties. Mr. Antonaci was informed of its decision on 11 July 1968.

E. On 3 June 1968 the complainant submitted a complaint under Rule 9.1 of the Rules Governing Conditions of Service of Short-Term Officials. He maintained that he had received unwarranted and unfair treatment on 26 March, when he had been informed that his appointment would terminate on 1 April. He requested the payment of his medical expenses until he was fit to resume work and of reasonable damages and the four weeks' sick leave which the Medical Adviser had recommended after the expiry of his contract and which the ILO had refused him. On 12 August the complainant contested the recommendation of the Compensation Committee and again alleged a causal link between his illness and his employment. He maintained, moreover, that he had not received proper medical treatment in Geneva. He asked for re-examination of his case. On 30 August the ILO rejected his requests of 3 June and 12 August 1968.

F. On 29 November 1968 Mr. Antonaci appealed to the Administrative Tribunal. The parties agreed to submit the case to a medical board consisting of three doctors, two appointed by the parties and the third appointed by those two. The Tribunal having consented to this arrangement, the proceedings were suspended and the medical board met in Rome on 12 September 1969. It examined the medical history of the complainant and in its report concluded that: "The illness developed during a mission to Santo Domingo and took the form at first of lumbar pains and later, during a flight from Santo Domingo to Mexico City, of acute sciatica on the left side due to a discal hernia. It is admitted that the patient received treatment - in the first place for the acute pains in Mexico City - and then underwent neurosurgical and rheumatological examinations at the University Hospital of Geneva (i.e., the Cantonal Hospital of Geneva) and that these examinations revealed a radicular compression and subtotal regression of the discal hernia. This development did not afford a sufficient basis for diagnosing an immediate need for neurosurgery. The board concentrated on the etiopathogeny." Whereas the doctor appointed by the complainant found that the illness had been provoked by his conditions of employment in Santo Domingo, the other two found an internal pathology unconnected with the conditions of employment and attributed the illness, in view of the complainant's age, to a gradual process of development preceding his employment with the ILO which had become manifest while he had been working in Santo Domingo and been suddenly aggravated during the flight to Mexico City, and that this development was connected with the natural process of a degenerative illness. They could not regard the complainant's work for the ILO as an aggravating factor. On the basis of the board's report, on 23 October 1969 the ILO confirmed the decision of 11 July 1968 and on 4 November 1969 Mr. Antonaci resumed proceedings before the Tribunal.

G. In his complaint Mr. Antonaci asks the Tribunal to find that his illness is attributable to the performance of his official duties in the service of the ILO and to award him reasonable compensation for his chronic partial incapacity. In his memoranda he asks for the quashing of the decision of 30 August 1968 dismissing his requests based on Rule 9.1 of the Rules Governing Conditions of Service of Short-Term Officials and of the decision of 11 July 1968 dismissing his claim based on Rule 5.5 of the same Rules. He also asks for compensation amounting to at least 80 million Italian lire as damages for moral and material injury. He maintains that the Medical Adviser of the ILO, who knew that Mr. Antonaci was to carry out a mission in arduous conditions, was negligent in that he carried out only a superficial medical examination on his appointment. Even if his illness was due to the aggravation of a latent condition, this negligence made the ILO responsible. He again describes in detail the conditions of employment which in his view were the cause of his illness (an unhealthy climate, rough roads, a diet affecting the

bone structure and the hurried packing of a large number of books) and holds the ILO responsible for his illness and for the adverse effects of his medical treatment in Geneva. He contests the legality of the Compensation Committee, considers its findings irrelevant and cites many medical textbooks concerning his illness in order to establish a direct causal link between his illness and his ILO mission.

H. The Organisation rejects these claims.

CONSIDERATIONS:

As to the claims made in respect of the decision of 30 August 1968 rejecting Mr. Antonaci's request submitted under Rule 9.1 of the Rules Governing Conditions of Service of Short-Term Officials:

The complainant alleges that he was treated in a manner contrary to the Rules Governing Conditions of Service of Short-Term Officials and was subjected to unwarranted and unfair treatment as a result of the decision of 26 March 1968 informing him of the termination of his contract of 1 April. He therefore requests the payment by the Organisation of an indemnity and of all medical expenses incurred by him since the latter date.

Mr. Antonaci accepted a four-month contract from 2 June 1967 and then an extension until 29 February 1968. On 14 December 1967 the Personnel Department of the Organisation reminded him that his contract would terminate on 29 February 1968. Since he was ill on his return to Geneva, the Organisation agreed to extend his contract for a period exactly equivalent to the period of sick leave to which he was entitled under his contract, namely until 1 April 1968.

After that date, as a short-term official whose contract had expired and who was not entitled to its renewal, he had no further legal connection with the International Labour Organisation. Consequently, the Organisation could no longer lawfully grant him further sick leave or continue to bear his medical expenses. Moreover, no provision of the Rules for short-term officials, except Rule 5.5, and no general principle of law required to Organisation to grant the complainant any monetary compensation whatsoever.

As to the claims made in respect of the decision of 11 July 1968 rejecting Mr. Antonaci's request based on Rule 5.5 of the Rules Governing Conditions of Service of Short-Term Officials:

Under Rule 5.5, "in the event of illness or injury arising out of and in the course of his employment, a short-term official shall be entitled to reasonable compensation".

It appears from the documents in the dossier and in particular from the report of the medical board which met on 12 September 1969 after the initiation of the present proceedings and whose conclusions are accepted by the Tribunal, that Mr. Antonaci was then suffering from sequelae of a radicular compression S1/S2 on the left side due to a discal hernia; that they first appeared during his mission to Santo Domingo on behalf of the International Labour Organisation in the form of lumbar pains and then during the flight from Santo Domingo to Mexico City in the form of acute sciatica on the left side; that this disease, which is attributed to an earlier process of degeneration, is by its very nature extraneous to the complainant's employment with the ILO; that it could be regarded as aggravated by his employment with the ILO; that it could be regarded as aggravated by his employment only in fairly exceptional circumstances and by clearly defined factors; and that neither the humid climate of Santo Domingo nor the act of driving a motor vehicle - on roads alleged by the complainant to have been in poor condition, but for short distances - nor the intensive work which the complainant claims to have performed during a period of twenty-six consecutive hours - a claim which has not been established and which indeed seems highly unlikely in view of his own contradictory statements - can be regarded as having aggravated a disease from which he was already suffering before his appointment. Moreover, it does not appear from the dossier that the complainant received unsuitable treatment at the Cantonal Hospital of Geneva. On the contrary, the detailed examinations carried out by the hospital led to a precise diagnosis of his disease. Besides, the Organisation cannot be held responsible for the consequences of directing him to a hospital whose reputation is well established and which had qualified specialists. Finally, although the complainant alleges that the medical examination provided for in Rule 3.6 of the Rules Governing Conditions of Service of Short-Term Officials was incomplete and that a thorough examination would have shown the ILO that he was not fit for a mission to Santo Domingo, it does not appear from the dossier that this allegation is correct; in particular, the fact that the complainant suffered from a rheumatic illness in 1951 was not in itself enough, in the circumstances of the case, to necessitate an X-ray of the spinal column.

As a result of the foregoing, the complaint cannot be accepted on either count.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and Mr. A.T. Markose Deputy Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Bernard Spy, Registrar of the

Delivered in public sitting in Geneva on 6 October 1970.

(Signed)

M. Letourneur
André Grisel
A.T. Markose
Bernard Spy