

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**G.**

**v.**

**WHO**

**137th Session**

**Judgment No. 4761**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr H. G. against the World Health Organization (WHO) on 13 July 2020 and corrected on 21 September and 16 November, WHO's reply of 24 February 2021, the complainant's rejoinder of 26 March 2021 and WHO's surrejoinder of 28 June 2021;

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 WHO's refusal to recognise that the illness from which he claims to suffer is service-induced.

The complainant joined the Organization in 1988. In February 2001 his treating physician placed him on sick leave due to symptoms of depression and acute anxiety. In April 2001 he returned to work at 50 per cent and then, in January 2002, to full-time work on adjusted hours. From 2014 onwards he began to encounter difficulties in his working relationships with his colleagues and his supervisor. In 2015 the latter refused to authorise his request to take a further training course leading to professional certification, on the grounds that the cost of the training exceeded the two-year training budget allocated for each member of staff. On 17 November 2015 the complainant, who had

decided to take the training course on a self-funded basis, failed the final examination. On 18 November 2015 he was placed on sick leave, again due to depression.

On 12 May 2016 the complainant submitted a claim for his illness to be recognised as service-induced and also asked for it to be acknowledged that he had suffered harassment at work. In his claim, he stated that he had been suffering from “burnout” and “recurring depressive disorder” since 18 November 2015. He identified the triggers of his health problem as his working environment and the context in which he had had to sit the examination which he failed. By memorandum of 10 February 2017, the Secretary of the Advisory Committee on Compensation Claims (ACCC) informed the complainant that it had sent a recommendation to the Director-General in which it found his request to be out of time as it had not been made within the prescribed period of six months following the manifestation and diagnosis of the illness in question, which, in this case, had appeared as long ago as 2001. In addition, he forwarded the Director-General’s decision of 9 February 2017, in which he endorsed the Committee’s findings and rejected the complainant’s claim.

On 28 March 2017 the complainant lodged a request for administrative review of that decision, which was rejected by memorandum of 6 June 2017. In relation to his allegations of harassment, the Administration also sent him a document setting out WHO’s policy on the prevention of harassment and explained to him that a harassment claim fell under a completely separate procedure.

On 13 June 2017 the Director, Staff Health and Welfare found that the complainant, who was still on sick leave, would be unable to resume his duties in the near future and that it would not be possible to redeploy him to other duties. On 22 June 2017 the complainant was informed that he was entitled, *inter alia*, to a disability benefit with effect from 28 August 2017, that is when his paid leave came to an end. He was also informed that his appointment would be terminated for reasons of health.

On 4 July 2017 the complainant lodged an appeal with the Global Board of Appeal against the aforementioned decision of 6 June 2017 and requested that a Medical Board be convened. The internal appeal procedure was therefore suspended pending delivery of the Medical Board's findings.

On 30 September 2017 the complainant's appointment was terminated for reasons of health.

On the basis of the Medical Board's report of 5 November 2018, the ACCC met again on 11 January 2019 and recommended to the Director-General that the complainant's claim of 12 May 2016 should be considered as having been submitted within the prescribed period of six months and, therefore, as receivable, but that it should be rejected on the merits because, in the absence of any causal link, the illness could not be regarded as service-induced. By decision of 11 June 2019, the Director-General endorsed the recommendations of the Medical Board in relation to both the receivability and the merits of the claim and refused to recognise the complainant's illness as service-induced.

On 12 September 2019 the complainant supplemented his appeal by extending it to also challenge the aforementioned decision of 11 June. On 15 November 2019 the Administration submitted its reply. As the complainant failed to lodge his rejoinder within the prescribed time limit, the written procedure was closed.

In its report of 14 February 2020, the Global Board of Appeal concluded that the decision not to recognise the complainant's illness as service-induced complied with the regulations and contained a sufficient statement of reasons, and that the complainant had not demonstrated any negligence on the part of the Organization or proven his allegations of harassment. However, the Global Board of Appeal recommended to the Director-General that the complainant be awarded compensation for the unreasonable time taken to deal with his claim of 12 May 2016 and be reimbursed for the costs of the proceedings. By letter of 14 April 2020, the Director-General endorsed the recommendations of the Board of Appeal and decided to reject the complainant's appeal but to award him 5,000 Swiss francs in moral

damages due to the delay in the procedure, together with 1,000 Swiss francs in costs. That is the impugned decision.

