

## **EIGHTY-EIGHTH SESSION**

### ***In re Wassef (No. 29)***

#### **Judgment 1937**

##### **The Administrative Tribunal,**

**Considering the twenty-ninth complaint filed by Mr Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 30 December 1996 and corrected on 14 February 1997, the FAO's reply of 5 July 1999 and the complainant's waiver of his right to rejoin;**

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

**Having examined the written submissions and decided not to order hearings, which neither party has applied for;**

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

**A. Details on the complainant's employment at the FAO and on the illness which he contracted in Chad in 1993 appear under A in Judgments 1401 on his first and second complaints. Judgments 1486 and 1702 on his eighth and twenty-sixth complaints are also of some relevance. He was separated from the Organization in January 1994.**

**Prior to going to Chad in 1991 the complainant was informed about the Group Life, Accident and Disability Insurance (GLADI), a voluntary plan where the cost of participation is borne entirely by the person insured. He filled in the relevant application form on 26 June 1991.**

**On 9 August 1995 he applied for payment of permanent disability benefits under GLADI and asked to see a copy of the original contract with the insurer.**

**By a letter dated 18 August 1995, the Senior Personnel Officer in charge of Social Security informed the complainant that section 346 of the FAO Manual constituted the current contract between the Organization and the insurer and that the question of the benefits he was entitled to was settled in the letter he had previously written to him on 19 June 1995 in his capacity as Secretary of the Advisory Committee on Compensation Claims. That letter had made clear which benefits would be granted to him under Manual section 342 relating to the FAO Staff Compensation Plan. It had also informed him of the Director-General's decision to accept the recommendations of the Committee and said that if he wished to appeal against that decision he could do so within ninety days of receiving it.**

**The complainant filed two appeals with the Director-General on 23 October and 5 December 1995, against the rejection of his claim for disability benefits and the way his claim was handled. He sought damages in both appeals. The Assistant Director-General in charge of Administration and Finance replied to his first appeal on behalf of the Director-General on 21 December 1995 rejecting his claims on the grounds that with the type of cover he had taken out under the GLADI scheme he had no entitlement to a "disability annuity" or to exemption from payment of insurance premiums against "death from any cause". Such benefits were available only to those specifically covered, whereas he had taken out insurance only against "accidental death and dismemberment". In a letter of 12 January 1996 he rejected the complainant's second letter of appeal as it concerned the same subject matter as his first.**

**Meanwhile the complainant had lodged an appeal with the Appeals Committee on 2 January, followed by a second on 22 January 1996. In his first appeal he asked for one million United States dollars in "general and punitive" damages for Personnel's "wrongdoing"; an annuity for life equal to 20 per cent of his last pensionable remuneration; exemption from further payment of the premium for "death from any cause" until age 65; compound interest of 25 per cent per annum on all the sums due to him from September 1993.**

If he should have to file a complaint before the Tribunal he also requested reimbursement of the cost of publication of any subsequent judgment in a number of newspapers and a penalty clause against the FAO in the event of delay of execution of the judgment.

In his second appeal he sought payment of one million dollars in "general" damages and one million in "punitive" damages; and compound interest of 25 per cent per annum on those sums from 3 February 1996, the date when the Organization's reply was due. He also requested reimbursement of the cost of publication of any subsequent judgment in a number of newspapers and a penalty clause against the FAO in the event of delay of execution of the judgment, should he have to file a complaint with the Tribunal.

The Director-General rejected both appeals in two final decisions dated 4 November 1996, which the complainant now impugns.

**B.** The complainant explains that the pleas relevant to this case were submitted in the rejoinder to his twenty-sixth case, which was an application for execution of Judgment 1486. As he has now obtained a negative final decision he has filed this complaint in case the Tribunal has meanwhile found his claims irreceivable in the context of his earlier one.

In view of the monthly premium he paid, the complainant considers that cover was not limited to "accidental death" only. On the application form filled out on 26 June 1991, he applied for cover for "accidental death and dismemberment" and for "permanent disability". On 1 July the form was returned to him with no cancellation of "permanent disability" and the Social Security Group did not deny that he had such cover when he first claimed an annuity; the denial came from the Director-General in response to his appeals.

The Social Security Group offered him reimbursement of an amount equivalent to the exact amount of his premiums during the thirty months he was paying for disability benefits although Manual section 346 makes no provision for such a refund. Even if the Personnel Division considered that he was given disability cover by mistake, he was never offered the chance to convert his insurance from "accidental death" to "death from any cause".

He submits that the Organization did not observe the rules on "form and procedure". It obstructed his attempts to obtain his rights and he holds it fully responsible for the denial of his entitlements. He therefore asks the Tribunal to award him what he claimed in his two internal appeals, including damages and interest on all the amounts due at 24.25 per cent. He also claims costs.

**C.** In its reply the Organization considers that all the issues raised in his complaint overlap with issues in previous complaints and are *res judicata*.

As to whether or not the complainant had cover under GLADI for permanent disability, it explains first that from the application form it was clear that he had selected cover for "accidental death and dismemberment" and "permanent disability". However, the latter option was only possible with cover for "death from any cause and exemption from premium payment" which the complainant had not requested. On 4 July 1991 he was told he could not be covered for "permanent disability" without having the other cover. He was also given a "notification of personnel action" dated 2 July 1991 which showed that he did not have such cover.

