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

NINETY-SECOND SESSION

***In re* Ansermoz** **Judgment No. 2083**

The Administrative Tribunal,

Considering the complaint filed by Mrs Myriam Ansermoz against the International Labour Organization (ILO) on 27 October 2000 and corrected on 23 November 2000, the ILO's reply received on 27 February 2001 and the complainant's letter of 2 April 2001 to the Registrar declining to enter a rejoinder;

Considering Articles II, paragraph 1, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, a Swiss citizen born in 1947, joined the International Labour Office (ILO), the Organization's secretariat, in 1973. She underwent surgery for a detached retina of the right eye in November 1976 and again in August and September 1980. In December 1983 the Compensation Committee unanimously recommended that, since hers was a very special case the Director-General should, by way of an exception, recognise the last two retinal detachments as attributable to the performance of official duties. In 1991 the complainant suffered a detached vitreous in the left eye which the ILO also treated as service incurred. In its report of 8 May 1992 the Invalidity Committee found the complainant to have an overall incapacity of 34 per cent, and recommended granting her compensation in the corresponding amount. In December 1993 the complainant and the Administration agreed on an amount after lengthy negotiations.

For several years the ILO refunded to the complainant all the medical and other costs generated by these injuries. But as from 28 September 1998 it stopped paying her claims, the Organization's medical officer having doubts as to their coverage by the compensation scheme. Having been consulted, the Compensation Committee found that her medical expenses no longer corresponded to treatment for retinal detachments but for shortsightedness which was unrelated to the service-incurred injuries. The complainant was so informed in a letter of 6 December 1999. On 4 February 2000 she sent in a medical report from her own doctor stating that there was an obvious connection between her treatment and the service-incurred injuries. After correspondence, the ILO informed the complainant by a letter of 26 July 2000 that it upheld its decision of 6 December 1999. That is the impugned decision.

B. The complainant submits that the case turns on whether the ILO should refund 100 per cent of the costs she incurs in attending an eye hospital for a checkup every three months as being a consequence of injuries attributable to the performance of official duties. It is a medical question to which the hospital gave a clear response, which the ILO rejects even though for several years it took the opposite view.

The complainant points out that the decisions to treat her injuries as attributable to the performance of official duties stipulate that she is entitled - under paragraph 7(a) of Annex II to the Staff Regulations (concerning compensation in the event of illness, injury or death attributable to the performance of official duties) - to "the reimbursement of all reasonable medical and related expenses concerning [her] accident". In her submission the whole point of including that clause was to avoid having to establish a direct causal link between the injuries and the treatments for which she has claimed reimbursement. By rejecting her claims the ILO exceeds the terms of the decisions.

She asks the Tribunal to quash the impugned decision, to invite the Organization to refund to her in full her

hospital bills and related expenses, and to reserve her rights for any future medical costs arising from the service-incurred injuries.

C. In its reply the ILO deems irreceivable the complainant's claim to full reimbursement of her hospital bills - including the ones she says she "gave up" submitting after the end of 1998. Her claim to have her rights reserved is also irreceivable, being hypothetical and too vague. Nevertheless once the Tribunal has ruled, the ILO will heed its decision in dealing with any further claims in this connection as well as any indication the Tribunal may give on the scope of its liability.

The Organization says that, in its view, the case turns on the extent to which the ILO's statutory obligation to pay compensation for occupational injury covers the complainant's visits to her ophthalmologist in 1998. The problem is one of interpretation in which expert medical opinion is only one factor and in which the final decision rests with the Director-General.

In its submission, the obligation is not unconditional but ceases once the injury has stabilised. The ILO continued to settle the complainant's claims well beyond stabilisation. The treatments she underwent in 1998 did not constitute curative treatments but rather "periodic checkups". The fact that in the complainant's case it went beyond its statutory obligation can on no account extend the scope of this obligation or prevent the ILO from reverting to strict observance of it. It adds that, as a member of the Organization's health fund, the complainant is entitled to reimbursement of at least 80 per cent of her medical and pharmaceutical costs.

CONSIDERATIONS

1. The complainant joined the International Labour Office on 1 July 1973.

At an initial medical examination carried out on 24 May 1973, after which she was declared fit for service, her visual acuity with contact lenses was found to be 0.6 in the right eye and 1.0 in the left eye.

In November 1976 she suffered a detached retina of the right eye for which she had to undergo surgery. Two further operations for retinal detachments in the right eye followed in 1980. When she resumed work on a full-time basis, at the end of March 1981, she was given duties which involved no exposure to visual display units.

2. In 1982 she claimed compensation for service-incurred injuries on the grounds that her assignment to the Financial Computer Systems and Data Control Section (FINSYS), where her job had involved intensive and prolonged exposure to visual display units, had been partly responsible for the retinal detachments she sustained in 1980.

On 9 December 1983 the Compensation Committee unanimously recommended that "by way of an exception and in view of the very special nature of the case", the Director-General should recognise "the last two retinal detachments [the complainant] sustained while she was at FINSYS as attributable to the performance of her official duties, in accordance with the provisions of Annex II to the Staff Regulations". The Director-General endorsed the recommendation on 13 December 1983 and the complainant was so informed on 20 January 1984.

After lengthy negotiations which culminated in an agreement in 1993, the complainant received the compensation.

Meanwhile, in 1991 she had suffered a detachment of the vitreous of her left eye, recognised in 1992 as service incurred.

3. In accordance with Annex II to the Staff Regulations, the Organization regularly reimbursed her bills relating to the service-incurred injuries.

But it stopped as from September 1998. In a letter of 6 December 1999 the Compensation Committee informed her that her claims would no longer be settled because they were "unrelated to any condition caused by [her] occupational injuries".

