

**SEVENTY-EIGHTH SESSION**

***In re* LEFEVRE**

**Judgment 1389**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Georges Lefèvre against the Universal Postal Union (UPU) on 7 June 1994, the Union's reply of 13 July, the complainant's rejoinder of 3 August and the UPU's surrejoinder of 14 October 1994;

Considering Articles II, paragraph 5, and VII 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 in the course of this dispute, which is about compensation for an accident the complainant suffered while on a technical assistance mission for the Union, the parties have lodged the following claims:

The complainant:

1. Compensation for loss of earnings which he sets ultimately at 227,576 Belgian francs;
2. interest on that amount as from 19 December 1993;
3. costs.

The defendant:

Dismissal of the complainant's claims.

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

A. The complainant was employed by the UPU from 1 February 1990 to 30 April 1991 as an expert in a project of the United Nations Development Programme (UNDP) in Vietnam. He was on secondment from the Postal Department of his own country, Belgium. On 30 November 1990, in Hanoi, he fell on his right wrist. Under a collective accident insurance policy the UPU had with a mutual insurance company, the company granted him lump-sum compensation for 6 per cent disability. Upon his return to the Belgian Postal Department he was put on leave for health reasons and, having exhausted his entitlement to sick leave, had his pay reduced for the periods of his absence.

B. The complainant submits that the compensation he received from the insurance company did not make good his loss of earnings. It was his frequent absences for reasons of health, which he blames on the accident, that led to the decision to put him on leave. He submits that the Union is under "quasi- tortious liability" for having taken out a policy that did not include disability coverage.

C. In its reply the UPU submits that it may not interfere in the complainant's relations with the Belgian Postal Department. That Department put him on leave on account of absences due to ailments prior to the accident of 30 November 1990. Not all his absences since his return to Belgium were entirely attributable to the accident. His letter of appointment stipulated that in the event of accident he would be entitled to compensation under the UPU's insurance policy covering experts in its employ. The insurance company met its obligations and he accepted the benefit it paid him, which was ample compensation for loss of earnings. The Union denies his charge of negligence for failure to cover temporary incapacity for work.

D. In his rejoinder the complainant challenges the UPU's allegations about the reasons for his absences, which were the direct cause of his loss of earnings. He says the absences due to orthopaedic disorders were all subsequent to

the accident of 1990 and the cause of his physical disability was the injury to his right wrist.

E. In its surrejoinder the UPU maintains that the accident he had in Vietnam was not to blame for his being put on leave.

#### CONSIDERATIONS:

1. The complainant, who is a chief inspector and honorary head of section in the Belgian Postal Department, seeks compensation from the Universal Postal Union for the injury attributable to an accident that befell him while on mission for the UPU in Vietnam in 1990-91 as an expert for a technical assistance project of the United Nations Development Programme (UNDP). Following internal appeal the Director- General of the International Bureau of the UPU rejected his claim to compensation on 24 May 1994. That is the decision he now impugns before the Tribunal.

#### The complaint

2. The facts of the case insofar as they have a bearing on the material issues may be summed up as follows.

3. On 15 June 1989 the UPU sent a circular to the postal departments of its member States announcing a competition for a medium-term appointment as an expert with the Vietnamese Postal Department. The circular set out the object of the appointment, the qualifications required and the administrative and financial conditions. On social security coverage for experts it said:

"For the duration of his appointment an expert shall be covered by a group life insurance policy and by sickness and accident insurance policies taken out by the UPU.

The expert shall retain coverage by the provident schemes of his own Postal Department."

4. Having been chosen for the mission, the complainant signed a letter dated 16 January 1990 appointing him as an "Expert in postal organisation, management and operations", from 1 February 1990 to 30 April 1991. The letter said, among other things:

"You will be entitled ... in the event of sickness or accident ... to an indemnity the amount of which is set by the provisions of the special insurance scheme that the UPU has for experts seconded to technical assistance projects. The provisions of Appendix 'D' of the United Nations Staff Rules do not apply."

"Save in the contingencies referred to above, entitlement to retirement pension or other social security benefits is not covered by the UPU during your appointment."

It must be stated that the UPU provided health and accident insurance under a collective policy it concluded with "Vaudoise Assurances", an insurance company at Lausanne, in Switzerland. It is common ground that the Union granted the complainant coverage under that policy.