Paragraph 14 of administrative circular 91/3, which was sent to staff at headquarters and in the field, stated:

"Cover against disability is also optional but participants may subscribe to it only if they are covered for death from any cause and exemption of premium payment."

Secondly, the Organization says that even if the complainant had asked for cover against permanent disability he did not meet the requirements of permanent incapacity at the date of separation to qualify for an annuity. Under Manual paragraph 346.5542

"Total permanent disability shall be deemed to exist if the participant has been found by the competent organ of the United Nations Joint Staff Pension Fund to be totally and permanently incapacitated."

On 14 September 1995 the complainant applied for disability benefits under the rules of the Pension Fund,

but his claim was rejected. Any further remedies would have to be pursued according to those rules and the United Nations Administrative Tribunal alone has jurisdiction in the matter.

Thirdly, the Organization asserts that it did no wrong, and the complainant's claim for damages is too vaguely expressed to "facilitate a reasoned response".

## CONSIDERATIONS

1. In his twenty-ninth complaint, the complainant, whose illness contracted in Chad was previously recognised as being service-incurred but was not regarded as having caused permanent incapacity for work, is challenging two decisions by the Director-General of the FAO of 4 November 1996. In these decisions, in accordance with the recommendations of the Appeals Committee of 28 June 1996, the Director-General rejected his claims for permanent disability benefit under the Group Life, Accident and Disability Insurance Plan, known as GLADI. He submits that he should have been insured under GLADI against the contingency of permanent disability and that, if he was not covered against this contingency, the Organization was responsible for the oversight. As in the other complaints which he has filed with the Tribunal, he seeks large sums in compensation from the FAO.

2. On 26 June 1991, the complainant requested enrolment in the voluntary insurance scheme which the Organization had recently decided to establish. The application form completed and signed by him indicated that he was applying for cover against "accidental death and dismemberment" and permanent disability. However, he did not request cover against "death from any cause". This form was signed, and therefore approved, by a representative of the Organization on 1 July 1991. However, the applicable rules, set out in circular 91/3 of 14 January 1991, provided that cover against disability could only be subscribed to by insured persons who were covered against the contingency of death from any cause. Having rapidly realised the error made by the competent services, the Administration sent him a note on 4 July 1991 explaining the existence of this rule. The complainant says that he does not remember having received such a note and expresses surprise that such a communication was not sent by more appropriate means, particularly since he had just left for Chad. He complains that his insurance contract was never communicated to him and that, not even knowing the company with which he was insured, he was not able to pursue his claims directly with the insurance company. He also emphasises that, in its statement to the Appeals Committee, the Organization bases its argument denying him any entitlement on the fact that he had recognised in the application form that he had read Manual section 346, which was clear on the disputed point. But the FAO admitted that the new rules of the GLADI plan had not yet been incorporated into the Manual. Finally, he takes the Organization to task for the many shortcomings and delays which, he says, characterised its handling of the case.

3. The FAO rebuts this plea and asserts that the complainant had been fully informed that he was not insured against the contingency of disability and that, in any case, even if he had been so insured, he did not meet the requirements for entitlement to a disability benefit. Indeed, on 23 November 1995, the FAO Staff Pension Committee rejected the complainant's application for a disability benefit from the United Nations Joint Staff Pension Fund on the grounds that his incapacity had not been recognised. The Standing Committee of the Board of the Fund rejected his appeal on 17 July 1996.

4. It is this latter argument which the Tribunal finds decisive. The FAO's handling of the case was certainly far from perfect and the Organization itself admitted to the Appeals Committee that the approval by one of its officials of an incorrect application form on 1 July 1991 was the result of an oversight. The error was admittedly put right rapidly, although it is not proven that the complainant actually received the note of 4 July. Furthermore, the pay slips which should have indicated the precise purpose of the contributions that he was paying for the GLADI were lacking in clarity and detail. It cannot, therefore, be excluded that he was badly informed of the real nature of his rights, particularly since Manual section 346 had not yet been amended when he accepted his cover by GLADI, and the Organization appears not to have given him any means of ascertaining the nature of the contract under which he was insured. As the Appeals Committee observed, "the rules regarding GLADI could have been communicated to the appellant in a more appropriate way". Nevertheless, the errors which were committed could only have prejudiced the complainant if they had had the effect of denying him a right. In this respect, it is clear that the absence of any recognition of medical incapacity at the time his appointment came to an end denies him any right to a disability benefit. Manual paragraphs 346.5541 and 346.5542 provide that:

"346.5541 Upon separation, an annuity ... shall be payable ... to participants ... if they are found to be permanently incapacitated for further service ...

346.5542 Total permanent disability shall be deemed to exist if the participant has been found by the competent organ of the United Nations Joint Staff Pension Fund (UNJSPF) to be totally and permanently incapacitated for further service with a member organization of the Fund ..."

As indicated above, and it is not challenged by the complainant, who did not enter a rejoinder, the Standing Committee of the Board of the Fund rejected his appeal against the decision not to recognise his incapacity. Any challenge to this decision does not lie within the jurisdiction of the Tribunal.

5. In these conditions, the administrative errors committed by the FAO did not cause the complainant any prejudice. His claims to an annuity for life and various types of compensation must, therefore, fail.

### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

*(Signed)*

Michel Gentot  
Mella Carroll  
James K. Hugessen

Catherine Comtet