The complainant asks the Tribunal to set aside the Director-General's decisions of 6 June 2017, 11 June 2019 and 14 April 2020, by which the Director-General refused to recognise his illness as service-induced. He seeks a further award of damages in the sum of 15,000 Swiss francs for the unreasonable delay in the proceedings before the ACCC, compensation of 30,000 Swiss francs for the material damage which he considers he has suffered as a result of "repeated mistakes" made by the Organization in examining his claim of 12 May 2016, together with 80,000 Swiss francs for the alleged negligence on the part of the Organization with regard to the difficult working conditions he encountered during 2014 and 2015. He also asks for 9,000 euros in costs. Although in his rejoinder he declares that he maintains "the majority of his claims", he no longer seeks compensation for material damages and asks for his case to be sent back to the Organization so that the internal complaints procedure for harassment can be initiated.

WHO asks the Tribunal to dismiss the complaint as unfounded. Subsidiarily, it asks for the case to be sent back to it so that the procedure for examining the complainant's claim for his illness to be recognised as service-induced can be resumed. WHO considers that the new claim contained in the rejoinder is irreceivable for failure to exhaust internal means of redress and, in any event, unfounded. In addition, WHO asserts that the Tribunal is not competent to make an order of that type and that this claim must therefore be dismissed.

## CONSIDERATIONS

1. The complainant seeks the setting aside of the decisions of 6 June 2017, 11 June 2019 and 14 April 2020 by which the Director-General refused to recognise his illness as being service-induced. He seeks the award of damages to compensate him, first, for the consequences of the unreasonable delay in dealing with his initial claim of 12 May 2016 and, secondly, for the injury he considers that he has suffered as a result of both the errors committed in assessing his claim and the

Organization's negligence with regard to the difficult working conditions he encountered in 2014 and 2015.

2. As can be seen from the above facts and the arguments exchanged by the parties, the essential question that must be resolved in this dispute is whether it was valid for the Organization to find that the illness relied on by the complainant was not attributable to service within the meaning of Article 730 of the Staff Rules and paragraph 3 of Annex 7.E to Section III.20 of the WHO e-Manual dated 1 November 2006 governing compensation to staff members in the event of death, injury or illness attributable to the performance of official duties on behalf of the Organization.

Since this involves a medical matter, the Tribunal recalls that, according to consistent precedent, it may not replace the findings of medical experts with its own assessment. However, it does have full competence to say whether there was due process and to examine whether the medical reports on which administrative decisions are based show any material mistake or inconsistency, overlook some essential fact or plainly misread the evidence (see, in particular, Judgments 4699, consideration 6, 4694, consideration 11, 4464, consideration 7, 3994, consideration 5, and 3361, consideration 8).

3. Contrary to what the complainant submits in the first place, the reason why his claim for his illness to be recognised as service-induced was rejected was ultimately not because it had been brought out of time. On the contrary, it is clear from the Director-General's decision of 14 April 2020 that the claim was declared receivable but was rejected on its merits as no causal link could be found between the illness declared and the working environment. The first argument raised by the complainant therefore has no factual basis and must be dismissed.

4. In the second place, there is no justification for the complainant's assertions that only the matters that occurred from November 2015 onwards could lawfully have been taken into consideration "independently of any other situation not declared within

the prescribed [time limits] and which were never the subject of a claim for service-induced illness”, namely the sickness episode in 2001.

The Tribunal considers that, in the absence of any provision to the contrary, there is nothing to prevent a medical board from taking into consideration matters that pre-date those in respect of which it has specifically been convened. In the present case, in its report of 5 November 2018 it was reasonable for the Medical Board, which was composed of three doctors who were of unanimous opinion, to include that 2001 episode in its overall diagnosis of the complainant’s psychiatric state and to conclude, on the basis of the entirety of the medical file available to it, that the complainant suffered from recurring depression as well as a personality disorder with paranoid tendencies. The Medical Board thus validly found that, while the complainant’s illness in 2015 could be described as a “psychic collapse (depression and anxiety) in a person already presenting a pre-existing psychic fragility”, and although this therefore constituted “a new disorder in the context of a state of prior vulnerability”, he had already suffered in 2001 from an “episode of severe depression and anxiety which had required sick leave and psychiatric treatment”.

Contrary to what the complainant submits, the illness from which he suffered in 2001 could therefore validly be taken into account by the Medical Board.