5. On 14 February 1990 the Belgian Ministry of Posts and Telecommunications issued an order under the royal decree of 13 November 1967 determining the administrative status of civil servants seconded on mission. By virtue of that order the complainant was granted leave of absence to take up the international appointment. The order says that such leave "shall be treated as active service" and that the period of appointment "shall be taken into account for the grant and the calculation of pension".

6. The evidence before the Tribunal shows that on 30 November 1990, in Hanoi, Mr. Lefèvre suffered a bad fall on his right wrist when returning from work along a path made slippery by rain. The accredited UNDP doctor gave him temporary treatment so that he could complete his mission. On returning to Belgium at the end of the mission he received further treatment.

7. After resuming duty with the Belgian Postal Department the complainant had to take sick leave several times owing to health problems which he attributes to his fall in Hanoi. It is not clear from the evidence what the real causes of the sick leave were. The medical certificates show that Mr. Lefèvre had had problems with his wrist before the accident in Hanoi and that the fall aggravated a prior lesion. They also show that he had suffered a double myocardial infarction and undergone triple bypass surgery before accepting the mission in Vietnam.

8. On 12 July 1991 the complainant wrote to the Belgian Postal Department asking that the accident of 30 November 1990 be treated as occupational. He did so because under Belgian law sick leave with full pay is subject to a maximum limit and an employee who has exhausted his sick leave is placed on leave with reduced pay pending retirement on an invalidity pension. According to the complainant leave granted in the event of occupational accident does not count as sick leave.

9. Before coming to a decision on the complainant's claim the Postal Department wrote directly to Vaudoise Assurances asking whether it would be willing, in view of the terms of Mr. Lefèvre's insurance policy, to reimburse the salary the Postal Department had paid the complainant while on sick leave, which by then amounted to 401,674 Belgian francs. On 20 November 1991 the insurance company replied:

"Mr. Georges Lefèvre's insurance policy does not cover incapacity for work. Mr. Lefèvre has subscribed only to medical, invalidity and survivor's benefit. We are sorry we are unable to do more."

10. The director-general of the Postal Department sent the complainant a copy of the letter and informed him that after looking into the matter he had reached the conclusion that the accident of 30 November 1990 in Hanoi should not be regarded as service-incurred and that consequently, his absences were to be treated as ordinary sick leave. The outcome was that Mr. Lefèvre was put on leave with reduced pay as from 21 February 1992, the date on which his sick leave ran out, and arrangements then began to retire him on a pension. He actually retired on 1 August 1993.

11. The complainant got compensation for his accident of 30 November 1990 from Vaudoise Assurances. Following negotiations with Mr. Lefèvre, on 20 November 1991 - the very day on which the Belgian Postal Department rejected his claim - the insurance company offered him a lump-sum indemnity of 35,470 Swiss francs corresponding to six per cent permanent invalidity. The complainant accepted the offer on 27 November and payment was made a few days later.

12. Having failed to get the Belgian Postal Department to recognise his fall as an occupational accident Mr. Lefèvre turned to the UPU. In a letter of 18 May 1992 he informed the Director-General of its International Bureau of the state of his health and of the difficulties he was having with the Belgian administration over his sick leave. He went on:

"Since the Postal Department declines to treat the injury as the result of an occupational accident the effect of the above absences is that I am now on 'leave for reasons of health' and the salary I am temporarily being paid is less than what I could claim if the accident was recognised by law as service-incurred".

That letter apparently went unanswered.

13. Almost a year later, on 26 April 1993, the complainant submitted to the management of the Belgian Postal Department a "claim to an attestation of injury". In his letter he referred to the accident in Hanoi which, he said, had been "recognised by the UPU's International Bureau" and went on:

"The medical certificates covering occasional absences since my return which were due to the after-effects of the accident therefore count as ordinary sick leave and not as occupational accident. Consequently, having exhausted my sick leave entitlements (double myocardial infarction in October 1984 and triple bypass surgery in 1986), I have since 22 January 1992 been on leave with reduced pay every time I have been off sick ...

So that I may seek legal redress for the injury thus caused I should be most grateful if you would get the competent section to send me an attestation showing clearly the loss of earnings incurred - or to be incurred - on account of the payment of only 60 per cent of my salary during the periods in question."

