

FORTY-THIRD ORDINARY SESSION

***In re* NEUVILLE**

Judgment No. 394

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the World Health Organization (WHO) by Mr. Eugène Gustave Christian René Neuville on 12 August 1978, the WHO's reply of 30 August, the complainant's rejoinder of 9 October and the WHO's surrejoinder of 30 October 1978;

Considering Article II, paragraphs 5 and 6, and Article VII, paragraphs 1 and 2, of the Statute of the Tribunal;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. Yves Neuville, the complainant's brother, joined the staff of the WHO in 1964. After several assignments he was sent against his will to New Delhi at the beginning of 1971. His wife's health had suffered during an earlier posting in a tropical country, and he was much upset to have to go without her to India. The medical examination which he underwent on 12 January 1971 before departure revealed nothing amiss. Yet on 17 January, during the journey and on his arrival in India, he showed symptoms of serious neurosis - anxiety, mistrust of others and feelings of persecution - and had to be sent back forthwith. After undergoing treatment, he resumed duty at WHO headquarters in September 1971. He then filed a claim for compensation under Staff Rule 720 on the grounds that his illness had been attributable to his assignment to India. The Advisory Committee on Compensation Claims held that the journey had merely revealed a latent condition and in its report of 22 October 1971 concluded that his illness had not been attributable to the performance of official duties. The Director-General endorsed that opinion on 26 October. Yves Neuville asked for review of his case, and on 2 March 1972 the committee confirmed its opinion. The medical report of 8 February 1972 on which the committee relied stated that he had consulted a psychiatrist in Paris as early as December 1970. The psychiatrist had advised him to see two doctors of a psychiatric clinic in Geneva and said that his "complex professional and family circumstances were rather the result than the cause of his mental condition". On 23 March 1972 the Director-General informed Yves Neuville that he upheld his decision but that an appeal would lie to a three-member medical board. On 22 June the complainant was informed that he would be paid a disability pension. On 14 July he appealed against that decision and applied for the establishment of a medical board. On 17 November he fell from the balcony of a hotel in Palma de Mallorca. His brother believes that he committed suicide. The French consul, whom the WHO consulted in March 1973, said that the inquiry tended to rule out suicide and to suggest that the fall was an accident.

B. On 1 December 1972 the WHO informed the guardian of the deceased's daughter - his first wife, from whom he had been divorced - that as his successor his daughter might pursue the appeal which her father had filed on 14 July 1972. It also informed his second wife that she too might do so. The lawyer representing the deceased's daughter, Mr. Kapper, of Stuttgart, formally withdrew the appeal on 9 August 1973. The lawyer representing his second wife, Mr. Dahl, of Copenhagen, asked for fuller information on the appeals procedure, and, having received it on 11 June 1974 (see Appendix L to the complaint) pursued the matter no further. Meanwhile, on 21 September 1973, the complainant had written to the WHO alleging that his brother's death had been attributable to the performance of WHO duties. On 10 October 1973 the Director of the Legal Division answered that that was by no means proved and that the matter would be considered on the application of the deceased's successors. On 23 April 1978, over four years later, the complainant reopened the case by writing to the Director-General. On 15 May 1978 the Director of the Legal Division answered that the WHO denied liability, for the reasons given in the letter of 11 June 1974 to Mr. Dahl; that the time limit for appeal by the successors - the deceased's daughter and second wife - had long since passed; and that the deceased's daughter would continue to receive a pension of 8,074 Deutschmarks a year until she came of age.

C. The deceased's brother filed the complaint with the Tribunal on 12 August 1978. The decision which he impugns is the letter of 11 June 1974 to Mr. Dahl and he says that that decision was notified to him by the WHO's letter of 15 May 1978. He alleges that his brother committed suicide because of a mental illness caused by the WHO's treatment of him. The WHO, he says, drove his brother to despair by forcing him to go to India, where his wife was unable to accompany him because of the state of her health. The WHO is to blame for the illness and death of his brother and he asks the Tribunal to declare it liable.

D. In its reply the WHO argues, first, that the complainant has no locus standi under Article II, paragraph 6, of the Statute of the Tribunal. Secondly, though duly informed in 1973, he failed to submit an internal appeal as is required by Article VII, paragraph 1, of the Statute. Thirdly, he did not file his complaint within the 90-day limit set in Article VII, paragraph 2. Subsidiarily, and as to the merits, the WHO refers to the medical reports appended to its reply and reserves the right to argue on the merits should the Tribunal consider it necessary.

E. In his rejoinder the complainant observes that the WHO has not disproved any of his allegations as to the cause of his brother's illness. The WHO put his brother in the "painful predicament of having to choose between his wife and his job". As to receivability, the letter which the WHO sent him on 10 August 1973 was only an interim reply and never followed up with the final reply which it promised.

F. In its surrejoinder the WHO produces two new items of evidence. It cites a memorandum which Yves Neuville submitted on 21 January 1972 to the Director-General and a letter from his wife to him dated 30 August 1971, from which it infers that he did not go to India against his will. As for the letter of 10 October 1973, the WHO did not imply that the complainant would be treated as a party to the proceedings and kept informed of their result.

CONSIDERATIONS:

The complainant, Christian Neuville, is the brother of the late Yves Neuville, who was a member of the WHO staff. He was not himself a member of the staff of the Organization. Nor is it proved that he was a person to whom the official's right devolved on his death, nor that he might derive rights from the contract of employment of the deceased, nor from the provisions of the Staff Regulations. Hence, in view of Article II, paragraph 6, of the Statute of the Tribunal, he has no locus standi and his complaints must therefore be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, Vice-President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Hubert Armbruster, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy