**M.**

***v.***

**FAO**

**129th Session** **Judgment No. 4228**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. R. M. against the Food and Agriculture Organization of the United Nations (FAO) on 1 February 2018 and corrected on 23 February, the FAO's reply of 12 June, the complainant's rejoinder of 1 August and the FAO's surrejoinder of 9 October 2018;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision to reject his request for compensation for loss of earnings allegedly caused by a service-incurred injury.

At the material time, the complainant was employed as a consultant on a "when actually employed" (WAE) basis. His contract provided for 27 days of work over the period from 26 July to 31 October 2012. He suffered an injury on 28 July while on official travel and was placed on sick leave from 4 August to 29 August. After completing his work in October 2012, he was paid his honorarium for 27 days of work, and his medical expenses were fully reimbursed, as his injury was recognized as service-incurred in November 2012.

The complainant subsequently raised the question of his entitlement to compensation for loss of earnings with the Secretary of the Advisory Committee on Compensation Claims (ACCC). He asserted that due to his injury he had not been able to finish his work for the FAO by the end of August, as he had planned, and had thus been unable to accept another work offer for September and October 2012 with a consultancy firm.

In exchanges between April and July 2013 the Secretary of the ACCC informed the complainant that there was no legal basis for his claim, as he had, notwithstanding the injury, completed his work for the FAO within the contract period and that compensation for loss of earnings could not be based on hypothetical work contracts outside the FAO. Following further exchanges, the Secretary of the ACCC rejected the complainant's claim on 12 November 2013 and informed him of his right to apply for reconsideration of this decision by the ACCC, which the complainant did by letter of 31 December 2013.

At its meeting held on 10 November 2014 the ACCC found that the complainant's claim did not fall within the scope of Manual paragraph 342.5.12 and unanimously recommended not to reconsider the ACCC Secretary's decision to reject his claim. By a letter of 2 December 2014 the Secretary of the ACCC informed the complainant of the Director-General's decision to follow that recommendation, based on the ACCC's reasoning.

On 18 February 2015 the complainant lodged an appeal against that decision and pointed out that he had not received the ACCC's recommendation. The Administration informed him by a letter of 20 April that his appeal was dismissed as unfounded and that ACCC's recommendations were not shared with claimants but that the FAO was willing to make these records available for review *in camera* if he lodged an appeal with the Appeals Committee.

The complainant submitted an appeal to the Appeals Committee in June 2015.

The Appeals Committee reviewed *in camera* the documents requested by the complainant. In its report of 2 August 2017 it found that the documents requested did not constitute evidence of a kind which would support his claim for compensation for loss of earnings

and thus dismissed this request. It did not consider the duration of the overall process as excessive and recommended that the appeal be dismissed in its entirety, which the Director-General did, by a decision of 3 November 2017. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to order the FAO to pay him the amount of 11,250 United States dollars corresponding to 25 days' honorarium, with interest. He seeks 5,000 euros in moral damages for the excessive delay in processing his claim, 10,000 euros for the additional delay in the internal appeal proceedings and 10,000 euros for the unjustified withholding of information concerning his claim. He asks the Tribunal to order the FAO to produce copies of all relevant documents, including all submissions made to the ACCC concerning his claim, the minutes of the ACCC hearing concerning his claim, the ACCC's report to the Director-General and the decision of the Director-General which was conveyed to him in the letter of the ACCC Secretary. Lastly, he claims 5,000 euros in costs for the present proceedings and the internal appeal proceedings.

The FAO submits that the complaint is entirely without merit. It has produced the submissions to the ACCC, as well as the ACCC's minutes concerning the complainant's claim as annexes to its reply.

In his rejoinder the complainant maintains his request for the production of documents with respect to the ACCC's report and the decision of the Director-General.

In its surrejoinder the FAO reiterates that the complainant was appropriately informed of the Director-General's decision and of the content of the ACCC's recommendation. He was provided with sufficient elements to understand the reason for rejecting his claim and to defend his appeal against that rejection.

## CONSIDERATIONS

1. The complainant was employed at the relevant time on a WAE contract with the FAO, which stipulated 27 days of work in the period from 26 July to 31 October 2012. He was prescribed 25 days of

rest, from 4 to 29 August 2012, for an injury which occurred on 28 July 2012, and which was recognized as service-incurred by letter dated 21 November 2012. He completed his work for the FAO within the time provided by the WAE contract and he was paid his honorarium for the 27 days of work stipulated by his contract. His medical expenses were fully reimbursed in accordance with the provisions of Manual paragraph 342.5.11. The complainant subsequently asked for compensation for loss of earnings, alleging that, due to his service-incurred injury, he had not been able to finish his work for the FAO by the end of August 2012, as he had planned, and was therefore unable to accept an offer of work from a consultancy firm for September and October 2012.

2. The present complaint hinges primarily on a question of law: whether or not the complainant is entitled to compensation for loss of earnings under the FAO Manual Section 342 on Compensation for Death, Injury or Illness. The Tribunal is satisfied that the complainant is not entitled to compensation for loss of earnings; he is only entitled to the salary and allowances provided by his contract with the FAO plus the reimbursement of his medical expenses stemming from his service-incurred injury, which he received in full.

