

N. (No. 4)

v.

WHO

135th Session

Judgment No. 4600

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms S. C. N. against the World Health Organization (WHO) on 21 November 2019 and corrected on 6 January 2020, WHO's reply of 13 April 2020, the complainant's rejoinder of 10 August 2020 and WHO's surrejoinder of 10 November 2020;

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 reject her claim that her illness be recognized as service-incurred.

Facts relevant to this case may be found in Judgments 4240 and 4241, delivered in public on 10 February 2020, on the complainant's first and second complaints. Suffice it to recall that the complainant joined the United Nations Joint Programme on HIV/AIDS (UNAIDS), a joint and co-sponsored United Nations programme on HIV/AIDS administered by WHO, in 2004.

Early September 2015 the complainant submitted a claim to the Advisory Committee on Compensation Claims (ACCC) for recognition that her illness was service-incurred. She suffered from several symptoms, which were related to a "work-induced burn-out". She referred to the

following periods of incapacity for work: 16 and 17 June 2015 and 6 July to 30 September 2015. She remained on certified sick leave until 31 January 2016.

In the meantime, in January 2016, she submitted a formal complaint of harassment to WHO Internal Oversight Services (IOS) against her supervisor. In her second complaint before the Tribunal, she contested the decision of UNAIDS to reject her complaint of harassment and to close the case without further action.

In August 2018 the Director-General of WHO accepted the ACCC's recommendation not to recognize her illness as service-incurred. He noted that the ACCC relied on the decision of UNAIDS' Executive Director that none of the allegations of harassment were substantiated, as well as on the findings of the IOS investigation. In November 2018 the complainant filed an appeal against that decision.

WHO's Global Board of Appeal (GBA) issued its report on 24 June 2019. It noted that the complainant's claims of harassment being the main allegation for her claim of service-incurred illness, the ACCC logically relied on the IOS report. The ACCC conducted a comprehensive review of her allegation and did not find that her work or working conditions directly caused her illness or that it was the source of her illness. Therefore, the GBA found no mistake of fact in the decision that her illness was not service-incurred. The GBA found no evidence of a breach of duty of care, noting in particular that the complainant had discussed the tense work environment with senior management as early as 2013, and that efforts had been made at different levels to resolve the conflict between the complainant and her former supervisors. She was even, at her request, reassigned in February 2016 to another Department and supervised by another Director. It also concluded that the contested decision was not based on an error of law. The GBA was of the view that the ACCC conducted a comprehensive review of the evidence brought before it and concluded that there was no direct causal link between the performance of the complainant's duties and the illness.

By a decision of 23 August 2019, UNAIDS' Executive Director *ad interim* notified the complainant that the contested decision was taken in accordance with the regulatory framework. She endorsed the

GBA's findings and emphasised that there was no evidence that essential facts were overlooked, or that there was a mistake of fact or law, or that the decision was based on erroneous conclusions or breached the organization's duty of care. Consequently, the appeal was dismissed. That is the impugned decision.

In February 2020 the Tribunal delivered in public Judgment 4241, in which it found that some of the acts the complainant complained of "interfered with [her] ability to carry out her work and created a hostile work environment for her, thus constituting harassment in the terms set out in the Policy". She was awarded moral damages on that ground. WHO forwarded that judgment to the ACCC in April 2020.

On the basis of the ACCC's new recommendation, WHO's Director-General accepted, by decision dated 16 July 2020, that the complainant's illness was service-incurred for the period from 6 July 2015 to 31 January 2016.

In the complaint form and her brief, the complainant asks the Tribunal to quash the impugned decision with "all legal consequences that it entails" and to order the organization to reimburse her "any and all medical bills and expenses related to her service incurred illness" that she had to pay out of pocket, and to re-credit "to her benefit all the absences deducted from her statutory sick leave or annual leave on account of her service-incurred sick leave alleged herein, the latter of which should be paid to [her] in the form of a per diem lump sum". She claims "actual, consequential, material, moral, and exemplary damages" in the amount of 250,000 Swiss francs on the ground that her illness has created a "pre-existing condition", which has adversely affected her ability to get private health insurance. She also claims additional moral damages for the "excessive and inexplicable" delay in the ACCC's determination of her claim for compensation and costs. She further claims interest at the rate of 5 per cent per annum on all sums awarded from 8 September 2015 until the date the awarded sums are paid to her in full. Lastly, she seeks such other relief as the Tribunal deems necessary, just and fair. In her rejoinder, she indicates that she maintains the redress she sought in the complaint.

In its reply, WHO asks the Tribunal to reject the complaint as irreceivable in certain aspects and otherwise devoid of merit. It adds that the claim for costs should be rejected but that, if they are awarded, they should be conditional upon “the receipt of invoices, proof of payment, and upon the claimant not being eligible for reimbursement from other sources”. In view of the Director-General’s decision of 16 July 2020, WHO submits, in its surrejoinder, that the complaint is moot.

CONSIDERATIONS

1. The complainant filled in the box signifying a request for an oral hearing pursuant to Article 12, paragraph 1, of the Tribunal’s Rules. The Tribunal notes that the complainant named no witnesses and did not refer to an oral hearing in her pleadings. An oral hearing will not be ordered as the issues raised in the case before the Tribunal can be resolved having regard to the detailed pleas and the documentary evidence which the parties have provided.