14. After a thorough check of the records the Postal Department sent Mr. Lefèvre an attestation on 21 June 1993 showing that at that date the pay he had lost owing to the fact that his accident was not treated as occupational amounted to 249,824 Belgian francs. On 9 October 1993 the complainant sent the attestation to the Director-General of the International Bureau with the request that he ask Vaudoise Assurances to "close the case" by making good the loss of earnings. The UPU forwarded his letter to the insurance company, which replied on 17 December 1993 that it would not accept any further costs since it had fully discharged its liability by repaying the costs of Mr. Lefèvre's medical treatment and granting him a lump-sum invalidity benefit. It considered that the complainant's

new claims were not covered by the insurance policy.

15. Being not yet aware of the insurance company's response, the complainant warned the International Bureau by a letter of 19 December 1993 that he would put up with no further delaying and that unless he obtained satisfaction he would have no choice but to seek reimbursement "by all available means of redress, whether national or international". He expressed regret at having to demand from the International Bureau compensation for the injury he had "suffered and duly substantiated", but assured the Director-General that he was "proud to have served the noble cause of the UPU" and sent him "sincere good wishes for every success in its endeavours".

16. The Assistant Director-General of the International Bureau replied by a letter of 23 December 1993. He reminded the complainant of the terms of his appointment and said that the Union had no obligations towards him beyond those set out in the letter of appointment, which limited its liability in the event of accident to the compensation provided for in the insurance policy.

17. The complainant's response was to ask the Union in a letter of 22 January 1994 to help him to recover what was owed to him. He also said that unless the insurance company paid him compensation, he would have no choice but to sue the UPU on grounds of "quasi-tortious" liability. He urged the Union to respond rapidly so as to "keep down the amount of any interest that might be due on arrears".

18. In reply the Union sent him information on the dispute procedure, including the text of the insurance policy and the address of the ILO Administrative Tribunal. The complainant then wrote to the Registrar of the Tribunal, who pointed out that he must exhaust the internal means of redress before filing a complaint. On 2 March 1994 the complainant accordingly sent a letter to the International Bureau of the UPU lodging an appeal under the proper procedure to claim compensation for the specific, identified and proven injury attributable to the accident that had befallen him while in Vietnam.

19. The UPU automatically submitted the appeal in accordance with the Staff Regulations to its Joint Appeals Committee. By a letter of 29 March 1994 the Chairman of the Committee informed the complainant of the Committee's membership and said that since the file sent by the Administration seemed to be complete and explicit the Committee would probably not need to ask him for further information.

20. The Committee's report of 10 May 1994 contains a thorough analysis of the dispute and in particular makes the following two points:

First, the Committee draws attention to the issue of causality and points out that the complainant's ailments were due as much to the state of his health prior to the accident as to the accident itself.

Secondly, it holds - and this is clearly the decisive point - that the lump-sum indemnity offered by Vaudoise Assurances, which the complainant accepted without reservation, compensated him for the injury he referred to in his appeal.

The Committee therefore concluded that the UPU had fully discharged its liability as Mr. Lefèvre's employer and so recommended rejecting his claims.

21. The Director-General of the International Bureau endorsed the recommendation and in a letter of 24 May 1994 informed the complainant of the rejection of his appeal. That is the decision Mr. Lefèvre is impugning before the Tribunal. He filed his complaint on 7 June 1994, and receivability is not challenged.

The parties' claims

22. The complainant has three claims. He asks the Tribunal to order the UPU:

to compensate him for the loss of earnings caused by the Belgian Postal Department's putting him on leave with reduced pay, the total being 249,824 Belgian francs, later reduced to 227,576 Belgian francs;

to pay interest on the sums due as from the date of his ultimatum of 19 December 1993;

to reimburse all his legal costs.

23. The complainant puts forward no plea in law in support of his case but saying that the Union is under "objective" and "quasi-tortious liability" towards him. He states that he would never himself have subscribed to the insurance policy to whose terms he is now being held. As to the offer from the insurance company, he observes that when he agreed to it he was unable to foresee that his earnings would be reduced as a result of the Postal Department's attitude. So what he is asserting in effect is that the UPU is liable to make good a loss which in his view was caused by the Belgian Postal Department's attitude and the insurance company's refusal to accept the consequences thereof besides paying the lump-sum benefit due under the insurance policy. In his submission, where an official is "on secondment from one organisation to another", the two organisations - here the UPU and the Belgian Postal Department - have a duty to try to reach a "constructive" settlement. If they fail, ultimate liability lies with the international organisation to which he was seconded.