5. In the third place, the complainant is wrong to claim that there is a contradiction between the Medical Board’s report, on the one hand, and the recommendations of the Advisory Committee on Compensation Claims (ACCC) of 11 January 2019 and the Director-General’s decision of 14 April 2020, on the other. The Medical Board stated the following in its report of 5 November 2018:

“4. The illness diagnosed in 2015 is linked to an unfavourable working context and a stressful direct environment, in particular with regard to disagreements with his close colleagues and direct supervisor and a feeling of isolation in his role and of a lack of recognition on their part. However, these factors must be viewed in the light of pre-existing personal vulnerabilities. The recurring depression from which he suffers has multiple origins.

5. The illness cannot be directly attributed to professional circumstances. However, the aspects of his working environment described as unfavourable have had a long-term deleterious impact on an already fragile person.

6. The illness can be linked to a pre-existing condition on the part of [the complainant], namely a personality disorder and depressive disorder which had already necessitated treatment and sick leave in 2001. Various stress factors can be noted: night shifts with ensuing problems in 2001, difficulties encountered in the new team 2007-2008 (significant isolation), failing his professional exams in 2015.”

Therefore, the Medical Board did not consider the illness diagnosed in 2015 to be solely linked to the complainant’s working conditions and his relationships with his colleagues at the material time. Consequently, contrary to what the complainant submits, the ACCC and the Director-General did not contradict the Medical Board when they found that there was no causal link between the illness and the working environment.

The Tribunal recalls in this regard that, in accordance with its case law, where an illness has several possible causes and only one or some of those causes are connected to professional activity, it can only be recognised as a service-induced illness if those particular causes were the determining factor (see, in particular, Judgment 4709, considerations 9 and 10, and the case law cited therein).

It follows from the foregoing that the Director-General’s decision does not rest on an “incorrect and truncated interpretation of the facts”, as the complainant submits. Furthermore, there is nothing in the file to corroborate his allegation of a lack of impartiality towards him on the part of the Director-General and the members of the ACCC.

6. In the fourth place, the complainant considers that the Organization erred in finding that he had not been a victim of harassment from 2015 onwards.

The Tribunal finds that, as WHO asserts, no specific acts of harassment are alleged by the complainant in his submissions or apparent from the file.

Furthermore, the complainant is wrong to affirm that the Organization's new policy on harassment prevented him from lodging a harassment claim in the proper form either before or at the same time as his claim for his illness to be recognised as service-induced.

In the light of these considerations, it is not appropriate to grant the complainant's request to be provided with statistics on harassment claims within the Organization, as this would contribute nothing to the resolution of the dispute.

7. In the fifth and last place, the complainant asserts that, in both 2001 and 2015, the Organization breached its duty of care by failing to take steps to provide him with a safe and suitable working environment.

The Tribunal has already rejected above the complainant's allegations of harassment.

Moreover, it is apparent from the file that when the complainant suffered from a first episode of illness in 2001, linked to his night shifts, his hours were adjusted on his return from sick leave so that he no longer had to work at night. Indeed, the complainant himself acknowledges that his working relationships improved following those adjustments. Similarly, it is clear that, as the Organization asserts, when the complainant complained about the way in which his supervisor had dealt with his performance reviews in 2013, steps were taken to arrange mediation with the consent of his supervisor, but that the complainant refused this option. Lastly, as the Organization also points out, the complainant has never lodged a formal harassment claim.

8. As a result of all the foregoing considerations, the Tribunal is not convinced by the various pleas made by the complainant to set aside the Director-General's decisions and, in particular, the impugned decision of 14 April 2020.

9. The complainant also complains about the excessive length of time taken by the Organization to examine the merits of his claim for his illness to be recognised as service-induced. However, the abnormally long duration of the procedure has already been acknowledged by the

Director-General, who, in his decision of 14 April 2020, awarded the complainant 5,000 Swiss francs in moral damages on this account.

The complainant considers this amount to be inadequate and seeks the award of a further 15,000 Swiss francs.

However, the Tribunal notes that nowhere in his submissions does the complainant justify his assertion that the amount already awarded to him is insufficient to remedy all the injury suffered under this head, whereas it is quite clear from the file that, throughout the proceedings, he was receiving a monthly disability benefit as well as a monthly payment under the Organization's group accident and illness insurance policy.

10. In his rejoinder, the complainant asks for the case to be sent back to the Organization so that the internal complaints procedure for harassment can be initiated.

However, the Tribunal considers that this constitutes a new claim, which a complainant is not permitted to enter in her or his rejoinder (see, in particular, Judgments 4396, consideration 7, 4092, consideration 10, and 3086, consideration 3(d)).

11. It follows from the foregoing that the complaint must be dismissed in its entirety.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

MIRKA DREGER