2. The complainant requests the joinder of this complaint and her third complaint in order that one judgment could be rendered. Citing consideration 2 of Judgment 4265, WHO argues that the Tribunal should reject the request because the issues of law to be decided and facts to be considered are substantially different. In the cited judgment, the Tribunal refrained from joining the underlying complaint with five other complaints the complainant had filed. This was on the basis that whilst the six complaints were broadly related to the same continuum of events (as are the present complaint and the complainant’s third complaint), it was not appropriate to join them consistent with the Tribunal’s case law that, ordinarily, the touchstone for the joinder of complaints is that they involve the same or similar questions of fact and law. For similar reasons, it is not appropriate to join this and the complainant’s third complaints. The request for their joinder is accordingly rejected.

3. The complainant had submitted to the ACCC a Report of Illness, dated 2 September 2015, in which she stated that she fell ill at work on 15 June 2015 and attributed it to “work-induced burn-out”. She

stated that she was on annual leave from 18 June 2015 to 5 July 2015; that she returned to the doctor on 6 July 2015 because her imminent return to work caused the symptoms to recur; the doctor put her on medical leave until the end of September 2015; the symptoms subsided when she rested at home but returned whenever she interacted with the office. The complainant claimed compensation for service-incurred illness for periods of incapacity from 16-17 June 2015 and from 6 July to 30 September 2015. She eventually appealed to the GBA against the decision of the WHO Director-General, who had accepted the ACCC's recommendation to reject her claim on the basis that her illness was not service-incurred. In this complaint, the complainant impugns the decision of 23 August 2019 by which the UNAIDS Executive Director *ad interim* accepted the GBA's recommendation to dismiss that appeal. She asks the Tribunal to set aside the impugned decision and to award her the consequential relief she seeks, which is detailed above.

4. This complaint has however been overtaken by events. The facts reveal that following the public delivery of Judgment 4241 by the Tribunal on 10 February 2020, the ACCC reconsidered the complainant's claim for compensation for the periods concerned. It concluded that the illness she had suffered was the result of working conditions which had a direct causal link to the performance of her official duties. Accordingly, the ACCC recommended that her illness be recognized as service-incurred and that her medical expenses related to it be reimbursed for the period from 6 July 2015 to 31 January 2016. WHO's Director-General accepted that recommendation on 16 July 2020. In an addendum to that decision, under the heading "Appeal procedures" the complainant was reminded that that decision shall be regarded as the final action and such a decision may be appealed to the GBA within ninety days from the date on which the complainant was notified of it. WHO states that the complainant was provided with a copy of the "forms to be used in order to claim medical expenses (for the periods concerned), which included steps for completing the forms" and it is now her responsibility to return the completed forms and related documents, including copies of bills. In the normal course, WHO is expected to

meet all payments to the complainant which this new decision entails, including all related benefits and adjustments.

5. Based on the foregoing, it is relatively clear that the claims which the complainant makes in this complaint are moot to the extent that she claims compensation for her illness as service-incurred. This does not however render moot her claim for moral damages on the basis that the organization failed to ensure a healthy work environment and to protect her health, which is essentially a claim that the organization breached its duty of care towards her in the context of this complaint; her claims for “actual, consequential, material, moral, and exemplary damages” on the ground that her illness has created a “pre-existing condition”, which has adversely affected her ability to get private health insurance; her claims for additional moral damages for the “excessive and inexplicable” delay in the ACCC’s determination of her claim for compensation and for costs, as well as her claim for interest at the rate of 5 per cent per annum on all sums awarded, as from 8 September 2015 until the date the awarded sums are paid to her in full.

6. The Tribunal has consistently stated that international organizations have a duty to adopt appropriate measures to protect the health and ensure the safety of their staff members and that an organization which disregards this duty is liable to pay damages to the staff member concerned (see, for example, Judgment 3689, under 5). In the circumstances of this case, the organization breached its duty of care to the complainant when it rejected her claim for compensation for her service-incurred illness in the face of the overwhelming evidence, including four favourable medical reports, and its failure to ensure a healthy work environment to protect her health. WHO will be ordered to pay her 25,000 Swiss francs in moral damages. However, as the complainant provides no evidence to prove that her illness created a “pre-existing condition”, which has adversely affected her ability to get private health insurance, her claims for “actual, consequential, material, moral, and exemplary damages” are rejected. In any event, she has not proved that she suffered material damage in the context of this complaint. Neither has she proved that she is entitled to exemplary damages as she

provides no evidence to prove that the decision of 23 August 2019, which she impugns, was based on malice, ill-will, bias, discrimination or prejudice towards her or that they were taken in retaliation against her (see, for example, Judgment 4240, under 8).

7. The complainant's claim for additional moral damages for "excessive and inexplicable" delay in the ACCC's determination of her claim is rejected as the complainant has not articulated the adverse effects that delay had upon her (see, for example, Judgment 4493, under 7 and 8).

8. The complainant provides no evidence of exceptional circumstances to ground a claim for costs in the internal appeal proceedings. However, as she succeeds in her complaint, she will be awarded 8,000 Swiss francs in costs in these proceedings.

DECISION

For the above reasons,

1. The impugned decision of 23 August 2019 is set aside to the extent stated in considerations 5 to 8 of this judgment.
2. WHO shall pay the complainant 25,000 Swiss francs in moral damages.
3. WHO shall pay the complainant 8,000 Swiss francs in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 24 October 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