Having been asked by the complainant to comment on the ILO's reasons for rejecting her claims, her own doctor replied on 24 January 2000 that she had received "treatment subsequent to a detached retina in the [right eye] (first

occupational injury) ... and to a trauma of the [left eye] (second occupational injury)".

In a letter of 4 February 2000 the complainant made it clear to the ILO that she would take legal action unless some agreement was reached.

After an exchange of letters, on 26 July 2000 the Organization upheld its decision of 6 December 1999 on the grounds that her outstanding claims and the treatment undertaken were "related not to any deterioration of her eye condition as a result of the service-incurred injuries but to periodic checkups and treatment which would have been necessary regardless of [these] injuries because she already suffered from myopia and in the 1970s had sustained a detached retina which was unrelated to her work". That is the decision she is challenging in this complaint.

4. She asks the Tribunal:

- to quash the impugned decision and invite the Organization to refund to her in full the bills for her quarterly checkups which she submitted between September 1998 and September 2000, together with her travel and other related costs, as being reasonable medical and related expenses arising from injuries recognised as service incurred;

- to reserve her rights in respect of any future medical costs arising out of these injuries.

5. The ILO rightly observes that some of her claims are irreceivable.

Her claim to repayment of costs incurred in visiting the eye hospital is irreceivable insofar as it concerns the bills she did not submit after the end of 1998.

So too is the claim to "reserve the complainant's rights in respect of any future medical costs arising from [the] injuries" recognised as service incurred, since it shows no actual and present interest.

6. The complainant is claiming reimbursement of bills for periodic checkups and treatment which, in her view, constitute reasonable medical expenses reimbursable under paragraph 7(a) of Annex II to the Staff Regulations:

"An official who suffers illness or injury which is within the scope of this Annex shall be entitled to the reimbursement of all reasonable medical, surgical, pharmaceutical, hospitalization and convalescence expenses, any travel expenses necessarily incurred in obtaining proper treatment and the reasonable cost of any necessary artificial limbs and surgical appliances and of their normal renewal."

In her view, the nub of the case is whether the ILO must reimburse in full the cost of her quarterly visits to the eye hospital and related expenses as arising out of injuries recognised as service incurred. She contends that the matter is a medical one, as the eye hospital made quite clear, and there need not be a direct causal link between the injuries and the medical treatment. She argues that under the above-mentioned text, the decision to recognise an injury as service incurred entitles her to reimbursement of all reasonable medical and related costs arising from the injury. Since the whole purpose of periodic checkups and treatment is to prevent any deterioration in her eye condition they are obviously related to the service-incurred injuries.

7. The Organization retorts that the issue to be resolved is the extent to which her periodic visits to her eye doctor in 1998 fall within its statutory obligation to compensate occupational injuries. It views the problem as one of interpretation in which expert medical opinion is only one factor, and while the latter may be decisive to settling the issue, the final decision is within the Director-General's discretionary power. Moreover, the treatments undertaken in 1998 and for which the complainant claims reimbursement were not for curative treatment as her medical certificate states, but for "periodic checkups". The latter will not improve her eyesight or restore her capacity for work, which "has been permanently impaired not by eye problems but by ailments of another kind".

The ILO argues that even supposing, as the complainant asserts, that its obligation under paragraph 7(a) did arise from the causal link between the medical treatment and the consequences of the injuries, the nature of the link would still have to be determined. The existence of a link is enough in the complainant's view, whereas the Organization holds that, in addition, the injury would have to be a direct and principal cause of the treatment.

8. The Tribunal observes that the ILO recognised the complainant's retinal detachments in the right eye in 1980 and the detachment of the vitreous in the left eye in 1991 as service incurred, and accordingly reimbursed regularly the hospital bills she submitted under paragraph 7(a). In other words, it treated them as costs which she was bound to

incur in securing the treatment she needed as a result of the injuries. Not until September 1998 did the ILO decide to stop reimbursing the bills on grounds which it notified to the complainant on 6 December 1999, namely that curing her retinal detachments was no longer the object of the treatment. However, it did not show that the service-incurred injuries were not a "direct and principal" cause of the treatment.

9. Given the diverging opinions as to the nature of the treatment in question, the Tribunal takes the view that although, as the Organization says, the decision to stop reimbursing the bills was at the discretion of the Director-General, it could not be taken without an independent expert medical opinion obtained through a process which provides all the safeguards of transparency and impartiality. As the ILO itself points out, this medical opinion is one of the factors to be considered in resolving the issue.

10. In reaching the decision of 26 July 2000 the ILO took no account of any expert medical opinion so issued as to ensure complete impartiality and total transparency and thus accord the Tribunal reliable evidence on which to base an objective assessment. The decision must accordingly be set aside and the case sent back to the Organization for referral, within three months of the date of this judgment, for the opinion of a medical board composed and acting in accordance with paragraph 25(a) of Annex II to the Staff Regulations. Within three months of the referral, the medical board shall submit a report indicating whether the complainant's quarterly checkups and the treatment she receives in that context are related to eye lesions she suffered as a result of injuries which the ILO recognised as service incurred.

11. Since her complaint succeeds in part, the complainant is entitled to costs, which the Tribunal sets at 3,000 Swiss francs.

DECISION

For the above reasons,

1. The decision of 26 July 2000 of the Director-General is set aside.

2. The case is sent back to the Organization for referral to a medical board in accordance with 10 above.

3. The complainant's claims to reimbursement of bills which she did not submit and to reservation of her rights for future medical costs are dismissed.

4. The Organization shall pay the complainant 3,000 Swiss francs in costs.

In witness of this judgment, adopted on 2 November 2001, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2002.