3. Manual Section 342 provided, at the relevant time:

"**STAFF RULES**

**302.6.5** Compensation for death, Injury or illness attributable [to] Service

**302.6.51** Staff members shall be entitled to compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the Organization.

[...]

**342.1.2 Application**

**342.1.21** Subject to the limitations set out below, the provisions of this Manual Section apply to all staff members holding continuing, fixed-term, or short-term appointments, including temporary conference appointments; consultants, OPAS personnel, and national experts signatories to Personal Service Agreements (PSA).

**342.1.22** Consultants serving on a 'when actually employed' (WAE) basis are covered only during the actual periods they are officially instructed in writing to perform FAO duties.

[...]

> **342.5 Compensation payments for Injury or Illness**
>
> **342.5.1 Total Incapacity**
>
> **342.5.11** The Organization pays all reasonable medical, hospital and directly-related costs to a staff member or former staff member who is incapacitated, when the incapacity is total and resulted from injury or illness attributable to the performance of official duties.
>
> **342.5.12** In addition to paying the above costs, and without prejudice to the staff member's entitlements under other provisions of the Staff Regulations and Rules, the Organization pays the staff member's salary and allowances which he would have received had he not been incapacitated (excluding, however, special post allowance) either:
>
> (a) until he returns to duty; or
>
> (b) if, by reason of his incapacity, he will not return to duty, then until the date of termination of his appointment or until the expiry of one calendar year from the first day of absence resulting from the injury or illness, whichever is the later, provided, however, that if the staff member dies before the expiry of such period, the payments cease on the date of death."

4. The Tribunal accepts that the interpretation of these provisions by the Appeals Committee is correct. As the Appeals Committee concluded in its report dated 2 August 2017, "[i]t follows from this provision that the maximum a staff member who meets the requirements of Manual paragraph 342.5.12 may receive under this provision is the salary and allowances the employment contract with the Organization foresaw as salary and allowances. The term 'salary and allowances' only refers to the salary and allowances provided by FAO, as evidenced by the reference to the 'special post allowance' (Manual Section 308) which is excluded from the 'allowances'."

5. The complainant's references to Judgments 402 and 479 are mistaken, as those judgments do not support his interpretation. In Judgment 402, the Tribunal found that compensation was not limited to the sums provided under the scheme for service-incurred injury because the service-incurred injury stemmed from a breach of contract on the part of the Organization, in which the complainant was subjected to an abnormal risk not foreseen by his contract, and the injury caused a permanent disability. In Judgment 479, the main issue regarded the amount of pensionable remuneration payable to the complainant who

had to retire prematurely from his external work at a university due to a service-incurred illness (which produced a permanent disability) contracted during a one-month mission he was carrying out for the Organization. The facts of the present case bear no similarity to the case which led to Judgment 479. In conclusion, as the complainant, who worked all 27 days provided by his contract, was paid the full amount stipulated in his contract, he is not entitled to any amount beyond that 27-day honorarium and the reimbursement of his medical expenses in accordance with Manual paragraph 342.5.11.

6. The claims regarding alleged flaws in the ACCC procedure are unfounded. The complainant submits that the ACCC procedure lacked transparency and breached Manual paragraph 342.6.522 because the ACCC failed to hold hearings and did not share its internal documents with him. He also claims that the ACCC was improperly composed and was biased against him. The Tribunal notes that Manual paragraph 342.6.522 provides that "[t]he [ACCC] considers claims on the basis of written submissions, but may request or grant a personal hearing by the claimant or by the claimant's designated representative, who must be a member of the staff". According to that provision, the ACCC is not required to hold hearings, and as the case at hand regarded only a question of law, the Tribunal finds no flaw in the ACCC's determination that hearings were unnecessary.

With regard to the failure to disclose the internal documentation, the Tribunal finds that the complainant was informed of the ACCC's recommendation in the letter dated 2 December 2014 in which the Director-General's decision to reject his claim was communicated to him. There was no breach of any due process rights as the complainant was informed of the substance of the ACCC's recommendation, as well as the Director-General's final decision. The complainant was provided with sufficient elements to understand the reasoning for rejecting his claim and to exercise his right of appeal.

The Tribunal finds the claims against the composition of the ACCC and of bias against the complainant to be unfounded. The ACCC followed its usual practice of reaching quorum when at least one

member appointed by the Director-General and one member appointed by the staff representatives were present. The complainant has not provided any evidence of bias.

7. The claim regarding excessive delay in the internal proceedings leading to the final decision of 3 November 2017 is unfounded. The Tribunal finds that the duration of the proceedings cannot be considered egregious, given that the complainant's request for reimbursement of medical expenses was approved immediately and that the procedure regarding his request for compensation for loss of earnings included many steps prior to the internal appeal before the Appeals Committee. The Tribunal further notes that there was no urgency to the question regarding loss of earnings that could not be remedied through a retroactive payment if necessary, and that the complainant has not provided convincing evidence of an injury stemming from the length of the procedure.

8. In light of the above considerations the complaint must be dismissed in its entirety.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 29 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