24. The defendant contends that Mr. Lefèvre's conditions of employment were governed by the United Nations Staff Rules applicable to technical assistance project personnel. Although under Rule 206.5 of those Rules service-incurred sickness, accident and death are covered by Appendix D, the complainant did not have those entitlements because under the terms of his letter of appointment Appendix D was replaced by the special insurance scheme that the UPU has for its experts. That scheme provides adequate coverage in the event of sickness, accident and death. So the type of claim the complainant is making is covered by the lump-sum indemnity for invalidity caused by an accident, which is reckoned on the basis of salary.

25. The Union further observes that it may not be held liable for loss of earnings which the complainant suffered after he resumed duty with the Belgian Postal Department. It states that, in accordance with the arrangements it has with national departments, and without prejudice to the insurance policies it concludes, experts must remain covered by the social security scheme of their own national department. It is not, says the UPU, for it to act in the stead of the complainant's regular employer. The Belgian Postal Department must therefore sort out the case with him, particularly since the after-effects of the accident in Vietnam were far from being the only cause of his absences on grounds of ill-health. Furthermore, according to the Belgian Postal Department, he was entitled to 832 working days' sick leave in view of his length of service. Obviously - concludes the Union - he had not used up his sick leave solely as a result of the accident in Vietnam.

#### The merits

26. What is at issue in this case is the sharing of liability under the contractual arrangements, described above, that apply to experts seconded by national postal departments. Both the circular announcing the competition for the post of expert and the letter of appointment say that the expert "shall be covered" in certain specific contingencies by a collective insurance policy "taken out by the UPU", and that the Union is entitled to subtract the corresponding premiums automatically from the expert's pay. The expert remains at the same time covered by the social security system of his own postal department. Those two conditions are set out in the complainant's terms of employment. Moreover, the contract of service concluded with him states that in the event of accident he is entitled to compensation in an amount governed by the provisions of the "special" insurance policy taken out by the Union and that the Union is not liable for any social insurance claims save in the stated contingencies.

27. The international organisation is under no duty to insure its expert against any adverse effects on him that the national postal department may draw from conclusions about the nature of an accident that has befallen him while on mission for the organisation. So any claim that the expert may make that goes beyond those limits should be made to the national department, which will deal with it according to its own rules. Nor indeed may the Union or the Tribunal intervene in the area of the department's competence. That is all the more true in a case like the present one in that the complainant's health had obviously already suffered for reasons that had nothing to do with his mission for the UPU. It is plain from the evidence that the Belgian Postal Department has gone thoroughly into those issues and has finally rejected the claim which has prompted the complaint.

28. In view of the complainant's arguments, clause 3 of the accident insurance policy warrants particular attention. It insures full-time employees against any sort of accident, regardless of whether service-incurred or not. Such a clause is common in this type of policy and the purpose of it is to avoid having to determine whether a particular accident is to be treated as service-incurred or not. So the complainant was wrong to inform the Belgian Postal Department that the UPU had "recognised" his accident as service-incurred. Under the insurance policy it makes no difference to the Union's obligations whether or not the accident is to be treated as "service-incurred". The complainant's arguments on the issue are therefore immaterial.

29. Nor does he succeed in his plea that he did not himself subscribe to the insurance policy. It is clearly established that experts are covered automatically by the UPU's collective insurance policy and that the UPU may subtract his share of the collective insurance premium from his pay.

30. There is one last point to be made. After negotiation with the insurance company the complainant consented unreservedly to the percentage of permanent invalidity and to the corresponding lump-sum benefit that the company had proposed. The lump-sum benefit covers all the consequences, both present and future, of the accident which befell the complainant while he was under contract to the UPU. His acceptance of such compensation has released the insurance company from any further liability towards him and by virtue of his contract of service such release applies to the UPU as well.

31. The conclusion is that the complaint has no basis either in fact or in law.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Pierre Pescatore, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas  
Michel Gentot  
P. Pescatore  
A.B. Gardner